



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D.C. 20463

**MAR 03 2005**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

John Buchalski

Portsmouth, NH 03801

**RE: MUR 5646**

**Dear Mr. Buchalski:**

On February 3, 2005, the Federal Election Commission found that there is reason to believe you, in your personal capacity, violated 2 U.S.C. §§ 434(b) and 432(c), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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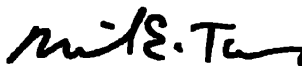
Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Dawn Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Vice Chairman

**Enclosures**

**Factual and Legal Analysis**

**Procedures**

**Designation of Counsel Form**

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** John Buchalski, in his personal capacity

**MUR** 5646

**I. GENERATION OF THE MATTER**

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

On June 10, 2004, Burton Cohen abruptly dropped out of the U.S. Senate race in New Hampshire reportedly due to "a campaign situation beyond his control." *Beverley Wang, Cohen Not Saying Why He Quit*, The Associated Press State & Local Wire, June 11, 2004 available at LEXIS, News & Business Library. News reports referred to accounts by campaign staff and others that a "significant" amount of campaign cash was missing and that the campaign manager had left town. *Id.* and *Campaign Money Missing*, The Union Leader (Manchester NH), June 12, 2004 at A1, available at LEXIS, News & Business Library. At a June 16, 2004 press conference, counsel hired by the Committee attributed Cohen's decision to drop out of the race in large part to "some concerns that have been raised in the past week about the accuracy and completeness of transactions disclosed" on reports the Cohen's principal campaign committee. Cohen for New Hampshire ("the Committee") had filed with the Commission. *Lawyer: Cohen, Campaign Victimized*, The Union Leader (Manchester NH), June 16, 2004 at A1, available at LEXIS, News & Business Library.

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1 Information in the Commission's possession provides a picture of events that led to  
2 Burton Cohen's withdrawal from the race and Campaign Manager Jesse Burchfield's departure.  
3 Committee Finance Director Ellen Stankiewicz, who began working full-time with the campaign  
4 in March 2004, had concerns about the campaign and Burchfield's performance and had  
5 numerous confrontations with him despite her relatively short tenure. Stankiewicz spoke with  
6 Cohen on June 3, 2004 about replacing Burchfield and contacted national finance director Kelly  
7 Bjorkland to search for a new campaign manager. An interview with a prospective applicant was  
8 scheduled for June 7, 2004. The evening before the interview, Stankiewicz brought the  
9 applicant's resume with her to a meeting with Cohen. Cohen has acknowledged that Burchfield  
10 was having problems managing some employees.

11 Burchfield's behavior around the time of these discussions suggests that he may have  
12 suspected his job was in jeopardy. On June 4, the day after Stankiewicz's first discussion with  
13 Cohen about replacing Burchfield, Burchfield disappeared from the office for hours, and he  
14 looked "somber" and "defeated" when he was in the office. On June 7, the day of the scheduled  
15 interview with Burchfield's potential replacement, Burton Cohen and others at the campaign  
16 received an e-mail from Burchfield stating that the campaign was broke and he was leaving to  
17 take a non-political job in Memphis, Tennessee. Following receipt of the e-mail, two campaign  
18 staffers went to Burchfield's apartment and found the door open and most of his belongings  
19 gone.

20 At Stankiewicz's urging, Cohen called the bank to check the balance of the Committee's  
21 accounts as of June 7, 2004 and learned that the accounts contained about \$15,000. Until then,  
22 Stankiewicz had believed the campaign had about \$350,000. The last Committee disclosure  
23 report filed prior to Burchfield's departure showed cash on hand of about \$397,000 as of

1 March 31, 2004.

2 Publicly available information and information obtained by the Commission in the  
3 ordinary course of carrying out its supervisory responsibilities indicates that there is reason to  
4 believe that Committee treasurer John Buchalski, in his personal capacity, violated the Federal  
5 Election Campaign Act of 1971, as amended ("the Act"), by misreporting the Committee's  
6 financial activity over the course of the 2004 election cycle, and by failing to maintain records of  
7 the Committee's disbursements.

8 **B. Misreporting and Recordkeeping Violations**

9 The Committee's counsel notified the Commission in a June 23, 2004 letter responding  
10 to a Request for Further Information from the Reports Analysis Division that the Committee was  
11 in the process of "a thorough review" of its finances and reporting and would file necessary  
12 amendments thereafter. On July 15, 2004, counsel advised the Commission in a letter  
13 accompanying the 2004 July Quarterly Report that the review had uncovered a "significant  
14 discrepancy" in the Committee's previously reported cash on hand. The adjusted cash on hand  
15 figure of \$170,000 in that report is \$227,289 less than the end cash-on hand figure previously  
16 reported in the 2004 April Quarterly Report. Counsel described the adjusted figure as an  
17 approximation and said that the Committee's reports would be amended at the conclusion of the  
18 financial review, a process he described as "a reconstruction of certain transactions."

19 More recently, on December 28, 2004, the Committee filed amendments to its 2004 April  
20 and July Quarterly Reports with an accompanying December 22, 2004 cover letter from  
21 Committee counsel indicating that the financial review of the Committee's transactions is  
22 ongoing. The amendments show that the end cash on hand as originally reported in the 2004  
23 April Quarterly indeed had been inflated but by \$51,851 rather than \$227,289. The amendments

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1 also reflect that disbursements had been underreported by about \$87,579 in the original 2004  
2 April Quarterly Report and by \$84,652 in the original 2004 July Quarterly Report.<sup>1</sup>  
3 Contributions had also been underreported by \$40,460 in the original April Quarterly Report.

4 The recently filed amendments confirm that the Committee filed inaccurate disclosure  
5 reports that significantly underreported its disbursements and underreported its contributions in  
6 calendar year 2004. Since counsel's December 22, 2004 cover letter indicates that additional  
7 amendments will be filed as necessitated by the Committee's ongoing financial review and no  
8 amendments have been filed for reports covering reporting periods in 2003, the extent of  
9 misreporting may be greater.

10 Jesse Burchfield has acknowledged that the Committee's finances were misreported since  
11 its first disclosure report, the 2003 April Quarterly Report, because certain expenses improperly  
12 paid for with leftover funds from Burton Cohen's state campaign could not be reported.  
13 Burchfield alone prepared the Committee's reports and has acknowledged that he purposely  
14 understated the Committee's expenditures to make it appear that the Committee had more cash  
15 on hand than it did. He identified the greatest understatement of expenses as occurring in the  
16 2003 Year End Report, which resulted in the Committee's cash-on-hand being overstated by  
17 close to \$300,000.<sup>2</sup>

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<sup>1</sup> The original 2004 July Quarterly Report was filed after Burchfield left the Committee but covers a time period during which Burchfield had primarily managed the campaign and its finances. The Committee also filed an amendment to the 2004 October Quarterly Report on December 28, 2004 that indicates disbursements during that reporting period had been initially underreported by \$84,294.

<sup>2</sup> Burchfield has identified the "fourth quarter 2003" report (the 2003 Year End Report) as the one containing the largest understatement of expenses, resulting in an overstated cash-on-hand of about \$300,000 when the true cash on hand was about \$100,000. However, the original and amended 2003 Year End Report Reports reflected cash-on-hand figures of \$247,107 and \$242,375, respectively. If the actual cash balance was about \$100,000 at year-end as Burchfield said, the overstatement in the 2003 Year End Reports would have been between \$142,000-\$147,000, not close to \$300,000. In light of the fact that the 2003 Year End Report has not been amended since the Committee began its financial review, Burchfield's statement ultimately may prove to be accurate.

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1           Burton Cohen and former Committee staffers have confirmed that Burchfield was  
2 responsible for preparing the Committee's disclosure reports. In addition, Burchfield performed  
3 other finance-related duties. No one could spend funds without Burchfield's approval. He  
4 controlled the checkbook, the bank statements, the use of the Committee's ATM and debit card,  
5 and he alone possessed the Personal Identification Number ("PIN") necessary to use the card's  
6 ATM function. He also deposited contributions and prepared checks to pay the campaign's  
7 expenses for Cohen's signature because Cohen was the sole signatory on the Committee's bank  
8 accounts. Cohen's status as sole account signatory should have been a check on Burchfield's  
9 control of the Committee's expenditures, but Burchfield has admitted that he routinely signed  
10 Cohen's name on checks without his authorization. Cohen was aware of at least one check  
11 where someone else apparently signed his name, and he signed several blank checks at  
12 Burchfield's insistence prior to leaving on a trip to Washington D.C. in May 2004.<sup>3</sup>

13           Despite the fact that Jesse Burchfield performed many duties of a treasurer, John  
14 Buchalski is listed as the Committee's treasurer in its Statement of Organization. In that role,  
15 Buchalski signed most of the Committee's disclosure reports that were filed with the  
16 Commission, and as treasurer he was responsible for ensuring the completeness and accuracy of  
17 the information in all of the Committee's disclosure reports.

18           Burton Cohen has stated that Buchalski, a war veteran, was treasurer "in title only."  
19 Cohen asked Buchalski to serve as treasurer to have a veteran involved in the campaign and said

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<sup>3</sup> Other information in the Commission's possession provides additional confirmation of misreporting. According to Ellen Stankiewicz, copies of Committee bank account statements obtained after Burchfield left the campaign listed checks that were not reported in the Committee's disclosure reports. Committee Field Director Paul and others reviewed the Committee's 2004 April Quarterly Report and its bank statements after receiving Burchfield's departing e-mail and noted a \$300,000 discrepancy between the nearly \$400,000 ending cash on hand in the 2004 April Quarterly Report and the bank account balances of about \$100,000.

1 his only function was to sign the Committee's disclosure reports. Buchalski confirmed this  
2 limited role in news accounts, stating that he had no professional financial background, handled  
3 no campaign money, and sometimes signed reports that were only partially complete. *Lawyer:*  
4 *Cohen, Campaign Victimized, supra.*<sup>4</sup> Buchalski admitted that he signed the Committee's  
5 reports but opined in the press that his signature was forged on a letter and two reports filed with  
6 the Commission, the 2004 April Quarterly and the 2003 October Quarterly. See *Cohen Aide*  
7 *Believes Signature Forged*, The Union Leader (Manchester NH), June 18, 2004 at A12,  
8 *available at* LEXIS, News & Business Library.<sup>5</sup>

9 In addition to information indicating that the Committee's finances were misreported,  
10 Burchfield has acknowledged that the Committee did not keep records of its disbursements. The  
11 Committee's 2004 July Quarterly Report, filed after Burchfield's departure, demonstrates the  
12 lack of recordkeeping. That report included about \$122,000 in disbursements that contain no  
13 address or purpose or inadequate purposes such as "information requested" and "expenses."<sup>6</sup>  
14 The missing information and the fact that the Committee apparently had to request information  
15 from payees reflects a failure to maintain records. As noted earlier, the 2004 July Quarterly  
16 Report has been amended, but not all of the missing information has been provided.

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<sup>4</sup> Buchalski also stated that he had been told by an unidentified person to expect to sign blank forms that campaign aides would complete. *Report: Cohen's Manager Hired Lawyer*, The Union Leader (Manchester, NH), June 23, 2004 at A8, *available in* LEXIS, News & Business Library.

<sup>5</sup> Indeed, information in the Commission's possession indicates that Jesse Burchfield signed Buchalski's name to the original and amended 2004 April Quarterly Reports.

<sup>6</sup> These facts also serve as an additional basis for pursuing violations of 2 U.S.C. § 434(b).



**Liability for Misreporting and Recordkeeping Violations**

The Act requires every political committee to have a treasurer. 2 U.S.C. § 432(a). No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent. *Id.* A principal campaign committee of a candidate shall file a Statement of Organization that includes the name and address of the treasurer of the committee and the name, address, and position of the custodian of the committee's books and accounts. 11 C.F.R. § 102.2(a)(1).

The Act also imposes reporting obligations on committee treasurers. Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(u). These reports shall include, *inter alia*, the amount of cash on hand at the beginning and end of a reporting period, the total amount of receipts and disbursements, the identification of each person who makes a contribution in excess of \$200 in an election cycle, and the name and address of each person to whom an expenditure exceeding \$200 is made together with the date, amount and purpose of the expenditure. *See* 2 U.S.C. § 434(b). Committee treasurers and any other person required to file any report or statement under the Commission's regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

Committee treasurers also have recordkeeping obligations. Among them, a treasurer must keep an account of the name and address of every person to whom a disbursement is made, together with the date, amount and purpose of the disbursement. 2 U.S.C. § 432(c)(5). In addition, for each disbursement in excess of \$200 by or on behalf of the Committee, the treasurer shall obtain and keep a receipt, invoice or cancelled check. *Id.* and 11 C.F.R. § 102.9(b)(2).

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1           While the candidate may have characterized Buchalski as treasurer "in title only," he is  
2 listed as the treasurer in the Committee's Statement of Organization and signed most of the  
3 Committee's disclosure reports with the exception of the 2004 original and amended April  
4 Quarterly Reports and possibly the 2003 October Quarterly Report. As the designated treasurer,  
5 Buchalski was responsible for ensuring the accuracy and completeness of the information  
6 contained in the Committee's reports and for ensuring that disbursement records were  
7 maintained. As discussed above, the Committee's reports and records were inaccurate and  
8 incomplete. Buchalski's reckless failure to perform his duties is evidenced by his  
9 acknowledgment that he sometimes signed reports that were incomplete. Therefore, there is  
10 reason to believe that John Buchalski, in his personal capacity, violated 2 U.S.C. §§ 434(b) and  
11 432(c).

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