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FIRST GENERAL COUNSEL'S REPORT

CELA

RAD REFERRAL: 14L-21R
DATE REFERRED: June 10, 2014¹
DATE OF NOTIFICATION: June 16, 2014
DATE OF LAST RESPONSE: August 4, 2014
DATE ACTIVATED: June 7, 2015

ELECTION CYCLE: 2012
EXPIRATION OF SOL: October 24, 2017 -
November 2, 2017

SOURCE: RAD REFERRAL

RESPONDENTS: House Majority PAC and Shannon Roche
in her official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30104(b)²
11 C.F.R. § 104.4(c)

INTERNAL REPORTS CHECKED: RAD Referral Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This matter was generated by a referral from the Commission's Reports Analysis Division ("RAD") to the Office of General Counsel ("OGC") concerning House Majority PAC's ("HMPAC") failure to timely file four 24-Hour Reports of independent expenditures for seven independent expenditures totaling \$67,653.88 during the 2012 election cycle. HMPAC acknowledges its failure to timely file these reports, but blames the untimely filings on vendor

¹ OGC initially transferred this case to the Office of Alternative Dispute Resolution ("ADR") on October 28, 2014, but Respondents later requested that the matter be transferred to the OGC. See Memorandum from ADR to OGC, ADR 740 (RR 14L-21), (Apr. 30, 2015).

² On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 invoices received after the 24-hour period and argues that it used best efforts in filing these
2 reports. As discussed below, the violations are clear, and they meet the Commission-approved
3 threshold for referral from RAD to OGC. Further, HMPAC does not present information that
4 would justify completely excusing its untimely filings under a best efforts defense. Therefore,
5 we recommend that the Commission open a MUR and find reason to believe that House Majority
6 PAC and Shannon Roche in her official capacity as treasurer violated 52 U.S.C. § 30104(b) and
7 11 C.F.R. § 104.4(c) by failing to timely file its independent expenditure reports. We also
8 recommend that the Commission authorize pre-probable cause conciliation with HMPAC.

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Facts**

11 HMPAC is an independent expenditure-only political committee registered with the
12 Commission since April 8, 2011.³ RAD's referral concerns four 24-Hour Reports regarding
13 seven expenditures made shortly before the 2012 General Election, totaling \$67,653.88.⁴ Those
14 independent expenditures were as follows:

³ HMPAC has been a named Respondent in other enforcement matters since registering with the Commission. See MUR 6617 (HMPAC/Vilsack for Iowa), MUR 6667 (HMPAC/Cheri Bustos for Congress), MUR 6796 (HMPAC/Allen Sink for Congress) (open matter).

⁴ RR 14L-21 Attach. 3.

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DATE OF INDEPENDENT EXPENDITURE	PAYEE	AMOUNT	DATE 24-HOUR REPORT DUE	DATE 24-HOUR REPORT FILED
10/23/2012	Waterfront Strategies	\$24,882.35	10/24/2012	12/17/2012
10/25/2012	Waterfront Strategies	\$29,858.82	10/26/2012	12/18/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
10/29/12	MITC, LLC	\$3,183.50	10/30/2012	12/19/2012
11/2/2012	Waterfront Strategies	\$178.71	11/2/2012	12/21/2012

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HMPAC did not file 24-Hour Reports for any of these expenditures within the 24-hour filing period. HMPAC's original 2012 Post-General Report, filed December 6, 2012, also did not disclose these independent expenditures. In mid-December 2012, HMPAC filed four amended 24-Hour Reports disclosing these expenditures, and then included them in its Amended 2012 30-Day Post-General Report filed on January 31, 2013. RAD sent HMPAC a Request for Additional Information ("RFAI") on July 5, 2013, concerning the independent expenditures disclosed on its Amended 2012 30-Day Post-General Report.⁵ In response, HMPAC filed a Form 99 (Miscellaneous Electronic Submission) stating that "[t]he Committee received the independent expenditure invoices from the vendors after the 24 hour period."⁶

RAD referred HMPAC to OGC for its failure to timely file the required 24-hour independent expenditure reports based on Standard 7 of the RAD referral thresholds, which provides for a referral to OGC if the schedules attached to any report omit more than \$50,000 of

⁵ RR 14L-21 at 2.

⁶ *Id.*

1 activity, such as independent expenditures.⁷ In its response to the referral, HMPAC explains that
2 it discovered the unreported expenditures while “preparing its reports filed after Election Day
3 and auditing its own compliance on old reports.”⁸ It further explains that two of its expenditures
4 made to Waterfront Strategies, totaling \$54,741, had not been reported “in part because the
5 invoices were received late from the vendor.”⁹ HMPAC does not explain why it did not timely
6 report the remaining \$12,894.71 in independent expenditures to Waterfront Strategies and
7 another vendor.

8 In further response to the referral, HMPAC argues that it used “best efforts” to comply
9 with the Act, as shown by its high overall compliance rate for the 2012 election cycle and the
10 fact that the RAD referral only identified one type of error, not systemic compliance issues.¹⁰
11 The committee also notes that the late reported independent expenditures consisted of “less than
12 one quarter of one percent of the Committee’s independent expenditure activity for the election
13 cycle,” and that they were “made in the busiest weeks leading up to the election.”¹¹ HMPAC
14 asserts that it “took steps to collect all information necessary to file amended reports.”¹²

⁷ 2011-2012 RAD Review and Referral Procedures for Unauthorized Committees (Standard 7). A referral to OGC is made pursuant to this threshold when a committee does not respond or inadequately responds to an RFAI and once a determination is made during the OGC Review and Concurrence Process whether to refer the matter to ADR or OGC.

⁸ Resp. at 2.

⁹ *Id.*

¹⁰ Resp. at 2-3.

¹¹ Resp. at 2. During the 2012 election cycle, HMPAC reported 593 independent expenditures totaling \$30,470,335. *Id.* at 1.

¹² *Id.* at 2.

B. Analysis

The Act requires committee treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C. § 30104(b).¹³ This requirement includes reporting independent expenditures made by political committees other than authorized committees.¹⁴ Every political committee that makes independent expenditures must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R. § 104.3(b)(3)(vii).¹⁵ In addition, political committees that make independent expenditures aggregating \$1,000 or more with respect to a given election after the 20th day, but more than 24 hours before the date of that election, must disclose them within 24 hours following the date of dissemination.¹⁶ The committee must file additional reports within 24 hours after each time it makes or contracts to make independent expenditures aggregating an additional \$1,000.¹⁷ When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.¹⁸

¹³ 52 U.S.C. § 30104(a)(1).

¹⁴ 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

¹⁵ 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee. The report also must disclose the date, amount, and purpose of any such independent expenditure and include a statement that indicates whether such independent expenditure is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*

¹⁶ 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

¹⁷ 11 C.F.R. § 104.4(c).

¹⁸ 52 U.S.C. § 30102(i), 11 C.F.R. § 104.7(a). *See also*, Statement of Policy Regarding Treasurers' Best Efforts to Obtain, Maintain, and Submit Information as Required by the Federal Election Campaign Act, 72 Fed. Reg. 31,438 (June 7, 2007) ("Best Efforts Policy").

1 HMPAC failed to timely file four 24-hour independent expenditure reports, in violation
2 of 52 U.S.C § 30104(b) and 11 C.F.R. § 104.4(c). Respondents do not dispute these violations
3 but argue that they should not be penalized because they used best efforts by taking steps to
4 review and obtain the necessary information to disclose the expenditures in amended 24-hour
5 reports. And, as mentioned above, HMPAC claims the errors made up a small percentage of its
6 overall 2012 cycle filings, the errors do not suggest systemic compliance problems, and further
7 enforcement action amounts to "nit-picking" over "*de minimis*" errors.¹⁹

8 HMPAC's best efforts arguments are unpersuasive.²⁰ In determining whether a
9 committee has shown best efforts, the Commission considers the affirmative steps taken to keep
10 adequate records and make accurate reports, as well as the reasons for its failure to obtain,
11 maintain, or submit the information properly.²¹ HMPAC, however, has not provided information
12 substantiating its claim that it made best efforts to submit these reports timely; it merely points to
13 other similar reports it filed correctly and its voluntary filing of amended reports. To the extent
14 HMPAC is blaming its failure to file timely reports on late billings from its vendors, the Best
15 Efforts Policy usually excludes "delays caused by committee vendors or contractors" as a valid
16 basis for this defense.²² Similarly, a committee generally cannot meet the best efforts standard
17 on the basis of the committee staff's errors or negligence, which could also be the case here.²³
18 Finally, there is nothing in the Best Efforts Policy supporting HMPAC's argument that

¹⁹ Resp. at 2-4.

²⁰ Best efforts is an affirmative defense, and HMPAC bears the burden of presenting "evidence sufficient to demonstrate that best efforts were made." Best Efforts Policy at 31,440.

²¹ *Id.*

²² *Id.*

²³ *Id.*

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1 committees that make only one type of filing error are eligible for relief. Thus, HMPAC has not
2 demonstrated best efforts to be considered in compliance with the Act with respect to the
3 violations in the referral.

4 Further, HMPAC's characterization of the reporting errors as *de minimis* is based on its
5 own subjective assessment and not on any specific threshold in the Act or Commission
6 regulations. In fact, the unreported independent expenditures met the criteria for referral to OGC
7 based on the Commission-approved RAD Review and Referral Procedures for Unauthorized
8 Committees. Accordingly, we recommend that the Commission find reason to believe that
9 HMPAC violated 52 U.S.C. § 30104(b) and 11 C.F.R. § 104.4(c).

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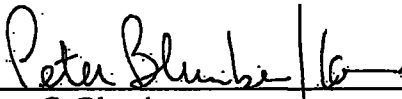
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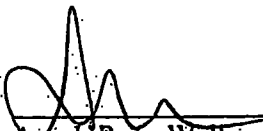
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6. Approve the appropriate letter.

8-6-15
Date


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