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2004 OCT 20 P 3: 59

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October 20, 2004

BY FACSIMILE AND HAND-DELIVERY

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Office of General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Request for No Further Action on Matter Under Review No. 5520

Dear Mr. Jordan:

I am writing in response to the letter from the Federal Election Commission ("the Commission"), dated September 1, 2004, notifying Charles L. Buckels, Jr. and the Republican Party of Louisiana ("the Party") of a complaint filed by Roger P. Hamilton, Jr. under the Federal Election Campaign Act of 1971, as amended. Mr. Hamilton also delivered a supplemental letter, which the Commission received on September 17, 2004. As counsel for Mr. Buckels and the Party, I submit this response to request that the Commission take no further action in this matter. See 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.6(a). By the Commission's letter dated September 14, 2004, the time for this response was extended to and including October 20, 2004.

Background: On May 10, 2004, Wilbert J. Tauzin III filed a Statement of Candidacy with the Commission regarding his campaign for election to the United States House of Representatives for the Third District of Louisiana. Mr. Tauzin's principal campaign committee is the "Tauzin for Congress" campaign. Mr. Tauzin's father, the Honorable Wilbert J. Tauzin II, is the incumbent Congressman for the Third District. Congressman Tauzin has announced that he will vacate his seat at the conclusion of the current legislative session. Congressman Tauzin's principal campaign committee is the "Billy Tauzin Congressional Committee."

On August 13, 2004, the Party's Executive Committee officially endorsed Wilbert J. Tauzin III's campaign for Congress by a unanimous vote. In response to the endorsement, Mr. Hamilton filed a one-page letter of complaint with the Commission on August 23. Mr. Hamilton alleges that the Party and its Treasurer, Mr. Buckels, plan to violate unspecified federal election laws in "coordination" with the Tauzin for Congress campaign and the Billy Tauzin

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COUNSEL

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Congressional Committee. More specifically, Mr. Hamilton contends that Mr. Buckels and the Party intend to "divert[] earmarked funds to Mr. Tauzin III's campaign."

As the only support for his charge, Mr. Hamilton refers and attaches to his complaint an incomplete excerpt from the *Louisiana Political Fax Weekly*, dated August 20, 2004. The excerpt purports to quote Congressman Tauzin's Press Secretary, Ken Johnson, in a general discussion about campaign tactics he has observed in other elections. Mr. Johnson, who is neither employed by nor affiliated with the Republican Party of Louisiana, is quoted in the article as having said that "there may be some winking and nods, but no deals." Attached to this letter as Exhibit A is a copy of the *full* article for the Commission's review.

In a September 8, 2004 article published in *The Advocate* and omitted from both of Mr. Hamilton's submissions to the Commission, Ken Johnson disputed both the context and the complainant's interpretation of his quote. A copy of this September 8th article is attached to this letter as Exhibit B. According to Mr. Johnson, the August 20 statement, which makes no reference to the Republican Party of Louisiana, was taken out of context. *The Advocate* quotes Mr. Johnson as saying that he made "crystal clear" that his "winking and nodding" comment referred solely to campaign tactics he has observed "at a distance" in other past political campaigns involving other candidates. Therefore, Mr. Johnson's comments do not concern the Party, Mr. Buckels, the Tauzin for Congress campaign, or the Billy Tauzin Congressional Committee. In the same September 8th article, John Maginnis, the author of the *Louisiana Political Fax Weekly* column, supports Mr. Johnson's memory of the conversation, and effectively rebuts Mr. Hamilton's interpretation. Mr. Johnson's Affidavit, which verifies his quotations in *The Advocate*, is attached to this letter as Exhibit C.

The Party has received two transfers of excess campaign funds from the Billy Tauzin Congressional Committee, including \$35,000 on September 7 and \$150,000 on October 12, both of which the Party deposited into its general fund. 11 C.F.R. § 113.2(c); Affidavit of Charles L. Buckels, Jr., ¶ 7 (attached as Exhibit D). Neither transfer was earmarked for any purpose. (Buckels Aff. ¶ 7.)

Between August 27-31, 2004, the Party spent \$29,037.80 for a mail piece in support of the Tauzin for Congress campaign. (*Id.* at ¶ 8.) The mailing was assisted by volunteers and thus qualifies as campaign activity pursuant to 11 C.F.R. §§ 100.87(a), 100.147(a). The Party spent an additional \$29,037.80 between October 1-5 and \$26,037.80 on October 6 for supplemental volunteer mailings. (Buckels Aff. ¶ 8.) The payments complied with federal election laws and Commission regulations regarding expenditures on volunteer activity for state party committees. (*Id.*) The Party made decisions to spend these amounts independently of the transfers from the Tauzin for Congress campaign. (*Id.*)

Analysis: Respondents do not dispute that the Billy Tauzin Congressional Committee made transfers to the Party on September 7, 2004 of \$35,000 and on October 12, 2004 of \$150,000. These transfers are specifically authorized by statute and the Commission's

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regulations. 2 U.S.C. § 439a; 11 C.F.R. § 113.2(c). Contrary to Mr. Hamilton's allegations, these funds were not "earmarked" for any purpose. (Buckels Aff. ¶¶ 6-7.) As is its normal practice, the Party deposited the transfers into its general fund. (*Id.* at ¶ 7.) Further, since the date the Party endorsed Mr. Tauzin's candidacy, it has admittedly paid for mass mailings in support of the Tauzin for Congress campaign. As noted above, all of these payments complied with federal election laws and Commission regulations that govern volunteer activity for state political parties. *See* 11 C.F.R. §§ 100.87(a), 100.147(a); Buckels Aff. ¶ 8. In view of the foregoing, the Commission should take no further action on Mr. Hamilton's complaint for the following three reasons.

First, the complaint does not set forth a violation of federal election laws. Although any person who believes that "a violation of any statute or regulation over which the Commission has jurisdiction has occurred or is about to occur" may file a written complaint with the Commission's Office of General Counsel, the complaint must contain a "clear and concise recitation of facts which describe a violation of a statute or regulation." 2 U.S.C. § 437g(a)(1); 11 C.F.R. §§ 111.4(a), (d)(3). Mr. Hamilton's letter, however, fails to specify any federal election law violation, or any act by the Party or Mr. Buckels that will lead to an infraction. Instead, Mr. Hamilton offers a general assertion that Ken Johnson's quoted statement relates to "the Louisiana Republican Party's endorsement of Billy Tauzin III campaign and the potential to direct funds to benefit the campaign of Billy Tauzin III." This vague claim does not rise to the level of a "clear and concise recitation of the facts that describe a violation of the law." Mr. Hamilton's letter therefore fails to meet the Commission's threshold requirements for an actionable complaint.

Second, Mr. Hamilton's letter is based only on conjecture and speculation rather than facts. Under the Commission's regulations, statements in a complaint that are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainant's belief in the truth of such statements. 2 U.S.C. § 437g(a)(1); 11 C.F.R. § 111.4(d)(2). In this matter, the complainant claims no personal knowledge of any acts by the respondents that violate federal election laws. Instead, as noted above, the foundation of Mr. Hamilton's complaint is a quotation attributed to Ken Johnson in an August 20 article from the *Louisiana Political Fax Weekly*. As shown, both Mr. Johnson and the reporter who authored the article in which the quotation appeared have made clear that the statement was grossly out of context, and has no relevance here.

Third, contrary to Mr. Hamilton's unsubstantiated theory, the Party did *not* make any deal with the Billy Tauzin Congressional Committee to pass earmarked contributions to the Tauzin for Congress campaign. The Commission's regulations indicate that a "conduit" or "intermediary" is any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee. 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6(b)(2). To "earmark" a contribution, the donor must make a "designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written," to direct the contribution to a "clearly identified candidate or candidate's authorized committee." 2 U.S.C. §

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441a(a)(8); 11 C.F.R. § 110.6(b)(1). Of course, it goes without saying that "a contribution subject to [the Commission's] earmarking rules must *in fact* be earmarked by the person making the contribution." (Statement of Reasons of Vice-Chairman Bradley A. Smith and Commissioner Michael E. Toner in Matters Under Review 4831 and 5274 at 3.)

Mr. Hamilton's letter implies that the Party's endorsement of Mr. Tauzin III is related to a plan to direct funding to the Tauzin for Congress campaign. Moreover, he writes that "Mr. Johnson's statement (regardless of how intemperate) clearly indicates the intention of subverting the election law and by his own admission has created an avenue of diverting earmarked funds to Mr. Tauzin III's campaign." To the contrary, the Party did not receive any contribution specifically earmarked for the Tauzin for Congress campaign. (Buckels Aff. ¶ 7.) And contrary to Mr. Hamilton's speculative assertions, the Party has not agreed to serve as a conduit or intermediary for any contributions earmarked for Mr. Tauzin's campaign. (*Id.* at ¶ 6.) The Louisiana Republican Party Executive Committee unanimously agreed to endorse the Tauzin for Congress campaign to advance the Party's strategic goals for the November 2 general election, not as part of a commitment or conspiracy to direct contributions to the Tauzin for Congress campaign. (*Id.* at ¶ 5.)

Indeed, the fact of the transfers does not provide even circumstantial support for an earmarking theory. The Billy Tauzin Congressional Committee's first transfer of \$35,000 was insufficient to fund the three mailings, which cost in excess of \$84,000. The second transfer of \$150,000 occurred *after* the three mailings, and thus could *not* have been earmarked for candidate Tauzin's campaign. More significantly, it is not illegal or even unusual for state political parties to endorse candidates or fund volunteer mail efforts. During the current election cycle, the Party also endorsed First District congressional candidate Bobby Jindal. It also spent a total of more than \$1 million for mail in support of Republican candidates for the United States Senate and the United States House of Representatives. Despite a similar endorsement and the fact that the Party used its resources for other candidates, Mr. Hamilton only filed allegations against the Party based upon its support for the Tauzin for Congress campaign.

In sum, there is no legal or factual substance to the allegations made by Mr. Hamilton. Accordingly, respondents respectfully request that the Commission find no reason to believe a violation has been committed or is imminent, and close the matter with no further action. If you require additional information, please do not hesitate to contact me at (202) 756-8003.

Respectfully submitted,



Bobby R. Burchfield

Attachments

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**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION
MATTER UNDER REVIEW NO. 5520**

AFFIDAVIT OF KEN JOHNSON

I, KEN JOHNSON, hereby swear as follows

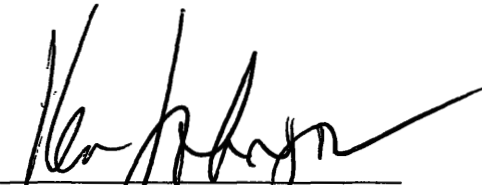
1. I am the Communications Director for the Honorable Wilbert J. Tauzin II, who is the incumbent member of the United States House of Representatives for the Third District of Louisiana. I have held this position since 1993. I am not employed by or affiliated with the Republican Party of Louisiana
2. As Communications Director, I serve as Congressman Tauzin's spokesman for his federal legislative offices.
3. Congressman Tauzin has decided to vacate his seat in the U.S House of Representatives. Congressman Tauzin's son, Wilbert J. Tauzin III, is currently campaigning for the open seat
4. On or about August 18, 2004, I spoke to John Maginnis, a columnist for the *Louisiana Political Fax Weekly*. Mr. Maginnis asked me to respond to comments purported to have been made by Louisiana State Senator Craig Romero regarding Congressman Tauzin and his son. Senator Romero is also a candidate for Congress in the Third District of Louisiana.
5. Later in our discussion, Mr. Maginnis asked me whether retiring Members of Congress could earmark contributions to political party committees to assist specific congressional candidates. I replied, "There may be some winking and nods, but no deals" I did not make the statement in reference to any specific candidate or campaign. Rather, I offered the remark as general observation about tactics that may have

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occurred in prior campaigns.

6. On August 20, 2004, the *Louisiana Political Fax Weekly* published Mr. Maginnis's article, which quoted - though wholly out of context - the statement explained in ¶ 5. The column did not accurately describe the circumstances in which I made the remark, which was during a general discussion about past political campaigns. In fact, in an article published in *The Advocate* on September 8, 2004, Mr. Maginnis is quoted as supporting my recollection of our conversation.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.


Ken Johnson

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of October, 2004, at District of Columbia. My Commission expires 04/30/08


Sandra D. Bean, Notary

**Sandra D. Bean
Notary Public, District of Columbia
My Commission Expires 04-30-2008**

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**BEFORE THE UNITED STATES OF AMERICA
FEDERAL ELECTION COMMISSION
MATTER UNDER REVIEW NO. 5520**

AFFIDAVIT OF CHARLES L. BUCKELS, JR.

I, CHARLES L. BUCKELS, JR., hereby swear as follows:

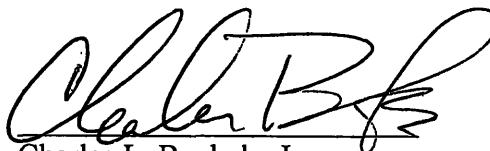
1. I am the Treasurer of the Republican Party of Louisiana. I have held this position since March 2004.
2. As Treasurer, I am responsible for managing the finances of the Republican Party of Louisiana. In addition, I serve on the Party's Executive Committee.
3. I, and the Executive Committee, are aware of the contribution limits, rules against earmarking, and rules governing volunteer activity under the Federal Election Campaign Act of 1971, as amended.
4. On May 10, 2004, Wilbert J. Tauzin III filed a Statement of Candidacy with the Federal Election Commission announcing his campaign for election to the United States House of Representatives for the Third District of Louisiana.
5. On August 13, 2004, the Republican Party of Louisiana Executive Committee convened a meeting to consider endorsing Wilbert J. Tauzin III's campaign for Congress in order to advance the Party's goals for the November 2 general election. The case for endorsing Mr. Tauzin was his strength in the polls and the Party's desire to avoid a run off election in the Third District, which might drain resources away from an anticipated runoff election for the open United States Senate seat.
- 6 The Executive Committee approved the endorsement, but did not commit, agree, or even discuss earmarking contributions to Wilbert J. Tauzin III or Tauzin for Congress.

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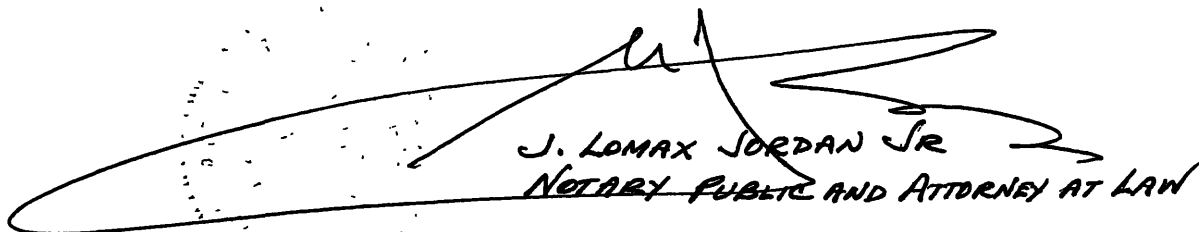
7. The Party has received two transfers of excess campaign funds from the Billy Tauzin Congressional Committee, which include \$35,000 on September 7 and \$150,000 on October 12. 11 C.F.R. § 113.2(c). The funds were deposited into the Party's general fund. They were not earmarked for any purpose.

8. Between August 27-31, 2004, the Republican Party of Louisiana spent \$29,037.80 for distribution of a mass mail piece in support of the Tauzin for Congress campaign. The mailing was assisted by volunteers and thus qualifies as campaign activity pursuant to 11 C.F.R. §§ 100.87, 100.147(a). The Party spent an additional \$29,037.80 between October 1-5, 2004 for the same volunteer-related activity. Finally, the Party spent \$26,037.80 on October 6, 2004 in preparation for another mailing. All payments complied with Federal Election Commission laws and regulations regarding expenditures on volunteer activity for state party committees. Decisions to spend these amounts were made independently of the transfers from the Tauzin for Congress campaign.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information, and belief.


Charles L. Buckels, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME this 14 day of October, 2004, at LAFAYETTE, LOUISIANA. My Commission expires AT DEATH.


J. LOMAX JORDAN JR
NOTARY PUBLIC AND ATTORNEY AT LAW

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Louisiana Political Fax Weekly

August 20, 2004

By John Maginnis

Vitter Stretches Lead

Chris John second in own poll

A new poll conducted for the Chris John campaign shows Republican Congressman David Vitter consolidating conservative support and John moving into second place over John Kennedy.

The survey results by Greenberg Quinlan are: Vitter, 42 percent; John, 21; Kennedy, 15; Arthur Morrell, 3; Undecided, 19. The Washington pollster's 600-sample of likely voters was taken Aug. 9-15 and has a margin of error of 4 percent.

A source that has seen the poll's internal numbers says Vitter has consolidated conservative support now that qualifying has passed and he is the only major GOP candidate. The Metairie congressman had not scored above 35 percent in any previous poll.

Chris John's growth compared to recent polls came in the black community, following a steady ad campaign on black radio stations. The source said Kennedy still leads among black voters, at 86 percent, but that John's support grew to 30 percent, compared to 19 percent in a May poll by the same firm.

In a trial runoff, Vitter and John were tied at 46 percent each.

A source close to the Kennedy campaign questioned the low undecided percentage, 19 percent, before the media campaign has started.

The undecideds were higher in a Penn, Schoen poll taken for the Kennedy campaign a month earlier, July 8-12. Those results were: Vitter, 33 percent, Kennedy, 18; John, 15; Morrell, 3; Undecided, 31.

Kennedy had the best favorable-to-unfavorable ratio in his poll at 58-10 percent, compared to Vitter, 44-17; John, 38-11; Morrell, 21-9.

A new Verne Kennedy poll will be in the field next week, with results due out by the end of the month.

The Cajun Injector

Republicans have cleared the way for Congressman Billy Tauzin to make a large cash infusion, via the national Republican Party, into his son Billy III's campaign for Congress in the 3rd District.

Last week's endorsements by the state's GOP congressman and by the executive committee of the state party satisfied national party rules for financially assisting a candidate in a primary in which other Republicans are running. The source of the prospective funding for Tauzin III is only a generation away.

Billy Tauzin Jr. has \$850,000 in his campaign account, which he can transfer all or part of to the National Republican Congressional Committee. In turn, the committee could directly contribute

(Continued)

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(TAUZIN, Continued)

\$75,000 to the candidate, and make an unlimited independent expenditure, as long as there is no coordination with the candidate's campaign. The 35-member board of directors of the NRCC, which includes Congressman Jim McCrery of Shreveport, will meet in early September when Congress returns from its recess.

The move provoked another blistering response from rival GOP candidate state Sen. Craig Romero, who said the elder Tauzin's potential aid to his son "keeps the wheels on their tricycle." Citing the trade associations that have contributed to the congressman, Romero said, "This is influence peddling money. They have an investment in that name. That name protects the price of prescription drugs to make sure we pay five times more than Canadians pay."

Congressman Tauzin's press secretary Ken Johnson responded, "It was an ugly, potty, cheap shot, but par for the course."

The pharmaceutical industry is the fourth largest group contributor to Congressman Tauzin, at \$57,000, behind healthcare, utilities and oil and gas, according to the campaign finance web site opensecrets.com.

The congressman cannot earmark his contribution to the party to be used on his son's behalf, but there is little chance the campaign committee would do otherwise. "There may be some winking and nods, but no deals," said the press secretary Johnson.

Tauzin Has High Numbers to Sustain

State party communications director Jon Bargas said it endorsed Tauzin III early in hopes of his winning the race outright in the primary, citing successive independent polls by Verne Kennedy showing Tauzin at 42 percent and Romero third at 6 and 9 percent, respectively. Yet even some close Tauzin supporters admit a primary win is all but out of reach.

Instead, the purpose of the party endorsement and potential money seems to be to bury

Romero and clinch a runoff spot. A Southern Media poll in June commissioned by Romero, which told respondents that the elder Tauzin was retiring, showed Tauzin III leading his GOP rival by only 25-13 percent.

Though yard signs don't vote, a drive along U.S. 90 shows widespread support for Romero, who is campaigning feverishly and has \$400,000 cash on hand, almost double that for Tauzin, as of June 30.

The Democrats, in comparison, have been more placid. Charmaine Caccioppi is the first candidate to air television commercials, a \$12,000 buy on two spots that stress her Raceland roots and the need for coastal restoration federal funding. This week, she received the endorsement of the Alliance for Good Government, a New Orleans region group.

BR Mayor Simpson Answering Challengers

When an incumbent mayor starts running commercials criticizing a challenger who was last seen in single digits in a poll, the political landscape might be changing.

Baton Rouge Mayor Bobby Simpson started radio ads this week to defend his street-building record and to question why challenger state Rep. William Daniel hasn't done more for the city as vice chairman of the House Transportation Committee. Daniel responded that he has only held the committee post for three months.

Though no recent poll numbers have been published, there are signs--plenty of them in yards in South Baton Rouge--that Daniel's campaign is catching on. Yet his is the toughest road, as a white Democrat running against an incumbent Republican and a black elected official, state Sen. Kip Holden, in a parish with over 35 percent black registration.

All three are expected to be on TV by the weekend. The mayor has the biggest war chest, with \$412,000 cash on hand, compared to Daniel's \$113,000. The wealthy Daniel has lent his campaign \$75,000 and will probably put up

(Continued)

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Complaint filed against state GOP

Panel member asks FCC to probe endorsement

By PATRICK COURREGES

pcourreges@theadvocate.com

Acadiana bureau

NEW IBERIA -- A member of Louisiana's Republican State Central Committee has filed a federal complaint against the state party, U.S. Rep. Billy Tauzin's congressional campaign and the 3rd District campaign of Tauzin's son, Billy Tauzin III.

Roger Hamilton Jr. of New Iberia has asked that the Federal Election Commission launch an investigation into the activities of the state party and the congressional campaigns of the elder and younger Tauzins.

Several members of the party's state central committee, and the entire Republican state Senate delegation, have decried the party's endorsement of the younger Tauzin in a race with two other Republican candidates still in the running.

One of those candidates, state Sen. Craig Romero of New Iberia, has claimed the endorsement paved the way for the elder Tauzin, who is stepping down from his longtime seat in the 3rd District, to funnel no-longer-needed campaign money to his son's campaign through the Republican National Committee.

The other Republican running in the Nov. 2 race is Kevin Chuasson, a former doctor from the Thibodaux area.

The Democrats running in the district that covers 10 parishes and parts of three more are state Rep. Damon Baldone of Houma, Charmaine Caccioppi of Raceland, a former staffer for longtime U.S. J. Bennett Johnston; and Charlie Melancon of Napoleonville, former president of the Thibodaux-based American Sugar Cane League.

In an interview and in his letter, Hamilton said that the call for an investigation is based heavily on a published account of U.S. Rep. Tauzin's spokesman, Ken Johnson, having said, "There may be some winking and nodding but no deals," allegedly in reference to such a shift of money.

"This public pronouncement of the intent to violate the law has led me to register this formal complaint and ask for your immediate intervention," Hamilton wrote in his complaint. "I believe a violation of FEC law is about to occur."

Johnson said he did make the "winking and nodding" comment in an interview with political commentator John Maginnis last month, but that it was taken out of context.

Johnson said he made "crystal clear" in the interview that he was speaking generally about tactics he has observed "at a distance" in the past in other candidates' campaigns.

Maginnis, in a Tuesday interview, backed up Johnson's memory of the conversation, saying Johnson had been speaking about general observations how the National Republican Congressional Committee has functioned in the past, not about the current 3rd District race.

Johnson said U.S. Rep. Tauzin still has not made plans about what to do with his leftover campaign money

"This complaint was filed for political reasons," Johnson said.

Hamilton said his complaint was filed because, "We have serious issues on hand" and that he's not in the habit of filing frivolous lawsuits.

Heading copies of Hamilton's letter faxed and e-mailed throughout the state was the declaration that an "official investigation" has been opened by the FEC.

Backing that up was a copy of a letter dated Sept. 1 apparently from the FEC to Hamilton acknowledging receipt of the complaint, noting that the parties accused in the complaint will be notified, and stating that the FEC will notify Hamilton as soon as it takes final action on the complaint

Officials with the FEC said Tuesday that the procedure for such complaints is for the commission's attorneys first to consider the complaint and get a response from those accused of violations of law.

The accused parties have 15 days to respond, and can get that time extended. After a response is sent to the FEC's general counsel, the counsel then considers the information and decides whether to recommend it to the commission for further investigation.

If the general counsel sends a complaint to the FEC, then the commission must consider it and vote on whether or not to investigate

Only when the FEC directs such an investigation does the general counsel go forward with it.