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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 6327

JOHN RUSSELL "RUSS" CARNAHAN

CARNAHAN IN CONGRESS AND

LAWRENCE GIESLING, AS TREASURER

CASTLE BALLROOM DEVELOPMENT, LLC

CASE CLOSURE UNDER THE

ENFORCEMENT PRIORITY

SYSTEM

GENERAL COUNSEL'S REPORT

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, including matters that may be time-barred under the statute of limitations, compared to other higher rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6327 as a low-rated matter.

In this matter, complainant Edward R. Martin, Jr. alleges that Congressman Russ Carnahan¹ may have illegally converted contributions made to his campaign committee, Carnahan in Congress (aka Russ Carnahan for Congress) and Lawrence Giesling, in his official capacity as treasurer ("the Committee"),² to his personal use, in violation of 2 U.S.C. § 439a(b). Specifically, the complainant alleges that in January 2003,

¹ Mr. Martin and Congressman Carnahan are both seeking to represent Missouri's Third Congressional District.

² At the time of the alleged violations, the Committee's name was "Russ Carnahan for Congress" and Thomas Carnahan was the Committee's treasurer.

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1 Mr. Carnahan, who was then a candidate for Congress, his wife, Debra Carnahan, and two
2 other individuals, Mary Entrup and Lewis E. Reed, formed a limited liability "corporation"
3 entitled "Castle Ballroom Development, LLC," ("Castle Ballroom") which purchased a
4 building known as the "Castle Ballroom building" in St. Louis, Missouri. Subsequently,
5 according to the complainant, the Committee paid a total of \$10,480 to Castle Ballroom for
6 "rent," as disclosed in the Committee's 2003 July and October Quarterly and Year End
7 Reports, and its 2004 April and July Quarterly Reports. Citing the portion of the Federal
8 Election Campaign Act of 1971, as amended ("the Act"), that pertains to prohibited uses of
9 campaign funds, the complainant maintains that contributions are deemed to be illegally
10 converted to "personal use" if they are used for expenses that would exist "irrespective" of
11 a candidate's campaign or duties as a federal office holder, including expenses such as "a
12 home mortgage, rent, or utility payment(s)." See 2 U.S.C. §§ 439a(b)(1) and (2)(A). The
13 complainant concludes that Mr. Carnahan's "use of campaign contributions to pay rent for
14 a building that was owned and controlled by a corporation in which he and his wife were
15 partners and, thus, beneficiaries, violates both the spirit and intent" of the Act's "personal
16 use" prohibitions.

17 In addition, the complainant asserts that, according to the Committee's 2004 Year
18 End financial disclosure report, Castle Ballroom contributed \$1,200 to the Committee on
19 December 1, 2004, for Mr. Carnahan's 2006 primary election. According to the
20 complainant, Castle Ballroom was taxed as a partnership, not a corporation

³ Although the complainant characterizes Castle Ballroom as a "corporation," Castle Ballroom's Articles of Organization, appended to the complaint as Attachment A (*infra*), describe the entity as a limited liability "company."

1 (see n. 4, *infra*). As such, Castle Ballroom would have been permitted to make
2 contributions to political committees, pursuant to 11 C.F.R. § 110.1(g); however,
3 according to the complainant, Castle Ballroom may have failed to inform the Committee
4 that it was eligible to make the contribution at issue, as required by 11 C.F.R.
5 § 110.1(g)(5). Further, the complainant asserts that the Committee failed to attribute the
6 contribution to the individual Castle Ballroom member(s) from whom the potential
7 contribution originated, as required by 11 C.F.R. §§ 110.1(e) and (g)(5).

8 Appended to the complaint, and lettered as Attachments A-J, are copies of the
9 following: Articles of Organization for Castle Ballroom, LLC, apparently signed by "John
10 Russell Carnahan" and dated December 30, 2002;⁴ Certificate of Organization for Castle
11 Ballroom, listed as a "Missouri...Limited Liability Company;" dated December 30, 2004;
12 what is described as a deed for Castle Ballroom's purchase of the Castle Ballroom
13 building, recorded on January 14, 2003; a deed listing Debra Carnahan, Mary Entrup, Russ
14 Carnahan, and Lewis Reed as members of Castle Ballroom; copies of pages from the
15 Committee's financial reports disclosing a total of \$10,400 in payments to Castle Ballroom
16 for "rent;"⁵ and copies of pages from the Committee's 2004 Year End Report disclosing a
17 \$1,200 contribution from Castle Ballroom on December 1, 2004.

4 Although the complainant references this exhibit as support for his statement that the members of Castle Ballroom elected to have their company taxed as a partnership, not a corporation, *see supra*, the exhibit does not refer to Castle Ballroom's tax status. We were unable to ascertain Castle Ballroom's tax status from the public record.

5 The payments are reported as follows: \$1,000 on May 17, 2003; \$500 on June 4, 2003; \$1,000 on June 12, 2003; \$500 on July 26, 2003; \$500 on August 24, 2003; \$500 on August 25, 2003; \$1,000 on October 8, 2003; \$1,000 on December 1, 2003; \$1,200 on January 1, 2004; \$1,000, also on January 1, 2004; \$1,100 on March 1, 2004; and \$1,100 on April 1, 2004.

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1 In response, Congressman Carnahan and the Committee (collectively,
2 "respondents"), assert that, contrary to the complainant's allegations, "Congress has
3 expressly approved of the use of campaign funds to lease office space at fair market value
4 from a candidate or a member of a candidate's family," pursuant to 11 C.F.R.
5 § 113.1(g)(1), which prohibits such rental payments only "to the extent the payments
6 exceed the fair market value of the property usage." Also citing A.O. 2000-02 (Hubbard),
7 in which the Commission held that a committee was permitted to rent office space owned
8 by a candidate for campaign use, as long as the committee paid no more than fair market
9 value, the respondents submit that there is no indication the Committee's rental payments
10 to Castle Ballroom exceeded the property's fair market value.

11 As for the \$1,200 contribution from Castle Ballroom on December 1, 2004, the
12 respondents do not deny that the contribution should have been attributed to the
13 appropriate Castle Ballroom member or members. They state, however, that the "single
14 memo entry," identified by the complainant, refers to a transaction that occurred over five
15 years ago, and that any penalties on the alleged violation would be time-barred by the
16 statute of limitations.⁶

17 According to information obtained from Dun and Bradstreet, Castle Ballroom,
18 which did not file a response, apparently terminated its existence as of May 17, 2010.

19 Based on the record in this matter, there is no indication that the Committee's rental
20 payments to Castle Ballroom exceeded the property's fair market value. Therefore, it does

⁶ The general federal five-year statute of limitations, 28 U.S.C. § 2462, applies to FEC civil enforcement actions that seek the imposition of civil penalties. See *FEC v Williams*, 104 F.3d 237 (9th Cir. 1996), cert. denied, 522 U.S. 1015 (1997).

1 not appear that Congressman Carnahan violated the Commission's "personal use" rules at
2 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g)(1). With respect to Castle Ballroom's
3 December 1, 2004 contribution to the Committee, assuming that Castle Ballroom, a limited
4 liability company, chose to be taxed as a partnership, rather than a corporation and so
5 informed the Committee, the contribution would have been permissible, *see* 11 C.F.R.
6 §§ 110.1(g).⁷ However, assuming that Castle Ballroom chose to be taxed as a partnership,
7 there is no indication that Castle Ballroom informed the Committee, as required by
8 11 C.F.R. § 110.1(g)(5). In addition, the record indicates that the Committee possibly
9 failed to attribute the contribution to the appropriate Castle Ballroom member(s), as
10 required by 11 C.F.R. §§ 110.1(e) and (g)(5).⁸

11 Accordingly, since the activity in question occurred more than five years ago, and
12 in furtherance of the Commission's priorities and resources, relative to other matters
13 pending on the Enforcement docket, the Office of General Counsel believes that the
14 Commission should exercise its prosecutorial discretion and dismiss this matter. *See*
15 *Heckler v. Chaney*, 470 U.S. 821 (1985).

⁷ *See generally Explanation and Justification for 11 C.F.R. 110.1(g): Treatment of Limited Liability Companies Under the Federal Election Campaign Act*, 64 Fed. Reg. 37397 (July 12, 1999).

⁸ It appears that the \$1,200 contribution would not have been excessive, as set forth at U.S.C. § 441a(a)(1), even if attributed in its entirety to any single Castle Ballroom member. During the 2005-2006 election cycle, the limit for individual contributions was \$2,100 per election. Neither Debra Carnahan, Mary Entrup, nor Lewis Reed made a contribution to the Committee during the 2005-2006 cycle, and Mr. Carnahan, as the candidate, would have been permitted to make unlimited contributions to his Committee.

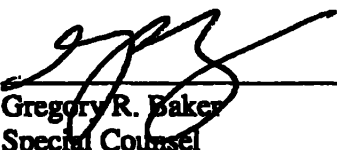
RECOMMENDATIONS

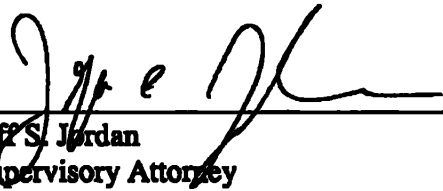
The Office of General Counsel recommends that the Commission dismiss MUR 6327, close the file, and approve the appropriate letters.


Christopher Hughey
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9/21/10
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