

April 20, 2005

VIA FACSIMILE AND MAIL

Adam Schwartz  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR - 5648  
J. Edgar Broyhill III  
Broyhill for Congress and Tim Nerhood, Treasurer

Dear Mr. Chairman:

This letter will serve as a further response to the allegations contained in the above referenced MUR against Broyhill for Congress and J. Edgar Broyhill ("Respondents"). Respondents previously answered the allegation that they failed to timely file Form 10s for loans made by the candidate on March 12, 2004, April 30, 2004, and June 8, 2004. Respondents attached back-up material showing the Form 10s were sent to the FEC in a timely manner. Resolution of the remaining allegations contained in the MUR should not include these three matters.

The Committee has spent additional time and resources investigating the other allegations raised in the Commission's Factual and Legal Analysis. The Commission's remaining allegations revolve around personal loans from the candidate to the Committee and the disclosure of those loans, namely: (1) Respondents failed timely file their initial Form 10; (2) Respondents underreported the amount of the candidate's loan by \$1,500 on all Form 10s; (3) Respondents failed to timely file a Form 10 for a June 19, 2004 loan for \$50,000; and (4) Respondents failed to file a Form 10 for a June 28, 2004 loan of \$90,000. Each one of these allegations is addressed in turn:

1. Before the Respondents began their campaign, they sought the advice of prominent election law attorney Jill Holtzman Vogel on a wide range of matters. Part of the discussion focused on the ability of a candidate to make loans to his campaign, the effect these loans have on the contribution limits to his competitors, how to report this activity, and the confusing nature of the primary dates for this Congressional election. Ms. Vogel explained this new area of the law and Respondents took copious notes. Unfortunately, Respondents did not understand or became confused about certain dates and amounts, and believed their reporting obligations began at \$375,000.

As soon as the Committee realized the filing threshold was \$350,000 they immediately filed their initial FEC Form 10. This report was only ten days late and was due to a misunderstanding of an attorney's advice. At no time were Respondents trying to hide or delay

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any reportable activity. Quite the opposite: the Committee worked with lawyers and accountants from the start to try and follow this new and admittedly complex law.

2. Similarly, Respondents inquired with the FEC's toll free Help Line to determine the correct procedure for aggregating the candidate's expenditures from personal funds. Respondents understood the Commission's advice to be that Mr. Broyhill's first two contributions of \$1,000 and \$500 did not count toward the Form 10 threshold because they were under the \$2,000 individual contribution limit. As such, Respondents excluded this \$1,500 amount from all of its Form 10 disclosures. *Note however that the two contributions were reported and disclosed on the Committee's regular filings with the FEC.*

As with the above, the Committee was not trying to hide or delay any reportable activity. Quite the opposite: the committee worked with the FEC to try and follow this new law. It simply reported the amount in the wrong place. Fortunately, the failure to include this small amount on the Form 10 had no material effect on the contribution limits to other candidates.

3. Respondents acknowledge that the Form 10 reporting the \$50,000 June 19, 2004 loan from the candidate was not timely filed. June 19, 2004 was a Saturday. As such, the committee did not list the loan until the following business day - June 21, 2004. The Form 10 reporting the loan was signed on June 22, 2004. Due to administrative burdens on the campaign it was not filed with the FEC until June 24, 2004. Respondents believe the Form 10 was filed two days late.

4. Similar to the three Form 10s addressed in Respondents first correspondence, Respondents also emailed a Form 10 disclosing the \$90,000 June 28, 2004 loan to the FEC on June 29, 2004. Respondents are sure they sent this form, but have been unable to find an email confirmation receipt showing this information was acknowledged by the FEC.

At all times Respondents acted with full intent to comply with the FEC's reporting requirements for BCRA's new and complicated millionaire provisions. These reporting requirements were new for the 2004 election cycle and Respondents had no history of dealing with the nuances of the provisions.<sup>1</sup> There was no attempt to hide or delay disclosure of the candidate's loans to his committee. Each issue raised by the Commission is the result of attempted reliance on counsel or advice from the FEC, or innocent administrative failure.

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<sup>1</sup> Respondents were also unable to find any closed MURs dealing with Form 10 filing issues in preparing its response.

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Sincerely,

A handwritten signature in black ink, appearing to read "Craig Engle". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Craig Engle  
Scott S. Ward

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