



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Thomas C. Zipfel, General Counsel
Worth & Company, Inc.
6263 Kellers Church Road
Pipersville, PA 18947

MAR 24 2009

RE: MUR 6034
Worth & Company, Inc.

Dear Mr. Zipfel:

On March 10, 2009, the Federal Election Commission ("the Commission") found reason to believe that your client, Worth & Company, Inc. ("Worth") violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act, as amended ("the Act"), and 11 C.F.R. § 114.2(f), with respect to its failure to obtain pre-payment for the food and beverages served at Worth's fundraiser for congressional candidate Tom Manion. In addition, the Commission found reason to believe that Worth violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) as a result of its solicitations for the fundraiser outside of Worth's restricted class. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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We look forward to your response.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis
Procedures

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENT:** Worth & Company, Inc.

MUR 6034

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6 **I. INTRODUCTION**

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8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Todd Myers. See 2 U.S.C. § 437g(a)(1). The complaint in this matter alleges that Worth &
10 Company, Inc. ("Worth") made prohibited in-kind corporate contributions in the form of
11 facilitated corporate resources to Manion for Congress and Richard Durso, in his official capacity
12 as treasurer ("the Committee"), in violation of 2 U.S.C. § 441b(a) of the Federal Election
13 Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. § 114.2(f). Specifically, it
14 maintains that Worth used its corporate facilities, which included its rooms, employees, and its
15 payment of food, beverages and other expenses with corporate funds, for a fundraiser on behalf
16 of then-candidate Tom Manion, who was running for Pennsylvania's 8th Congressional District,
17 without compensation from the Committee.

18 Additionally, the complaint asserts that Worth solicited contributions for the event
19 outside its restricted class and secretly "bundled" contributions by having an unnamed Worth
20 employee collect and forward the contribution checks received at the event to the Committee, in
21 violation of 11 C.F.R. § 110.6(b). Finally, the complaint alleges that the invitations distributed in
22 connection with the event contained a defective and misleading disclaimer, contrary to 2 U.S.C.
23 § 441d(c) and 11 C.F.R. § 110.11(c). In response, Worth, which is located in Pipersville, PA,
24 employs approximately 400 people, and provides mechanical contracting and maintenance
25 services, see <http://www.worthandcompany.com>, asserts that it committed no substantive

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violations of the Act, but if it did commit any violations of the Act, they were technical, so the complaint should be dismissed or transferred to the Alternative Dispute Resolution Office.

As discussed in further detail below, the Commission has: (1) found reason to believe that Worth violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) with respect to its failure to obtain pre-payment for the food and beverages at the event in issue; (2) found reason to believe that Worth violated 2 U.S.C. § 441b(a) and 11 C.F.R. 114.2(f) by soliciting individuals outside its restricted class; (3) found no reason to believe that Worth violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by making a prohibited in-kind corporate contribution, in the form of printing and miscellaneous costs, because the Committee reimbursed Worth within a commercially reasonable time; (4) dismissed the allegation that Worth violated 11 C.F.R. § 114.2(f)(2) by holding the fundraiser in its facilities without receiving compensation, and allowing one of its employees to work on the event; and (5) found no reason to believe that Worth violated 11 C.F.R. § 110.6(b)(2) with respect to the allegation that it collected and forwarded contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

On March 25, 2008, Worth organized and hosted a fundraiser, billed as a “champagne reception,” for congressional candidate Tom Manion in a room located in its facility, at which attendees could join “Worth & Company and other business leaders” in “support[ing] Republican Candidate Tom Manion.” See Invitation (attached to Complaint). Worth acknowledges that before this event, it had never organized a political fundraiser at its facility and was unfamiliar with the Act and its underlying regulations. Worth Response at 1-2. According to Worth, it became involved with the fundraiser because one of its managers, Steve Cantrell, wanted to

1 honor Todd Manion, the candidate's late son, with whom he had served in Iraq, and who had
2 died while on duty there. *Id.* at 4. Worth provided its guests with \$4,424.17 worth of food and
3 beverages, but maintains that it did so solely to make attendees at the fundraiser feel comfortable,
4 and not "in an effort to circumvent the FECA, nor to curry favor with Manion." *Id.* at 2; *see also*
5 Invoice dated June 27, 2008 (attached to Worth Response).

6 Worth also printed and distributed invitations for the fundraiser. The Invitations
7 requested that attendees, who were asked to donate at least \$250 per person, RSVP to Sara
8 Alexander at her corporate email address, , or her office
9 telephone number. Complaint at 2. Worth identifies Alexander as the Executive Assistant to
10 Company President Stephen Worth, and it maintains that she volunteered to make arrangements
11 for the Manion fundraiser, including circulating invitations via email and U.S. mail, while
12 performing her normal work duties. Worth Response at 2. Alexander herself did not supply an
13 affidavit or response. Worth also denies that it coerced its employees to participate in the
14 fundraiser. *Id.*

15 The RSVP information is contained in a shaded box at the bottom of the invitation, which
16 also includes the disclaimer "Paid for by Manion for Congress." Complaint at 5. As shown in
17 the Invoice attached to Worth's response, the printing costs included \$1,038.80 for 2,000 color
18 copies of "Tom Manion Flyers" (presumably for the invitations to the event), and \$150 for
19 miscellaneous expenses, including Worth's estimate of the cost of postage. Adding these
20 expenses (\$1,188.80) with the \$4,424.17 in food and beverage costs yields \$5,612.97.

21 According to Worth, approximately 75 people attended the fundraiser, most of whom
22 were described as "family and close friends of Worth employees." *Id.* The available information
23 indicates that the event raised approximately \$16,400, of which at least \$3,200 apparently came

1 from Worth employees,¹ and that a Manion campaign intern at the event collected and forwarded
2 the contributions received at the event to the Committee for reporting and depositing.

3 Worth did not bill the Committee for the \$5,612.97 in food, beverage, printing, and
4 miscellaneous expenses until June 30, 2008, 95 days after the March 25, 2008 event. *Id.* at 2.

5 The Committee's 2008 July Quarterly Report discloses a disbursement to Worth for "printing
6 and catering" matching the Invoice amount. Worth acknowledges that the *Philadelphia Inquirer*
7 contacted Worth executives on June 30, 2008, but points out that the *Philadelphia Inquirer* news
8 report, which raised questions about the Manion fundraiser similar to those raised in the
9 complaint, was dated July 1, 2008, the same date on which the complaint was filed, and one day
10 after it had billed the Committee. See Complaint at 7; Worth Response at 3.

11 **B. Analysis**

12 **1. Corporate Facilitation**

13 **a. Payment for Food and Beverages**

14 Corporations are prohibited from making contributions in connection with Federal
15 elections, including using corporate resources or facilities to engage in fundraising activities in
16 connection with any federal election beyond certain limited exemptions set forth in the
17 Commission's regulations. See 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f). Political committees
18 are prohibited from knowingly accepting such contributions. *Id.* For example, a corporation may
19 not provide catering or other food services in connection with fundraising unless it obtains
20 advance payment for the fair market value of the goods. See 11 C.F.R. § 114.2(f)(2)(i)(E).

¹ Specifically, on March 27, 2008, James A. Gillen of the Worth Accounting Department contributed \$500; Steve Cantrell, a manager who had served with Manion's son Todd in Iraq, where the latter was slain, and who reportedly wanted to have the Manion fundraiser at Worth headquarters to honor his friend, contributed \$500, and company president Stephen Worth contributed \$2,200.

Here, Worth did not seek pre-payment for the food and beverages served at the fundraiser, as required. Instead, Worth provided for the catering of the event and did not bill the Committee until 95 days later when, as noted above, the *Philadelphia Inquirer* was investigating the matter. Thus, the \$4,424.17 amount spent by Worth on the Manion fundraiser constituted the use of corporate resources and facilities and, thus, a prohibited in-kind corporate contribution from Worth. Therefore, the Commission found there is reason to believe that Worth violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f).

b. Payment for Other Costs on the Invoice

With respect to the other expenses found on the Invoice, printing and miscellaneous expenses that collectively totaled \$1,188.80, the Commission's regulations require that such expenses must be reimbursed by a committee within a "commercially reasonable time" in order to avoid causing corporate facilitation, *see* 11 C.F.R. § 114.2(f)(2)(B). The Commission has found a number of different arrangements to be acceptable, including a situation where the corporation did not bill the campaign for 90 days. *See* MUR 5985 (Tim Burns). As such, the fact that the Committee was billed 95 days after the event in question appears to be reasonable. Therefore, the Commission found no reason to believe that Worth & Company, Inc. violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) in connection with the cost of the invitations and miscellaneous expenses.

c. Compensation for use of Worth's rooms for fundraiser

Corporate facilitation also occurs when a corporation makes its meeting rooms available for a candidate's fundraiser, but does not make the room available for civic or community groups. *See* 11 C.F.R. § 114.2(f)(2)(i)(D). Here, the complaint alleges that the Committee should have paid Worth for the use of the rooms in its corporate facilities where it held the

reception. Worth responds generally that it made the room that was used for the event available to other civic groups and, therefore, no payment by the Committee was required. This assertion is undisputed, but it is also unsubstantiated and unsworn, and does not provide specific information regarding its past practice with respect to loaning its facilities to civic groups. To determine definitively whether Worth's representation is accurate, an investigation would be necessary. However, in light of the relatively small amount of money involved in this matter, and in the interest of conserving Commission resources, the Commission exercises its prosecutorial discretion and dismisses this allegation against Worth and Manion for Congress and Richard Durso, in his official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

d. Use of Worth Employee Sara Alexander

Section 114.9(a)(2) of the Commission's regulations contains a safe harbor from the corporate facilitation rules for volunteers. Individual volunteer activity that does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, as well as voluntary individual Internet activities, as set forth in 11 C.F.R. § 100.94, fall within the safe harbor, provided that the activity does not prevent an individual from completing the normal amount of his or her compensated work, does not increase the overhead or operating costs of the corporation, and is not performed under coercion. *See* 11 C.F.R. § 114.9(a)(2)(ii).

With respect to Alexander, the employee who allegedly assisted with the Manion fundraiser, Worth denies coercing her and states that her work on the Manion fundraiser did not prevent her from completing her normal load of compensated work. Alexander did not supply an affidavit or response. However, due to the *de minimus* dollar amount involved and the

Commission's limited resources, the Commission exercises its prosecutorial discretion and dismisses the allegation that Worth violated 11 C.F.R. § 114.2(f) with respect to an employee's time spent working on the Manion fundraiser. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

e. Alleged Collection and Forwarding of Contributions

Although corporations are prohibited from collecting and forwarding contributions to candidates, 11 C.F.R. § 110.6(b)(2)(i)(E), there is no indication, save for the complaint's unsupported allegation, that Worth acted as a conduit for the contributions raised at the Manion fundraiser. Worth has denied such activity and has stated that it was under the impression that a Manion campaign volunteer collected and forwarded the contributions made at the fundraiser. Thus, the Commission found no reason to believe that Worth illegally collected and forwarded contributions from the fundraiser, in violation of 11 C.F.R. § 110.6(b)(2). *See* Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, issued December 21, 2000) (four Commissioners stated, "Absent personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation . . . so as to warrant a focused investigation that can prove or disprove the charge").

f. Worth's Solicitations Outside of its Restricted Class

Corporations such as Worth, which do not have separate segregated funds, are permitted to solicit contributions to be sent directly to candidates, but those solicitations are limited solely to its restricted class, consisting of its stockholders and executive or administrative personnel, and their families. 2 U.S.C. § 441b; 11 C.F.R. §§ 114.1(j) and 114.2(f).

Worth's printing of approximately 2,000 color copies of the Manion fundraiser invitations indicates that it solicited individuals outside of its 400-person company and their families. Worth does not deny such activity, and it acknowledges that "close friends" of its employees

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- 1 attended. As such, Worth solicited individuals outside of its restricted class. Therefore, the
- 2 Commission found reason to believe that Worth violated 2 U.S.C. § 441b(a) and 11 C.F.R.
- 3 § 114.2(f).

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