



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 9, 2004

MEMORANDUM

TO: Lawrence H. Norton
General Counsel

THROUGH: James A. Pehrkon *AC/jap*
Staff Director

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Deputy Staff Director

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

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SUBJECT: Stephanie Tubbs Jones for U.S. Congress (A03-09) – Referral Matter

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FEDERAL ELECTION COMMISSION
OFFICE OF THE GENERAL COUNSEL

On January 7, 2004, the Commission approved the final audit report on Stephanie Tubbs Jones for U.S. Congress. The final audit report includes a matter that meets the criteria for referral to your office: Finding 1—Personal Use of Campaign Funds (see attachment.)

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Henry Miller or Wanda Thomas at 694-1200.

Attachment: Finding 1—Personal Use of Campaign Funds

Finding 1. Personal Use of Campaign Funds

Summary

The Audit staff identified charges made on STJ For Congress' American Express card, totaling \$9,556, which may have been for the Candidate's personal use. Most of the charges appear to be travel related expenses that were incurred by the Candidate and her spouse. The Candidate reimbursed STJ For Congress for \$2,722 of this amount prior to notification of the audit, although the reimbursement was not made within the 30 day time period allowed by the regulations. Possible reimbursable "personal use" charges of \$6,834 remained. In response to the interim audit report, the candidate provided documentation to show that \$1,910 of the \$6,834 in reimbursed charges was campaign or officeholder related. The Audit staff determined that documentation for \$1,245 of the \$1,910 was evidence of campaign or officeholder expenses. Nevertheless, the candidate reimbursed STJ For Congress \$6,834.

Legal Standard

Use of Campaign Funds. Using campaign funds for personal use is prohibited. 2 U.S.C. §439a(b)(1)

Personal Use Defined. Personal use is defined as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder.

If a committee uses campaign funds to pay expenses associated with travel that involves both personal activities and campaign or office related activities, the incremental expenses that result from the personal activities are personal use, unless the person(s) benefiting from this use reimburse(s) the campaign account within thirty days for the amount of the incremental expenses. 11 CFR § 113.1(g)(1)

Facts and Analysis

During the audit period, STJ For Congress paid \$48,753 for charges made on its American Express credit card. The only available documentation to support the charges was the American Express statements. The statements detailed the charges by the four authorized users: the Candidate, Treasurer, Candidate's spouse, and a campaign staff member.

Information captured on the statements included the following:

- The vendor that provided the goods/services
- The state or country in which the goods/services were provided
- The date of the transaction
- The dollar amount of the goods/services provided
- A brief description of the goods/services provided

The Audit staff reviewed each charge on the American Express monthly statements to determine if the charge was campaign or officeholder related. In making that determination, the Audit staff considered, among other things, the geographical location (the Candidate's home state, Washington, DC, or other location) where a charge occurred and the description of the goods and services charged. As a result of that review, the Audit staff determined that charges totaling \$18,384 needed explanation and documentation to verify that they were campaign or officeholder related and not "personal use" of campaign funds. In many cases, the purpose of the questionable charges could not be discerned from the descriptions on the American Express statements. A list of possible "personal use" charges was developed. The list included all charges incurred overseas, charges that were incurred outside of the Candidate's home jurisdiction or the Washington, D.C. area, and certain charges within the Candidate's home jurisdiction or the Washington, D.C. area that based on the statement description appeared to be non-campaign related. The list of possible "personal use" charges was given to the Treasurer during audit fieldwork.

The Candidate had previously reimbursed STJ For Congress \$2,722 of the \$18,384, although the reimbursement was not made within the 30 day time period allowed by the regulations. The reimbursed charges were for travel related expenses incurred overseas. The reimbursement was made in response to a Request for Additional Information from the Commission's Reports Analysis Division. Possible reimbursable "personal use" charges of \$15,662 remained.

At the exit conference, the Audit staff informed the Treasurer that the list provided during fieldwork was a preliminary list. The Treasurer stated that the Candidate had been given the list and would personally address the questionable charges.

The Candidate's responded that she would reimburse STJ For Congress an additional \$2,467 for "personal use" charges. These charges included purchases of clothing, jewelry, and art. For the other charges on the list, a brief comment was written to explain why the charges were not reimbursable. Examples of such comments included that the charge was:

- for expenses not paid by the sponsors of overseas travel or travel within the U.S.;
- for meals with supporters or constituents occurring in the Candidate's home state, Washington, DC, or other locations;
- for travel expenses for spouse (even though travel was outside of the Candidate's home jurisdiction or the Washington, D.C. area); and
- for reelection activities occurring outside of the Candidate's home jurisdiction or the Washington, D.C. area.

However, no additional documentation was provided for any charge on the list.

The Audit staff researched Advisory Opinions that relate to personal use of campaign funds¹. According to these Advisory Opinions, campaign funds may only be used to pay those expenses of a trip that relate to the campaign or officeholder duties. Campaign funds may not be used to pay for the portions of a trip that consist of personal activity.

¹ See A.O. 2002-5 for example of candidate travel that has campaign and non-campaign components

Campaign funds used to pay for personal activities must be reimbursed within thirty days. We also reviewed the U.S. House of Representatives publications regarding campaign activity, gifts and travel.² According to these publications, the Committee on Standards of Official Conduct strongly advises that campaign committees maintain records that, for travel expenditures, specify the politically related activities in which the Member (and/or other trip participants) engaged during each campaign-funded trip, and, for meal expenditures, note both the individuals who were present at each meal, and the specific campaign or political purpose served by the outlay.³ Also, a member of Congress may accept reasonable expenses for transportation, lodging and meals from the private sponsor of an officially connected trip.⁴ Some of the possible "personal use" charges coincided with sponsored trips.

Based on the Candidate's response and considering the Advisory Opinions, the Audit staff developed a new list, totaling \$9,556, which included an additional charge not previously considered possible "personal use". This amount includes the \$2,722 previously reimbursed, the \$2,467 that the Candidate stated would be reimbursed, \$3,992 charges that were on the initial list⁵, and an additional travel related charge, totaling \$375, which was not on the initial list. The disbursements that remained at issue were identified for STJ For Congress

Interim Audit Report Recommendation

The Audit staff recommended that STJ For Congress provide evidence that the \$6,834 (\$9,556 - \$2,722) in charges described above were for campaign or officeholder expenses and not for the Candidate's personal use. Absent such evidence, it was recommended that the Candidate reimburse the amount to STJ For Congress.

Committee Response to Recommendation and Audit Staff's Assessment

In response to the recommendation, the Candidate reimbursed STJ For Congress \$6,834. The Candidate also provided documentation for expenses totaling \$1,910 in attempt to show that the costs do not represent personal use of campaign funds. For those amounts that are accepted as permissible uses of campaign funds, the Candidate intends to have STJ For Congress return the funds to her. Regarding the other expenses identified by the Audit staff, the Candidate stated that they "are expenses that I honestly believe are legitimate campaign expenses. I do not have additional records at this time to support my position."

The documentation provided supports that \$1,245 of the expenses were either campaign or office holder expenses. However, \$665 in expenses for flying a family member to a

² The candidate, Stephanie Tubbs Jones, is currently a member of the House Committee on Standards of Official Conduct.

³ House Committee on Standards of Official Conduct, *Laws, Rules and Standards of Conduct on Campaign Activity*, H Rep., 107th Cong., 1st Sess. (Dec. 2001) p 57

⁴ *Rules of the U S. House of Representatives on Gifts and Travel*, H Rep., 106th Cong. 2nd Sess (Apr. 2000) p 80

⁵ The Audit staff concluded that, based on its research and the Candidate's response, \$9,203 in charges questioned on the initial list are not personal use of campaign funds

basketball game and transporting Congressional pages to the game are neither. In the Audit staff's opinion, STJ For Congress cannot reimburse the Candidate for these expenses.

Of the \$9,556 that the Audit staff considered possible personal use, there remain expenses in the amount of \$8,311 (\$9,556-\$1,245) that have not been demonstrated to be permissible uses of campaign funds. The Candidate has reimbursed STJ For Congress \$2,722 in response to questions raised by the Reports Analysis Division and the remainder in response to the Interim Audit Report.