

REPORTS ANALYSIS DIVISION REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: July 11, 2012

ANALYST: Bradley Matheson

- I. COMMITTEE: Susan Davis for Congress
C00344671
Brett Smiley, Treasurer (10/12/2011 - present)
Kinde Durkee, Treasurer (9/24/08 - 10/12/11)
P.O. Box 84049
San Diego, California 92138-4049
- II. RELEVANT STATUTES: 2 U.S.C. § 432(b) and (c)
2 U.S.C. § 434(b)
11 CFR § 102.9
11 CFR § 102.15
11 CFR § 104.3
- III. BACKGROUND:

Other Violations of the Federal Election Campaign Act (Unauthorized Use of Campaign Funds)

Susan Davis for Congress ("the Committee") filed its 2011 October Quarterly Report to disclose unauthorized disbursements of \$160,015.47 (Attachment 2).

On September 28, 2011, Lyn Utrecht, the Committee's counsel, met with the Office of General Counsel (OGC) and the Reports Analysis Division (RAD) to discuss the unauthorized use of Committee funds by former treasurer, Kinde Durkee. Among other issues, Ms. Utrecht mentioned the Committee would not be able to report an accurate cash-on-hand balance for the 2011 October Quarterly Report. RAD Management advised Ms. Utrecht that the Committee should file the 2011 October Quarterly Report with an additional explanation of the Committee's situation and statement that an amendment would be filed to correct the cash-on-hand balance once the Committee received the necessary information. RAD Management explained that the Committee should amend the 2011 October Quarterly Report with a one-time cash adjustment and discussed the acceptable methods. RAD Management encouraged the Committee to make an adjustment as soon as it had more information and to file future

amendments if further adjustments were necessary. RAD Management stated that with each cash adjustment, the Committee should include a detailed explanation of any previously omitted activity (Attachment 3).

On October 15, 2011, the Committee filed the 2011 October Quarterly Report covering the period from July 1, 2011 through September 30, 2011. The report disclosed a \$160,015.47 cash-on-hand adjustment on Schedule B, supporting Line 21 (Other Disbursements) of the Detailed Summary Page, with a purpose of "adjustment for embezzled funds" (Image 11971623759). The report also included memo text, which stated:

"Towards the end of the reporting period, the Committee discovered that the former treasurer embezzled funds from the Committee. The ending cash on hand figure represents the current balance of the accounts at the end of this reporting period. While not anticipated, it is possible that the Committee will amend this figure should additional information come to its attention" (Images 11971623709).

On May 9, 2012, the RAD Analyst left a message for Brett Smiley, Committee treasurer, requesting a return call (Attachment 3).

On June 7, 2012, the RAD Analyst attempted to contact Mr. Smiley. The Analyst informed Brendan Galvin, Mr. Smiley's assistant, that the issue of unauthorized activity may be referred to another office for further action. Mr. Galvin asked the Analyst if the Committee should provide any further information. The Analyst advised that the Committee amend its reports or file a Miscellaneous Electronic Submission ("Form 99") if the Committee had any additional information. Mr. Galvin indicated that he believed all information had been previously disclosed.

To date, no further communications have been received from the Committee regarding this matter.