

BEFORE THE FEDERAL ELECTION COMMISSION

FEDERAL ELECTION COMMISSION
SECRETARIAT

2006 JUL 12 A 9:23

In the Matter of)

MUR 5748)

CURT HOHN)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY SYSTEM**SENSITIVE**

GENERAL COUNSEL'S REPORT

The Office of General Counsel has scored MUR 5748 as a low-rated matter. Under the Enforcement Priority System, matters that are low-rated and are deemed inappropriate for review by the Alternative Dispute Resolution Office 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 May 16, 2006, involve the alleged underreporting of expenditures by the respondent's, Curt Hohn's, Congressional campaign committee during the 2000 election. Additionally, as the General Manager for respondent, WEB Water ("WEB"), Mr. Hohn allegedly continued to receive annual salary payments (totaling between and retirement benefits, although he was campaigning for public office for up to 10 months immediately prior to the election. The respondents denied the allegations. They noted that the basis for the complainant's reporting allegation stems from the deposition of Paul Fischbach, Mr. Hohn's former Committee treasurer, concerning an access to records lawsuit filed by the complainant. Mr. Fischbach testified as to his recollection of Committee expenditures, but he did not have the Committee's financial records to refer to at the deposition in order to confirm the amount of expenditures. Mr. Hohn refuted the allegation

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1 concerning his salary from WEB by claiming that he was able to devote the necessary time
2 needed to satisfy both his managerial duties and campaign for Congress. Specifically,
3 Mr. Hohn stated by affidavit that during the campaign he worked on WEB business for an
4 average of 40 hours per week. Thus, Mr. Hohn argues that his salary did not amount to an
5 in-kind contribution from WEB to his campaign committee.¹

6 The alleged activity in this case took place over five years ago and, therefore, is
7 beyond the statute of limitations. *Federal Election Commission v. Williams*, 104 F.3d 237
8 (9th Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997). Accordingly, in reviewing the
9 speculative nature of the complaint, as well as the procedural posture of MUR 5748, and in
10 furtherance of the Commission's priorities and resources relative to other pending matters on
11 the Enforcement docket, the Office of General Counsel believes that the Commission should
12 exercise its prosecutorial discretion and dismiss the matter.² *See Heckler v. Chaney*, 470
13 U.S. 821 (1985).

14 RECOMMENDATION

15 The Office of General Counsel recommends that the Commission dismiss
16 MUR 5748, close the file effective two weeks from the date of the Commission vote, and
17 approve the appropriate letters. Closing the case as of this date will allow CELA and
18 General Law and Advice the necessary time to prepare the closing letters and the case file for
19 the public record.

¹ It should be noted that prior to the complaint being filed in this matter, Curt Hohn for Congress was permitted to terminate on March 22, 2002.

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7/11/06
Date

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Deputy General Counsel

BY:

Gregory R. Baker
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Attachment:
Narrative in MUR 5748

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4 **MUR 5748**

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6 **Complainant:** Bill Johnson

7
8 **Respondents:** Curt Hohn
9 WEB Water Development Association, Inc.
10

11 **Allegations:** The complaint alleges that respondent, Curt Hohn, who ran for a seat in
12 Congress in 2000, failed to disclose certain receipts and expenditures for his campaign
13 committee in violation of 2 U.S.C. § 434. Additionally, as the General Manager for
14 WEB Water ("WEB"), a non-profit water utility in northeastern South Dakota,
15 respondent continued to receive his salary, which was estimated between
16 annually, notwithstanding the fact that he was campaigning full time. Moreover,
17 complainant noted that the respondent continued to receive retirement benefits from
18 WEB and possibly used WEB's facilities in 2000 while campaigning full time for
19 Congress.
20

21 **Response:** In a joint response submitted from the respondents they noted that Mr. Hohn
22 was asked by WEB to stay on the job while he was campaigning for office as long as he
23 could manage his official duties. Mr. Hohn noted they he was not engaged in
24 campaigning for Congress full time and was able to manage both his job and the
25 campaign. Additionally, Mr. Hohn claims that he did not use of WEB's funds or
26 facilities for campaign purposes. Furthermore, Mr. Hohn explained that discrepancies
27 that appeared between a deposition transcript taken from his treasurer and figures found
28 on his committee's FEC reports were the result of his treasurer's inability to precisely
29 recall the exact expenditures of the committee off the top of his head, which related to
30 campaign activities from six years earlier.
31

32 **General Counsel Note:** The facts giving rise to this complaint took place in 2000 and,
33 therefore, appear to be beyond the applicable statute of limitations for an FEC
34 Enforcement action. It should be noted that the complainant is currently engaged in
35 litigation with Mr. Hohn in an unrelated matter and alleges that the deposition of the
36 campaign committee's treasurer, Paul Fischbach, revealed that the committee failed to
37 report the full amount of its receipts and expenditures during the 1999-2000 election
38 cycle. Finally, the respondent's committee, Curt Hohn for Congress, terminated its
39 reporting responsibilities with the Commission on March 22, 2002.
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41 **Date complaint filed:** May 15, 2006
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43 **Response filed:** June 8, 2006

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