

**FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463**

FIRST GENERAL COUNSEL'S REPORT

**RAD REFERRAL 13L-08
DATE RECEIVED: April 16, 2013
DATE ACTIVATED: June 20, 2013**

**EARLIEST SOL: October 23, 2017
LATEST SOL: January 23, 2018
ELECTION CYCLE: 2012**

SOURCE: Internally Generated

RESPONDENT: Rob Zerban for Congress and Randy Bryce in his official capacity as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)-(b)
11 C.F.R. § 104.1(a)
11 C.F.R. § 104.3(b)
11 C.F.R. § 111.43

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Rob Zerban for Congress and Randy Bryce in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose additional disbursements of \$438,682.66, which were not disclosed on its original 2012 12-Day Pre-General Report. In response, the Committee acknowledges the reporting errors but requests that the Commission decline to open an enforcement matter or refer the matter to Alternative Dispute Resolution ("ADR").

Based on the available information, we recommend that the Commission open a matter under review ("MUR") in connection with RR13L-08 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to accurately disclose disbursements.

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1 Additionally, we recommend that the Commission enter into pre-probable cause conciliation
2 with the Committee

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 The Committee is the principal campaign committee of Rob Zerban, who was a candidate
6 for the U.S. House of Representatives from Wisconsin's First Congressional District during the
7 2012 election cycle.¹ Resp. at 1 (Jun. 11, 2013). On October 22, 2012, the Committee timely
8 filed its 2012 12-Day Pre-General Report covering the period from October 1, 2012 through
9 October 17, 2012, which disclosed \$323,024.29 in disbursements. RR13L-08 at 1 (Zerban for
10 Congress). Thereafter, the Committee filed three amendments to the original report, one in
11 December 2012, one in January 2013, and one in April 2013, disclosing additional disbursements
12 totaling \$438,682.66. *Id.* at 1-2.

13 On February 11, 2013, RAD sent the Committee a Request for Additional Information
14 ("RFAI"), requesting clarification regarding the substantial increase in disbursements that were
15 not disclosed in the original filing. RR13L-08 at 2. Responding to the RFAI, the Committee
16 filed a Miscellaneous Document ("Form 99") on March 8, 2013, stating that:

17 Zerban for Congress noticed several discrepancies in our records
18 while completing the 2012 Post Election campaign filing and initiated
19 an internal audit to rectify the problem. The internal audit was not
20 completed by the 2012 Post Election filing deadline, so an attempt
21 was made to correct the record to the best of our ability at the time by
22 filing amended reports for the errors we had become aware of. Once
23 the internal audit was completed, Zerban for Congress filed amended
24 reports for all affected periods to correct the errors.

25
26 *Id.*

¹ Zerban lost the 2012 general election. Resp. at 1 (Jun. 11, 2013).

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1 RAD referred the Committee to OGC for failing to disclose additional disbursements
2 totaling \$438,682.66. See Memorandum from Patricia C. Orrock, Chief Compliance Officer,
3 FEC, to Anthony Herman, General Counsel, FEC (Apr. 16, 2013) ("Referral").² Upon receipt of
4 the Referral, OGC notified the Committee about this matter on April 24, 2013. See *Agency*
5 *Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617
6 (Aug. 4, 2009).

7 In response to the notification, the Committee maintains that the Commission should
8 dismiss the matter for a number of reasons. See Resp. 1-2. First, the Committee argues that the
9 reporting error was accidental, noting that the treasurer and the treasurer's staff at the time of the
10 original filing were inexperienced volunteers. *Id.* at 1. Second, the Committee states that, at the
11 time, it lacked the ability to automatically import its transactions into its campaign finance
12 software, and thus was entering transactions by hand. *Id.* Consequently, when the Committee
13 misplaced a page of disbursements that it should have entered into the software, it did not realize
14 it had omitted the information until it was preparing its 2012 30-Day Post-General Report. *Id.* at
15 2. Third, the Committee argues that it voluntarily remedied the errors without any prompting by
16 the Commission. *Id.* at 1. Once it learned of the errors, the Committee asserts that it filed an
17 amended 2012 12-Day Pre-General Report within six weeks of the original filing. *Id.* at 2. After
18 additional auditing, the Committee filed a subsequent amendment on January 23, 2013. See

² RAD referred the matter to OGC pursuant to *Reports Analysis Division Review and Referral Procedures for Authorized Committees for 2011-2012 Election Cycle* at 75 (the "Referral Procedures") (approved by Comm'n Apr. 5, 2011). Standard 7 of those procedures states that a case will be referred to OGC for review when (i) an amendment or amendments are filed at least : business days after the original report was filed; (ii) the amendment or amendments disclose an increase or decrease of more than in receipts, disbursements, or debts; and (iii) for an election-sensitive report, the increase or decrease is in excess of , or for a non-election sensitive report, in excess of . *Id.* The activity outlined in the Referral meets this threshold.

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1 Amended 2012 12-Day Pre-General Rpt. (Jan. 23, 2013).³ Finally, the Committee argues that
2 the matter should be dismissed because it has less than \$2,000 in cash.⁴ Resp. at 2.
3 Alternatively, the Committee requests the Commission refer the matter to ADR. *Id.*

4 **B. Legal Analysis**

5 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee
6 treasurers to file reports of receipts and disbursements in accordance with the provisions of
7 2 U.S.C. § 434. 2 U.S.C. § 434(a)(1); 11 C.F.R. § 104.1(a). These reports must include, *inter*
8 *alia*, the total amount of disbursements, including the appropriate itemizations, where required.
9 2 U.S.C. § 434(b); 11 C.F.R. § 104.3(b).

10 Here, the Committee admits it did not comply with the Act's reporting requirements
11 when it failed to disclose a total of \$438,682.66 in disbursements on its original 2012 12-Day
12 Pre-General Report. Resp. at 1-2. Although the Committee requests either dismissal or a
13 referral to ADR, the Referral Procedures indicate that increased-activity matters referred
14 pursuant to the Standard 7 per-report threshold must be handled by OGC where, as here, the
15 unreported activity is in excess of \$250,000 for an election-sensitive report, and constitutes an
16 increase of 20% or more in the applicable category (receipts, disbursements, or debts) for the
17 reporting period. *See 2011-2012 RAD Review and Referral Procedures for Authorized*
18 *Committees* at 75. The Committee's reporting omissions included almost \$440,000 in activity
19 (an increase of more than 135% from the original report) and involved an election-sensitive

³ See <http://images.nictusa.com/pdf/122/13960388122/13960388122.pdf>. The Committee's third amended 2012 12 Day Pre-General Report, filed on April 15, 2013, disclosed no change in the amount of disbursements from the January 23, 2013 amendment. See Amended 2012 12-Day Pre-General Rpt. (Apr. 15, 2013), <http://images.nictusa.com/pdf/692/13961642692/13961642692.pdf>.

⁴ At the time of its June 7, 2013, Response to the Referral, the Committee's 2013 April Quarterly Report showed a cash-on-hand balance of \$1,597.93. 2013 April Quarterly Rpt. at 2 (Apr. 15, 2013), <http://images.nictusa.com/pdf/341/13961644341/13961644341.pdf>. The Committee's 2013 July Quarterly Report, filed on July 15, 2013, discloses a cash-on-hand balance of \$12.49. 2013 July Quarterly Rpt. at 2 (July 15, 2013), <http://images.nictusa.com/pdf/149/13964091149/13964091149.pdf>.

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1 report.⁵ Therefore, we believe that opening a MUR — rather than dismissal or transfer to ADR
2 — is the appropriate course.

3 We therefore recommend the Commission open a MUR and find reason to believe that
4 the Committee violated 2 U.S.C. § 434(b).

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⁵ Pursuant to 11 C.F.R. § 111.43(d)(1), election sensitive reports include pre-election reports for primary, general, runoff, and special elections.

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IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Rob Zerban for Congress and Randy Bryce in his official capacity as treasurer violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with Rob Zerban for Congress and Randy Bryce in his official capacity as treasurer prior to a finding of probable cause to believe.
5. --

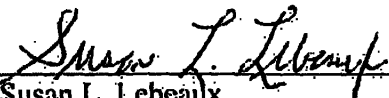
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6. Approve the appropriate letter.

Daniel A. Petalas
Associate General Counsel

8-8-13
Date

BY: 
Kathleen Guith
Deputy Associate General Counsel


Susan L. Lebeaux
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