

SANDLER, REIFF & YOUNG, P.C.

50 E STREET, S.E. RECEIVED  
WASHINGTON, DC 20003  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

JOSEPH E. SANDLER  
sandler@sandlerreiff.com  
NEIL P. REIFF  
reiff@sandlerreiff.com

TELEPHONE: (202) 479-1111  
FACSIMILE: (202) 479-1115

COUNSEL:  
JOHN HARDIN YOUNG  
young@sandlerreiff.com

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December 6, 2006

Jeff S. Jordan, Esq.  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Re: MUR 5841

Dear Mr. Jordan:

The undersigned represents the Arizona Democratic Party and Carter Olsen ("collectively referred to as the ADP"), as Treasurer in the above mentioned matter. This matter was generated by a complaint filed by the Arizona Republican Party ("ARP") against the ADP. In the complaint, the ARP alleges that the ADP apparently violated 2 U.S.C. § 441a(d) by making expenditures for mailings that supported the Democratic nominee for the United States House of Representatives for the Fifth Congressional District, Harry Mitchell, without allocating or reporting the costs under 2 U.S.C. § 441a(d). Further, the ARP alleges that the ADP violated 2 U.S.C. § 441d by failing to state whether or not the mailings were authorized by a federal candidate. Both of these allegations are completely without merit. In fact, the costs of these mailings are exempt from the definition of contribution and expenditure under 2 U.S.C. §§ 431(8)(B)(ix) & 431(9)(B)(viii) and 11 C.F.R. §§ 100.87 & 100.147.

Without any apparent firsthand knowledge, the ARP assumes that the mailings attached to his complaint were "done" by a commercial vendor without any "evidence" of whether there was any actual volunteer activity undertaken in connection with these mailings. The ARP concludes, without providing any additional information, that the mailings were, in fact, mailings undertaken by a commercial vendor. The ARP's allegations are completely without merit, and each mailing attached to his complaint was, in fact, handled in a significant manner by volunteers. Consequently, the mailings in question meet the definition of volunteer distribution of campaign materials under 11 C.F.R. § 100.147. Further, the disclaimers on each mailing are in accordance with the Commission's disclaimer regulations regarding exempt mailings. 11 C.F.R. § 110.11(e).

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The three mailings attached to the ARP's complaint were part of an exempt mail program for mailings that were produced and mailed by the ADP during the 2006 general election cycle. Each of the three mailings were handled and prepared for mailing by volunteers at the facilities of Tri-City Mailing Services, Inc in Tempe, Arizona. In each instance volunteers were present to unload the mail from delivery boxes from the printing company, feed the mail directly into an addressing machine, receive the mail on the other end of the machine and proceed to sort and rubber band the mail pieces. The volunteers placed the mail into bags that were sorted by zip code and placed the bags on crates to be placed in a truck that would transport the mail to the post office. Each bag was tagged by volunteers as political mail and numbered in accordance with postal service regulations. Although the volunteers intended to transport the mailings to the post office, the ADP and its volunteers were instructed by the the mailing service that they were prohibited from doing so due to insurance and legal requirements. Thus, Tri-City Mailing Services employees were required to transport the mail pieces to the post office.

Each of the mailings was supervised by ADP employee Nicholas Klonoski. Mr. Klonoski has submitted an affidavit attached to this letter that outlines the steps taken by ADP volunteers to assist in the preparation of these mailings as described above. Also enclosed with this response are pictures that document the volunteer activity undertaken during the mailings.

As Mr. Klonoski's description and the enclosed pictures demonstrate, there was significant participation by volunteers. To be sure, the Commission has never, itself, provided any specific guidance on exactly how much volunteer activity is required to qualify costs of a mailing for the volunteer exemption. The Commission has acknowledged that there is a significant variance in the amount of volunteer activity utilized by party committees. Thus, in its 1996 legislative recommendations to Congress, the Commission asked Congress to "clarify the extent to which volunteers must be involved in an activity in order for that activity to qualify as an exempt activity." Federal Election Commission Annual Report 1996, p. 55. The Commission did not reiterate this request in future recommendation reports and Congress did not act to clarify the necessary level of volunteer activity. Further, the Commission itself has not provided any significant guidance on the level of volunteer activity required. In its latest version of its Handbook for party committees, the Commission notes the volunteer requirement but does not provide any specific guidance as to the appropriate amount of volunteer activity required. See Campaign Guide for Political Party Committee, August 2004, p. 38.

The Commission has, historically, taken a case-by-case approach to volunteer mail matters. For example, in MUR 3218, the Commission rejected the General Counsel's office recommendation to find reason to believe that the Ohio Republican Party's mailings did not contain sufficient volunteer activity. In that matter, the volunteers merely stamped a bulk mailing permit on each piece, sorted the pieces and transported the pieces to the post office. In that matter, the Commission noted that a vendor had pre-printed the mail piece and pre-batched the mailings by zip code and carrier route. In another matter, MUR 3248, the General Counsel's office noted that

“labeling, sorting, addressing and bringing pieces to the post office” were sufficient. More recently, in MUR 4754, the Commission appeared to focus on whether it was the vendor or volunteers that sorted and bundled the mail by zip code and carrier route.

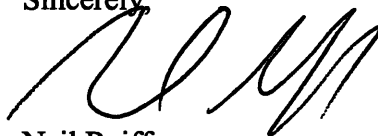
Although the ADP believes that the amount of volunteer activity undertaken in this matter is more than sufficient to meet the requirements of the volunteer exemption, it should be noted that advancement in technology, as well as postal service requirements, makes it impossible and or difficult for volunteers to perform many of the tasks for which volunteers may have been utilized in the past. First, most party mailings utilize postcards and folded postcards called bi-folds and tri-folds. Therefore, there is no opportunity to stuff envelopes. Second, addresses are generally laser printed onto postcards, and labels are no longer utilized. Third, Postal Service regulations contain strict guidelines as to sorting in order for letters to be eligible for the non-profit rate. Therefore, some level of automation is required to ensure that the party is eligible for the non-profit postage rate when it sends out its mail. Fourth, the bulk postage stamp is part of the printing of a mail piece and no longer requires a hand stamp to meet postal service requirements. Finally, as noted above, most mail houses and post offices prohibit private individuals from transporting bulk mail to their facilities for legal and insurance reasons. All of these advances leave less and less for volunteers to participate in when undertaking mail activities for party committees.

While the Commission’s past cases in this area may be instructive, the Commission must take a more modern approach in analyzing volunteer activity in the context of campaigns undertaken in the 21<sup>st</sup> century balancing advances in technology since the creation of the volunteer exemption in 1979, stricter requirements from the U.S. Postal Service, and the ability of party committees to communicate with voters. Notwithstanding, even by the standards of earlier cases, the ADP has demonstrated more than sufficient involvement by volunteers to meet the Commission’s requirements regarding volunteer activity.

With respect to the disclaimer, the Commission’s regulations regarding exempt mail do not require an exempt mailing to state whether a federal candidate has authorized the mailing. Therefore, the disclaimer contained in its exempt mailings were fully compliant with the Commission’s regulations. 11 C.F.R. § 110.11(e).

Based upon the above, the Commission should find no reason to believe that the ADP, and Carter Olson, as Treasurer, violated any provision of the Federal Election Campaign Act and close this matter with respect to the ADP.

Sincerely,



Neil Reiff

Counsel to the Arizona Democratic  
Party, and Carter Olson, as Treasurer

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