

MAY 22 2006

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION
COMMISSION
SECRETARIAT

In the Matter of

MUR 5716
ASHCROFT 2000

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CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM

2006 MAY 22 A 9:51

SENSITIVE

GENERAL COUNSEL'S REPORT

The Office of General Counsel has scored MUR 5716 as a low-rated matter. Under the Enforcement Priority System, matters that are low-rated are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The facts giving rise to this complaint, which were circulated informationally to the Commission on March 16, 2006, involve an alleged "undisclosed debt burden" by the Ashcroft 2000 Committee¹ ("the Committee") to both the Internal Revenue Service and the Missouri Director of Revenue. The alleged debt arises from the complainant's employment relationship with the Committee dating back to the summer of 2000. The complainant alleges that after improperly changing his status from employee to independent contractor, the Committee failed to pay a sufficient amount of withholding taxes. According to the complainant, the Committee's total estimated federal tax is \$870.15, excluding interest and penalties. The Committee denies that it withheld an insufficient amount of payroll taxes and, therefore, maintains that its disclosure reports were accurate.

¹ It should be noted that prior to the complaint being filed in this matter, Ashcroft 2000 was permitted to terminate on March 7, 2006.

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2 While it is not clear from the documentation we have received whether the
3 Committee has any federal or state tax liability, the amount in question appears to be de
4 minimus in nature. Moreover, the alleged activity in this case took place over five years ago
5 and is beyond the statute of limitations. *Federal Election Commission v. Williams*, 104 F.3d
6 237 (9th Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997).

7 Thus, in reviewing both the merits and the procedural posture of MUR 5716, and in
8 furtherance of the Commission's priorities and resources relative to other pending matters on
9 the Enforcement docket, the Office of General Counsel believes that the Commission should
10 exercise its prosecutorial discretion and dismiss the matter.² *See Heckler v. Chaney*, 470
11 U.S. 821 (1985).

12 RECOMMENDATION

13 The Office of General Counsel recommends that the Commission dismiss
14 MUR 5716, close the file effective two weeks from the date of the Commission vote, and
15 approve the appropriate letters. Closing the case as of this date will allow CELA and
16 General Law and Advice the necessary time to prepare the closing letters and the case file for
17 the public record.

James A. Kahl
Deputy General Counsel

5/22/06
Date

BY:

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
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Attachment:
Narrative in MUR 5716

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4 **MUR 5716**

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6 **Complainant:** William N. O'Malley

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8 **Respondents:** Ashcroft 2000 Committee and
9 Garrett M. Lott, as Treasurer

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11 **Allegations:** Complainant alleges that Ashcroft 2000 failed to report debts in connection
12 with potential tax liabilities to the Internal Revenue Service and the Missouri Director of
13 Revenue for its share of federal and state payroll taxes arising from the employment of
14 the complainant in 2000. The total estimated federal tax liability according to the
15 complainant is approximately \$870.15, excluding interest and penalties. The
16 complainant claims that he was not informed of the Committee's noncompliance with its
17 tax obligations until 2004 and, therefore, the statute of limitations was tolled for the four-
18 year period.

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20 **Responses:** Ashcroft 2000 responded by stating that its accountant reviewed the records
21 and concluded that there was no tax liability for unpaid taxes as asserted by the
22 complainant. Thus, there was no debt owed to any taxing authority that was either
23 unreported or misreported to the Federal Election Commission.

24
25 **General Counsel Note:** The facts giving rise to this complaint took place in 2000 and,
26 therefore, but for the contention that the employment taxes were not discovered by the
27 complainant until 2004, it appears that the activity giving rise to this complaint is beyond
28 the applicable statute of limitations for an FEC Enforcement action.

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30 **Date complaint filed:** March 15, 2006

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32 **Response filed:** April 6, 2006

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