

Ezra W. Reese
Phone 202/434.1616
Fax: 202/654.9109
Email: ereese@perkinscoie.com

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Perkins
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607 Fourteenth Street N.W.
Washington, D.C. 20005-2011

PHONE: 202.628.6600

FAX: 202.434.1690

www.perkinscoie.com

April 22, 2005

VIA HAND DELIVERY

Dawn Odrowski, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5646

Dear Ms. Odrowski:

This letter is the response of Cohen for New Hampshire Committee and John Buchalski, as Treasurer (collectively, "the Committee"), to the Federal Election Commission's finding of reason to believe that the Committee violated 2 U.S.C. §§ 434(b), 432(c), and 432(h), and knowing and willfully violated 2 U.S.C. § 441i(e)(1)(A) of the Federal Election Campaign Act of 1971, as amended (the "Act"), and 11 C.F.R. § 110.3(d).

Introduction

As the background of the Commission's Factual and Legal Analysis itself demonstrates, the Committee was the victim of a pattern of fraud and deception perpetrated by the then-campaign manager, Jesse Burchfield.

Burt Cohen is a fourteen-year veteran of the New Hampshire State Senate. He filed as a candidate for the United States Senate from the state of New Hampshire on January 16, 2003. His campaign ended on June 10, 2004, when he was forced to withdraw from the election due to "a campaign situation beyond his control."¹ That "campaign situation" was the abrupt departure and disappearance of Burchfield from the campaign, along with the discovery by Cohen and campaign staff that the campaign had

¹ B. Wang, *Cohen Not Saying Why He Quit*, ASSOCIATED PRESS, June 11, 2004.

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hundreds of thousands of dollars less cash-on-hand than the Burchfield had previously informed both them and the Commission.

Immediately after Burchfield's disappearance, he left a message on Cohen's cellular voice mail. That message is attached to this response. On the message, Burchfield admits culpability for the Committee's violations. "I am so, so sorry," he says. He told Cohen that he would "take the blame for all of this. It's all my fault; I'll take whatever comes my way."

Misreporting & Failure to Maintain Disbursement Records

As the Commission's Factual and Legal Analysis recognizes, "Burchfield alone prepared the Committee's reports."² Burchfield even signed reports filed with the Commission, forging the name of John Buchalski, the treasurer of the campaign.³

Burchfield admitted to the Commission that he had purposefully understated the Committee's expenditures over the course of the campaign. On June 7, 2004, when Burchfield left the Committee and disappeared, cash-on-hand was found to be over three hundred thousand dollars less than Burchfield had led the Committee to believe. No one besides Burchfield knew that he was misreporting the Committee's expenditures.⁴ The Committee also believes that Burchfield reported false contributions. Additionally, no one knew that the records he was keeping were inadequate.

Burchfield was solely responsible for all aspects of the Committee's financial operations, including preparing disclosure reports to be filed with the Commission. As he had insisted, Burchfield "controlled the checkbook, the bank statements, the use of the Committee's ATM and debit card."⁵ He also insisted on being the only person with access to the Committee's incoming mail, and he was the only person making deposits into the Committee's bank account. Thus, he concealed from all parties the discrepancy between the disclosure reports and the true financial status of the campaign.⁶

Immediately after Burchfield's disappearance in early June 2004, the Committee began a comprehensive review of its financial status and history. Subsequently, the

² Factual and Legal Analysis, p. 4.

³ *Id.* p. 5.

⁴ *Id.* p. 6.

⁵ *Id.*

⁶ *Id.* pp. 6-7.

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Committee has filed a series of amendments to its disclosure reports. The Committee has kept the Reports Analysis Division apprised of its progress. While progress was hampered for a time by difficulty obtaining records from the Committee's bank, that issue was resolved, and the Committee expects to finish its review of the records and file amendments in early May 2005.

In short, the Committee was merely the victim of Burchfield's pattern of deception, which the Committee could not have uncovered in the normal course of the campaign. Once the Committee discovered the misreporting and recordkeeping problems, it immediately took action to rectify these errors and to correct the public record to the extent possible. The Committee should not be held accountable for the criminal actions of a rogue employee.

Personal Use of Campaign Funds / Excessive Cash Disbursements

As the Commission's Factual and Legal Analysis indicates, the only potential violation of 2 U.S.C. § 439a(b)(1) was with regard to funds used by Burchfield. The Committee discovered that Burchfield may have used Committee funds for various personal expenses, such as vacations and internet pornography. As noted above, Burchfield was the only person with direct access to Committee funds. He held the checkbook, the ATM card, and the debit card. He had control of the Committee bank records, and was the only person to make bank deposits. He had sole access to the Committee's incoming mail.

The Committee was not contemporaneously aware of Burchfield's use of Committee funds for personal use. The Commission stated that "Mr. Cohen was aware that Burchfield used the Committee's bankcard to purchase 'Internet porn.' He also believed that Burchfield used the bankcard for other personal expenses, including a rental car trip to California in March or April 2004." This statement is inaccurate; Cohen was not aware of these expenditures at the time, and would not have approved them if he were. Cohen only became aware of these expenditures after Burchfield disappeared. Soon after Burchfield left the campaign, the Committee reviewed the bank records, which revealed the expenditure for internet pornography. The Committee immediately informed the Federal Bureau of Investigation of the misuse of funds.

Similarly, while the Committee acknowledges that Burchfield may have made excessive cash disbursements, in violation of 2 U.S.C. § 432(h), he was the only Committee employee to have access to the Committee's ATM card, and there is no inference that any other Committee personnel knew or took part in that violation.

In sum, Burchfield committed these violations alone, as part of a pattern of fraud and deceit perpetrated against the Committee. Burchfield's violations of federal election law were committed in the course of stealing funds from the Committee. To hold the

Committee itself as having violated these provisions – and to levy a penalty against it – when the Committee was the victim of these acts, would be nonsensical. Burchfield alone should pay the price for his actions to defraud the Committee.

Use of Non-Federal Funds to Pay for Federal Campaign Activity

In January and February 2003, the state senate campaign, Friends of Burt Cohen, issued checks to a variety of sources, including staff payments to Burchfield and Sharon Valdez, and payments for office supplies and postage. Because New Hampshire state contribution limits are only \$1,000 per election; and because Cohen's state campaign did not receive any contributions from sources prohibited under the Act, none of the funds used violated the Act's contribution limit or source prohibition requirements. Nevertheless, while the contributions and expenditures were reported to the New Hampshire Secretary of State, they were not reported to the Commission.

All of the checks from the state campaign were signed by Cohen, who remained the sole signatory on the state campaign account. However, these payments were only made due to Burchfield's initiative, who assured Cohen and the other campaign staff that they were legal. Until Burchfield left the campaign in early June 2004, all checks written from the state campaign with Cohen's signature were prepared by Burchfield.

During early 2003, Cohen asked Burchfield on more than one occasion if payments from the state senate campaign were permissible. Each time, Burchfield assured him that these payments were appropriate. Cohen only discovered that the use of state funds was improper in the fall of 2004, three months after Burchfield's disappearance.

The use of state campaign funds is consistent only with ignorance of the law on the part of Cohen, Buchalski and other Committee personnel. Had Cohen known that the payments were in violation of the Act, he never would have approved them. The payments were reported – with Cohen's signature – on the state senate campaign's disclosure reports to the New Hampshire Secretary of State. No effort was made by Cohen to hide these payments from public scrutiny. The Committee does not know if Burchfield knew that the use of state campaign funds was in violation of federal law. Burchfield's actions indicate that he attempted to conceal it, such as his request to Sharon Valdez that she not reveal that she was paid from state campaign funds.

The Committee acknowledges that some state campaign funds were used to pay for Committee expenses. However, this violation was not a knowing and willful one, and was only undertaken at the direction of Burchfield.

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Conclusion

The Commission's findings paint a picture of an employee, Jesse Burchfield, who had complete and total control over the Committee's finances. While this authority was not unusual for someone of his position, he abused that trust by using funds for personal use, by misstating the Committee's financial status both to the Committee and to the Commission, and by recommending that the Committee pay for expenses from Burt Cohen's state campaign account.

The evidence reveals that Burchfield committed these violations alone. No other Committee personnel knew of the misreporting, personal use, or excessive cash violations, and Burchfield took steps to hide these violations. Other Committee personnel were aware of the use of state campaign funds, but the use of such funds was solely Burchfield's idea, and it was Burchfield who insisted that it was legal and appropriate.

The Committee was the victim, not the perpetrator, of these violations. Indeed, many of the violations stemmed from theft from the Committee and subsequent attempts to cover up that theft. Once the Committee discovered the extent of Burchfield's actions, it immediately initiated an investigation of the true financial status of the Committee and to file appropriate amendments to the Committee's disclosure reports.

The Commission's weight should not be brought to bear against the Committee for the actions of a rogue employee, who had sole control of the Committee's finances and who acted alone. The Committee has already expended a large amount of funds to investigate and correct the various misdeeds of Burchfield.

These matters should be resolved in a manner that reflects the Committee's extensive and ongoing efforts to rectify any violations of the Act.

Very truly yours,



Marc E. Elias

Ezra W. Reese

Counsel to Cohen for New Hampshire

John Buchalski, Treasurer

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