



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 23, 2008

MEMORANDUM

To: Lynn Fraser
Acting Director
Office of Alternative Dispute Resolution

Through: Joseph F. Stoltz *JFS*
Acting Staff Director

From: John D. Gibson *JDG*
Chief Compliance Officer

Wanda J. Thomas *WJT*
Acting Assistant Staff Director
Audit Division

Alex Boniewicz *AB*
Audit Manager

By: Rhonda Gillingwater *RG*
Lead Auditor

Subject: Christine Jennings for Congress (A07-16) - Referral Matters

On December 15, 2008, the Commission approved the final audit report on Christine Jennings for Congress. The final audit report includes the following matters that are referable:

- Finding 1 – Receipt of Contributions that Exceed Limits meets the criteria for referral to your office. The Audit staff identified 111 contributions from individuals that exceeded the limitation by \$95,897. JFC provided copies of letters sent to contributors that were eligible for presumptive redesignation and/or reattribution (\$93,797). JFC refunded the remaining contribution (\$2,100), and provided a copy of the front and back of the negotiated refund check.
- Finding 3 – Failure to File 48-Hour Notices meets the criteria for referral to RAD for processing under the Administrative Fines Program. However, Audit Division policy dictates if one matter is referred to your office, other matters shall also be

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referred to your office. JFC failed to file 48-hour notices for 27 contributions totaling \$43,700 received prior to the primary and general elections. In response to the interim audit report, JFC acknowledged that it may have failed to completely report all contributions that were subject to the 48-hour reporting requirements. JFC's response also stated that for 2008, it has instituted policies and procedures to achieve more uniform compliance.

- Finding 4 – Itemization of Contributions from Other Political Committees meets the criteria for referral to your office. JFC failed to itemize 30 contributions from 24 political committees totaling \$43,310 on Schedules A (Itemized Receipts) of its disclosure reports. In response to the interim audit report, JFC filed amended reports which materially disclosed these contributions.

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Rhonda Gillingwater or Alex Boniewicz 694-1200.

Attachments:

Finding 1 – Receipt of Contributions that Exceed Limits

Finding 3 – Failure to File 48-Hour Notices

Finding 4 – Itemization of Contributions from Other Political Committees

Finding 1. Receipt of Contributions that Exceed Limits

Summary

JFC accepted 111 contributions from individuals that exceeded the limit by \$95,897. Of these excessive contributions, contributions amounting to \$93,797 were eligible for presumptive election designation and contributor attribution. However, there was no evidence that the required notices had been sent to contributors. The remaining excessive contribution, \$2,100, was not eligible for presumptive redesignation and/or reattribution and must be refunded. In response to the interim audit report, JFC sent the required presumptive redesignation and/or reattribution letters and refunded the remaining excessive contribution of \$2,100.

Legal Standard

A. Authorized Committee Limits. For the 2006 election, an authorized committee may not receive more than a total of \$2,100 per election from any one person as adjusted by the Consumer Price Index (CPI). 2 U.S.C. §441a(a)(1)(A), (c) and (f); 11 CFR §110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable contribution to the donor; or
- Deposit the contribution into a campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion of contributions may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- Refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, when an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the committee may presumptively redesignate the excessive portion of a general election contribution back to the primary election if the amount redesignated does not exceed the committee's primary net debt position.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- Refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- That the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee must either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5

Facts and Analysis

Contributions from individuals were reviewed to determine if excessive contributions were received. The Audit staff identified 111 contributions that exceeded the limit by \$95,897. During this review, it was noted that JFC routinely redesignated contributions to another election or reattributed contributions to another individual. However, JFC did not provide evidence of written reattributions or redesignations, or provide evidence that the contributors were notified of any presumptive reattribution or redesignation. Of the excessive contributions, \$93,797 could be resolved by JFC sending presumptive redesignation and/or reattribution letters. The one remaining excessive contribution (\$2,100) appeared resolvable only by refund. JFC did not maintain sufficient funds in its bank account to refund the excessive contributions.

Prior to the exit conference, the Audit staff provided JFC representatives with a schedule of excessive contributions noted above. The issue was discussed at the exit conference with JFC representatives who agreed to review the schedule and concentrate on sending the necessary letters as soon as possible.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that JFC:

- Provide evidence demonstrating that the contributions were not excessive. Evidence should have included documentation that was not made available to the Audit staff during the audit, including copies of solicitation cards completed by the contributors at the time of their contribution that clearly informed the contributors of the limitations; timely notifications sent to contributors eligible for presumptive redesignation and/or reattribution; or, timely refunds (copies of the front and back of negotiated refund checks), redesignations, or reattributions for excessive contributions; or,
- Absent such evidence, JFC was to send notices to those contributors that were eligible for presumptive redesignation and/or reattribution (\$93,797) to inform them how the contribution was designated and/or attributed and offering a refund of the excessive amount. Absent a request for a refund by the contributors, these notices obviate the need for contribution refunds or payments to the U.S. Treasury. For notices sent to contributors, JFC was to provide a copy of each notice and evidence that it was sent. These notices must demonstrate that both the contributor and the individual to whom the contribution was reattributed were notified. If any contributor could not be located or if the presumptive notice came back undeliverable, JFC was to make a disgorgement of the excessive contribution to the U.S. Treasury; and
- For the remaining excessive contribution, JFC was to refund the excessive portion to the contributor or pay the amount to the U.S. Treasury and provide evidence of such action (copy of the front and back of the negotiated refund check); or
- If funds were not available to make the necessary refunds, JFC was to disclose the contribution requiring a refund on Schedule D (Debt and Obligations) until funds became available to make the refund.

In response to the interim audit report recommendation, JFC provided copies of letters sent to contributors that were eligible for presumptive redesignation and/or reattribution (\$93,797). For the remaining contribution (\$2,100), JFC provided a copy of the refund letter and negotiated check.

Finding 3. Failure to File 48-Hour Notices

Summary

JFC failed to file required 48-hour notices for 27 contributions totaling \$43,700, received prior to both the primary and general elections. In response to the interim audit report, JFC acknowledged that it may have failed to completely report all contributions that were subject to the 48-hour reporting requirements, but has now instituted policies and procedures to achieve uniform compliance.

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Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate, including:

- Contributions from the candidate;
- Loans from the candidate and other non-bank sources; and
- Endorsements or guarantees of loans from banks. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 268 contributions, totaling \$494,633, which were greater than \$1,000 and received during the 48-hour notice filing period of both the primary (8/17/06 – 9/2/06) and general elections (10/19/06 – 11/4/06). JFC did not file 48-hour notices for 27 contributions totaling \$43,700. These included contributions from both individuals and political committees. For the general election 48-hour notices, 19 (\$30,200) of the 21 contributions were included in the same three deposits made on October 23, or October 24.

At the exit conference, JFC was provided a schedule of the 48-hour notices not filed. Representatives for JFC did not comment, but took the workpapers for review.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that JFC provide evidence that 48-hour notices were timely filed, that no notice was required or submit any comments it considered relevant.

In its response to the interim audit report, JFC acknowledged that it may have failed to completely report all contributions that were subject to the 48-hour reporting requirements, but does note that it did file 241 (\$450,000) of the 268 (\$494,633) contributions that required such notices. JFC's response also stated that for 2008, it has instituted policies and procedures to achieve more uniform compliance.

Finding 4. Itemization of Contributions from Other Political Committees

Summary

JFC failed to itemize 30 contributions from 24 political committees totaling \$43,310 on Schedules A (Itemized Receipts) of its disclosure reports. In response to the interim audit report, JFC filed amended reports which materially disclosed these contributions.

Legal Standard

Regardless of Amount. Several types of receipts must be itemized on Schedule A regardless of amount. They include:

- Contributions from political committees and similar organizations;
- Transfers from other party committees and party organizations;
- Transfers from non-federal accounts and of Levin funds;

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- Loans received;
 - Loan payments received; and
 - Refunded contributions received from political committees.
- 2 U.S.C. §434(b)(3)(B), (C), (D) and (E).

Facts and Analysis

Based on its 100% review of all contributions from other political committees, the Audit staff identified 30 contributions from 24 other political committees totaling \$43,310 that were not itemized on JFC's disclosure reports. All the contributions were from federal political action committees which require itemization on Schedule A, Line 11(c), regardless of amount. These contributions were reported by the contributing committees. Included among the contributions were five in-kind contributions from three political committees totaling \$4,985.

At the exit conference, the Audit staff discussed these matters and provided a schedule of the contributions noted above. The representatives for JFC did not comment.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that JFC amend its reports to disclose these contributions. In response to the interim audit report, JFC filed amended reports which materially corrected the disclosure of these contributions.

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