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FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20443

FIRST GENERAL COUNSEL'S REPORT

MUR: 6089

DATE COMPLAINT FILED: October 6, 2008

DATE OF NOTIFICATION: October 14, 2008

LAST RESPONSE RECEIVED: Dec. 9, 2008

DATE ACTIVATED: February 3, 2009

EXPIRATION OF SOL: July 20, 2013

COMPLAINANT:

Shawn T. Flaherty

RESPONDENTS:

Melissa Hart

Meakem Communications Company LLC

(a/k/a Leadership Radio Network)

People with Hart Inc., and Michelle Pierson, in her
official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(9)(B)(I)

2 U.S.C. § 434(b)

2 U.S.C. § 441b(a)

11 C.F.R. § 100.73

11 C.F.R. § 100.132

11 C.F.R. § 109.21

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that an interview of Federal candidate Melissa Hart on a radio talk show called "The Glen Meakem Program" that was broadcast on FM News Talk 104.7 (a/k/a WPGB), in Pittsburgh, Pennsylvania, was a coordinated communication that expressly advocated the election of Ms. Hart and solicited contributions to her campaign. Complainant further alleges that this activity violated the Federal Election Campaign Act of 1971, as amended (the "Act")

1 because it resulted in the corporate producer of the Glen Meakem Program, the Leadership Radio
2 Network (the "LRN"), making a prohibited corporate in-kind contributions to Melissa Hart and
3 People with Hart, Inc., her principal campaign committee. Finally, Complainant asserts that the
4 Leadership Radio Network cannot claim it is entitled to the "press exemption" because it paid for
5 the airtime on FM News Talk 104.7 and thus was not acting as a press entity.

6 In a joint response ("Meakem Response") Glen Meakem and the Meakem
7 Communications Company LLC's ("MCC") (a/k/a Leadership Radio Network), deny that the
8 interview with Ms. Hart was coordinated and explain that the costs to air the Program are paid by
9 MCC, a partnership for purposes of the Act. According to the Meakem response, MCC contracts
10 with Clear Channel Communications, the owner of the radio station, to air the Program twice a
11 week. See Meakem Response, Exhibit 1(Affidavit of Mr. Glen Meakem). MCC pays the costs
12 to air the Program. *Id.* The Program is advertised on the radio "under the brand names of 'The
13 Glen Meakem Program' and 'The Leadership Radio Network'" but neither the Program nor LRN
14 are independent legal entities. *Id.* MCC asserts that it is not a corporation under the Act, but is a
15 partnership under FEC regulations. *Id.* at 2. MCC provided documentation showing that MCC
16 is treated as a "disregarded entity" by the IRS, and that its sole member is SnowLine Partners,
17 L.P., a Pennsylvania Limited Partnership, which, in turn, is owned, controlled and capitalized by
18 the living trusts of Mr. Meakem and his wife, Diane Boone Meakem. *Id.* at 3. Based on the
19 above, MCC concludes that any contribution arising out of the interview would not constitute an
20 impermissible corporate contribution.

21 The response further asserts that even if the interview was coordinated, the *pro rata* value
22 of the interview is *de minimis* and would not warrant further action by the Commission. A joint

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1 response from Melissa Hart and the Hart Committee also denies coordination and argues that the
2 press exemption applies to the activity.

3 Because we conclude that the press exemption applies, this Office recommends that the
4 Commission find no reason to believe that any of the Respondents violated the Act in connection
5 with the broadcast of the interview, and close the file.

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Factual Background**

8 Glen Meakem is the host of the radio show, The Glen Meakem Program, (the "Program")
9 which airs on FM News Talk 104.7 ("the station") in Pittsburgh, Pennsylvania. The radio station
10 is owned by Clear Channel Communications, Inc. ("CCC"). The station's daily programming
11 features regular news reports and several talk shows, including the hour-long Program, which it
12 airs twice a week, on Saturday and Sunday mornings.¹ The hour-long Program features a mix of
13 interviews, commentary, and commercials. The agreement between MCC and CCC allows the
14 Program to run promotional announcements and commercials.

15 On July 20, 2008, Glen Meakem interviewed Ms. Hart, a 2008 candidate for a seat in
16 Pennsylvania's 4th Congressional District, on the Program. An audio file of the interview is
17 available on Glen Meakem's website at <http://glenmeakem.com/> (last accessed on April 13,
18 2009). The program was 57 minutes long and included a discussion of listener's emails, third

¹ The agreement between MCC and CCC provides for 57 minutes of airtime every Sunday for 52 weeks beginning March 16, 2008, at a cost of \$375 per program. See Meakem Response at 2. The Program now airs twice a week, on Saturday and on Sunday mornings. *Id.*

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1 party advertisements, an interview with an author, the interview with Melissa Hart, and a
2 discussion of economic issues. Before the program aired, a disclaimer stated: "The following is
3 a paid commercial announcement of the Leadership Radio Network."

4 The segment of the show with the interview of Hart lasted about 17 minutes. Meakem
5 introduced Hart as a candidate and they discussed campaign issues. Toward the end of the
6 interview (the last 2 minutes of the program), Meakem made statements expressly advocating the
7 candidacy of Hart, encouraged listeners to contribute to her campaign, and asked Hart to indicate
8 how people could support her campaign as follows:

9 I am a huge supporter of Melissa Hart . . . I have contributed to her campaign
10 personally . . . My wife and I, we are really behind Melissa . . . We think it's great
11 that she's running . . . Thank you for running . . . There's a lot of people in our
12 listening area who can actually vote for Melissa 'cause they're in Pennsylvania's
13 Fourth Congressional District, myself among them, so, Melissa was my
14 Congressperson and, doggone it, I want her to be my Congressperson again. So
15 I'm going to be pulling the lever for Melissa or pushing the button on the screen
16 for Melissa this November. But also, you know what? In politics, regular people
17 making contributions make a difference. And, hey, if you feel strongly for
18 Melissa, this is a person you should support. And if you want to support Melissa,
19 how do people support you financially, how do they support your campaign?"

20
21 Hart replied by providing the campaign's website and mailing addresses:

22 Well, we have a website, it's w-w-w dot People with Hart - H - A - R - T - dot
23 com. If you go there you can actually contribute on the website. And if you're
24 not a website kind of guy or woman, we have our campaign committee, it's
25 People with Hart, P.O. Box 435, Wexford, PA, 15090. Our phone number --

26
27 Meakem continued:

28
29 I hope she wins in November. I hope you decide to reach out with your vote, time
30 and energy, volunteering or with your money, or contributing. That will be a great
31 thing to do for our community and our country. We need to have more
32 conservatives back in congress. Melissa is a great candidate.
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10044281721

1 Complainant alleges that the interview of Hart was a coordinated communication
2 resulting in the making and receiving of in-kind contributions. See 11 C.F.R. § 109.21(a)(1)-(3).
3 Complainant also asserts that the costs to broadcast the interview may have been paid for by a
4 corporation, resulting in prohibited corporate contributions and the illegal corporate facilitation
5 of federal contributions. See 2 U.S.C. § 441(b) and 11 C.F.R. § 114.2(f). Finally, Complainant
6 asserts that the "press exemption" does not apply here because the radio station was paid to
7 broadcast the Program, citing to Advisory Opinion 2004-32 (Citizens United) ("the very act of
8 paying a broadcaster ... rather than receiving compensation from a broadcaster, is one of the
9 'considerations of form' that can help to distinguish [non-exempt spending] ... from exempted
10 media activity.").

11 Respondents deny the allegations of coordination and argue that even if there was
12 coordination, the Commission should take no further action because the *pro rata* value of the
13 "coordinated communication" is *de minimis*.² MCC also argues that any contribution arising out
14 of the interview would not constitute an impermissible corporate contribution because it is a
15 partnership for purposes of the Act. See *supra* at 2. Further, the Hart Respondents argue that the
16 press exemption should apply in light of the fact that neither the radio station nor the Program
17 appears to be owned or controlled by any candidate, political committee or political party, the
18 nature of the Program and recent rulings by the Commission regarding blogs. See Hart Response

² MCC paid \$375 to air the 57 minute program, or \$6.60 per minute. See Meakem Response, Exhibit 6 (Radio Station Invoice at 3, Order Line 2) and 7 (copy of MCC check for payment of July airtime). The Hart interview comprised 17 minutes of the total program, for a value of \$112.20 in total. *Id.* at 6. According to MCC, the portion of the interview that contained express advocacy and the dissemination of information regarding contributions lasted only about 2 minutes, for a value of \$13.31. *Id.* However, there may be additional costs associated with the broadcast. The agreement between MCC and CCC references "\$475 per week NET investment" costs for "all items listed in the agreement including production, studio time, board operation." *Id.* at Exhibit 5 (FM news 104.7 Block Programming Opportunity). Thus, there may be additional production costs associated with airing the Program.

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1 at 3.³ Because we conclude that the activity qualifies for the press exemption, we do not address
2 the coordination allegations.

3 **B. Analysis**

4 The Act prohibits corporations from making contributions or expenditures from their
5 general treasury funds in connection with any election of any candidate for Federal office.
6 2 U.S.C. § 441b(a). The Act defines "contribution" and "expenditure" to include any gift of
7 money or "anything of value" made for the purpose of influencing any election for Federal office,
8 but exclude any cost "incurred in covering or carrying a news story, commentary, or editorial by
9 any broadcasting station (including a cable television operator, programmer, or producer), ...
10 unless the facility is owned or controlled by any political party, political committee, or
11 candidate." 2 U.S.C. § 431(8)(A)(i), (9)(A)(i), and (9)(B)(i); 11 C.F.R. §§ 100.52, 100.73,
12 100.111(a), and 100.132. This exclusion is known as the "press exemption." or "media
13 exemption." The term "anything of value" includes in-kind contributions. 11 C.F.R.
14 § 100.52(d)(1). Contributions and expenditures must be disclosed under the Act. 2 U.S.C.
15 §§ 432 and 434.

16 Any party claiming the press exemption is subject to a two-part test. First, the
17 Commission asks whether the entity engaging in the activity is a press entity within the meaning
18 of the Act and the Commission's regulations. See Advisory Opinion 2007-20 (XM Satellite
19 Radio Inc.) at 3-4 and other advisory opinions cited therein. Second, the Commission, in
20 determining the exemption's scope, asks (a) whether the press entity is owned or controlled by a
21 political party, committee, or candidate; and, if not, (b) whether the entity was functioning within

³ The *Minkem* Response unlike the *Hart* Response does not assert that the Program qualifies for the press exemption.

10044281723

1 the scope of a legitimate press entity at the time of the alleged violation. If the press entity is
2 independent of any political party, committee, or candidate, and if it was acting as a legitimate
3 press entity at the time of the alleged violation, it is exempt from the Act's restrictions on
4 corporate contributions and expenditures, and the Commission's inquiry should end. *See*
5 *Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1213 (S.D.N.Y. 1981); *FEC v. Phillips*
6 *Publishing*, 517 F. Supp. 1308, 1312-13 (D.D.C. 1981); Advisory Opinions 2005-19 (The Inside
7 Track), 2005-16 (Fired Up!).

8 In this matter, Complainant alleges that the radio interview of Hart does not qualify for
9 the press exemption because it was a paid broadcast, and thus the costs of the interview are
10 illegal in-kind corporate contributions to the Hart campaign because they contain express
11 advocacy of Hart's election.⁴ Addressing the allegations, we first consider whether the radio
12 station's broadcast of the Program qualifies for the press exemption. We conclude that the radio
13 station is a press entity but that it is not acting as a press entity when it airs the Program because
14 another entity pays for the airtime and maintains control over the content of the show. The
15 second question is whether MCC, the entity that pays for the airtime, itself is a press entity and
16 whether it was acting in its legitimate press function when it aired the Program containing the
17 interview of Hart. We conclude that it does and that the press exemption applies. Thus, any
18 costs incurred in the production and broadcast of the Program at issue are not contributions or
19 expenditures under the Act.

⁴ Based on the available information, MCC, the entity that paid for the airtime, appears to be partnership rather than a corporation for purposes of the Act. *See* 11 C.F.R. § 110.1(g). Therefore, any contribution from the MCC to the Hart campaign is permissible as long as it is within applicable contribution limits. *See* 11 C.F.R. § 110.1(e).

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1 In this case, the Program is broadcast on FM News 104.7 (a/k/a WPGH). The radio
2 station itself is a press entity because it is in the business of producing on a regular basis news
3 stories and talk shows. In addition, Complainant does not allege nor does the available evidence
4 show that either the broadcast facility or its owner, CCC, is "owned or controlled by any political
5 party, political committee, or candidate." See 11 C.F.R. § 100.7(b)(2). However, the station is
6 not acting as a press entity when it airs the Program. Because MCC pays for the air time and
7 Meakem maintains control over the show's content, the station itself is necessarily not acting as a
8 media entity exercising its "unfettered right ...to cover and comment on political campaigns."
9 Advisory Opinion 1982-44 (DNC and RNC), citing H.R. Report No. 93-1239, 93d Congress, 2d
10 Sess. 4 (1974); see also MUR 5297 (Wolfe) (the station was not acting as a press entity but as an
11 entrepreneur, when it aired a show hosted by Wolfe because Wolfe paid for the airtime and
12 maintained complete control over the content of the show).

13 Next, we turn to the question of whether MCC qualifies as a press entity. In determining
14 whether an entity is a press entity, the Commission has focused on whether it is in the business of
15 producing on a regular basis a program that disseminates news stories, commentary, and/or
16 editorials. See Advisory Opinion 2007-20 (XM Satellite Radio Inc.) and 2005-19 (The Inside
17 Track). In its IRS filing for an employer ID number, MCC listed "broadcast production" as the
18 principal activity of the business and "creation of talk radio programming" under products
19 produced or services provided. See Meakem Response, Exhibit 2 (IRS Form SS-4 for MCC).
20 The Program is a regular radio show hosted by Mr. Meakem which features interviews,
21 commentary and/or editorials. The Program's archives (available on the Program's website) list

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1 programs on a wide range of topics, including the economy, politics, history, energy, education,
2 and the environment. Thus, based on the above, MCC would appear to qualify as a press entity.

3 The next question in the press exemption analysis is whether the press entity is owned or
4 controlled by a political party, political committee, or candidate. Neither the MCC nor the
5 Program appears to be owned or controlled by a political party, political committee, or candidate.
6 In addition, Melmon was not a candidate for Federal office and we have no information
7 suggesting that he is an officer or employee of any political party or political committee.

8 The final question is whether the press entity is acting as a press entity in conducting the
9 activity at issue. Similarly, on-air interviews of candidates also fall within the bounds of the
10 press exemption, and therefore, the interview of Hart is a legitimate press function of a media
11 entity. See Advisory Opinion 1987-08 at 5-6 (U.S. News) (candidate interviews covered by news
12 story exemption). Even if the Program expressly advocated the candidate's election and solicited
13 contributions to her campaign, this lack of objectivity does not disqualify it from the press
14 exemption. See Advisory Opinions 2007-20 (XM Satellite Radio Inc.), 2005-19 (The Inside
15 Track) and 2005-16 (Fired Up). Moreover, the interview with Hart consisted of 17 minutes of
16 the 57 minute program and only 2 minutes of the program contained discussion that Complainant
17 claims to be express advocacy of Hart's election and solicitations of contributions. Finally, the
18 fact that an entity buys airtime to broadcast a program does not necessarily preclude it from
19 qualifying for the press exemption, notwithstanding Complainant's reference to Advisory
20 Opinion 2004-30 (Citizens United) ("the very act of paying a broadcaster ... rather than receiving
21 compensation from a broadcaster, is one of the 'considerations of form' that can help to
22 distinguish [non-exempt spending] ... from exempted media activity" in support of its assertion.

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1 In Advisory Opinion 2004-30, the Commission's conclusion that the press exemption would not
2 be available to Citizens United was not based on the fact that Citizens United would be paying
3 for the broadcast, but because it did not "regularly produce documentaries or pay to broadcast
4 them." Moreover, the Commission has found that the press exemption would apply even where
5 an entity paid a broadcaster to air the program. In Advisory Opinion 2005-19 (The Inside Track),
6 the Commission concluded that an entity's production and purchase of airtime to broadcast a
7 radio talk show would fall within the press exemption, noting that the entity "is in the business of
8 producing on a regular basis a radio program that disseminates news stories, commentary and/or
9 editorials" and that it "also buys airtime to broadcast the program and resells some of that airtime
10 for third party advertisements." Like in Advisory Opinion 2005-19, MCC is in the business of
11 producing a radio show, which runs on a regular basis and also includes third party
12 advertisements. Thus, based on the above, it appears that MCC was acting as a press entity when
13 it aired the interview with Hart.

14 The press exemption, where applicable, also encompasses what otherwise would be
15 deemed "coordinated communication" between a candidate or committee and a *bona fide*
16 corporate media entity, which might lead to violations of section 441b. See 11 C.F.R.
17 §109.21(b); 11 C.F.R. §§ 100.73 and 100.132. Since the press exemption applies to the activity
18 in this case, any alleged coordinated communications would not violate the Act, and therefore we
19 need not engage in a full coordination analysis.

20 Though Complainant charges that Melissa Hart and her campaign received free air time
21 on the Program, because the activity is exempt from the definition of "contribution" and

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"expenditure" under the press exemption, 11 C.F.R. §§ 100.73 and 100.132, none of the Respondents in this matter violated the Act in connection with the allegations in this matter.

Based on the above, this Office recommends that the Commission find no reason to believe that Meakem Communications Company LLC (a/k/a Leadership Radio Network), Melissa Hart, and People with Hart Inc. and Michelle Pierson, in her official capacity as treasurer, violated the Act or the Commission's regulations in connection with MUR 6089, and close the file.

IV. RECOMMENDATIONS


1. Find no reason to believe that Meakem Communications Company LLC (a/k/a Leadership Radio Network) violated the Federal Election Act of 1971, as amended, or the Commission's regulations in connection with the allegations in MUR 6089;
2. Find no reason to believe that Melissa Hart violated the Federal Election Act of 1971, as amended, or the Commission's regulations in connection with the allegations in MUR 6089;
3. Find no reason to believe that People with Hart Inc. and Michelle Pierson, in her official capacity as treasurer, violated the Federal Election Act of 1971, as amended, or the Commission's regulations in connection with the allegations in MUR 6089;
4. Approve the attached Factual and Legal Analysis;
5. Close the file; and,
6. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

Date

5-4-09

BY:


Kathleen M. Guith
Deputy Associate General Counsel for
Enforcement

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Peter G. Blumberg
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