



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Betsy Roe, Treasurer
Ratcliffe for Congress
2931 Ridge Road, Suite 101
PMB # 217
Rockwall, TX 75032-6684

MAY 24 2016

RE: MUR 6822

Dear Ms. Roe:

On May 22, 2014, the Federal Election Commission notified Ratcliffe for Congress and its treasurer ("the Committee") of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). On May 12, 2016, based upon the information contained in the complaint, and information provided by the Committee, the Commission decided to exercise its prosecutorial discretion to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on May 12, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel

A handwritten signature in black ink, appearing to read "Daniel A. Petalas", is written over the typed name and title.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

100-11001-1001

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Ratcliffe for Congress
and Betsy Roe, as treasurer¹

MUR 6822

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by Ratcliffe for Congress and Betsy Roe, in her official capacity as treasurer, (the "Committee"). It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

Complainant Ken Dickson alleges that the Committee reported receiving \$5,000 in contributions from Naomi Jackson on January 13, 2014.² However, Naomi Jackson died in 2008. Compl. at 1. The Complaint attached Ms. Jackson's obituary and an excerpt from the relevant Committee report showing one of the contributions attributed to Naomi Jackson.³ *Id.* at 3-4.

¹ Ratcliffe for Congress was the principal campaign committee for John L. Ratcliffe, a 2014 candidate for Texas's 4th Congressional District seat. No candidate won a majority of votes in the 2014 Republican Party Primary election held on March 4, 2014, resulting in a primary runoff election. See http://elections.sos.state.tx.us/elchist169_state.htm. Ratcliffe defeated incumbent Congressman Ralph Hall in the 2014 Republican Party Primary Runoff election on May 27, 2014, and subsequently ran unopposed in the general election. See http://elections.sos.state.tx.us/elchist173_state.htm.

² Michele Ratcliffe was treasurer of the Committee at the time of Jackson's contribution. On December 30, 2014, the Committee filed an amended Statement of Organization naming Betsy Roe as treasurer.

³ See Ratcliffe for Congress 2014 12-Day Pre-Primary Report at 9, filed February 20, 2014. Available at <http://docquery.fec.gov/pdf/214/14940533214/14940533214.pdf>.

1 The Committee acknowledges that it accepted a \$10,000 check from a joint account in
2 the names of Johnny and Naomi Jackson, and that it attributed contributions to Naomi Jackson.
3 Committee Resp. at 1. The Committee asserts that it received the check from the Jacksons' son-
4 in-law "who instructed the Committee of his in-laws' desire to have the funds attributed evenly
5 between the primary and primary runoff elections (should it be required)." *Id.* The Committee
6 Response included a copy of the check, signed by Johnny Jackson. *Id.* at 2. The Committee
7 claims that at the time it received the check, it believed that Naomi Jackson was alive, and it only
8 discovered that she had died when it read the Complaint. *Id.* at 1. The Committee notes that it
9 immediately verified Ms. Jackson's death and refunded to Mr. Jackson the amount improperly
10 attributed to his wife. *Id.* The Committee attached a copy of the refund check.⁴ *Id.* at 3.

11 Johnny Jackson's response acknowledges that he wrote a \$10,000 check to Ratcliffe's
12 campaign from a joint account he has maintained "for 20 years." Jackson Response at 1.
13 Jackson states that the Committee asked him several months later to confirm his wife's death,
14 and he did so. *Id.* Jackson states that the Committee informed him that it had attributed a
15 portion of the contribution to his wife, and it refunded that portion to him. *Id.* Jackson attached
16 copies of the contribution and refund checks. *Id.* at 2-3. He does not explain why he believed he
17 could individually contribute \$10,000 to Ratcliffe.

18 **B. Legal Analysis**

19 In 2014, an individual was limited to making \$2,600 in contributions, per election, to any

⁴ The Committee reported the refund to Jackson in its next report. *See* Ratcliffe for Congress 2014 July Quarterly Report at 60, filed July 15, 2014. Available at <http://docquery.leg.gov/pdf/216/14961586216/14961586216.pdf>.

1 candidate. 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. §§ 110.1(b)(1)(i)-(ii).⁵ Further, candidate
2 committees are prohibited from knowingly accepting contributions in excess of these
3 limitations. 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

4 If a committee accepts contributions that exceed the contribution limits, its treasurer
5 shall either refund the excessive contributions or seek redesignation⁶ or reattribution within sixty
6 days. 11 C.F.R. § 103.3(b)(3). If a redesignation or reattribution is not obtained, the treasurer
7 shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to
8 the contributor. *Id.* Also, if a committee discovers that a contribution is prohibited, based on
9 evidence which was not available to the committee when the contribution was deposited, the
10 committee must refund the contribution within 30 days of discovery. 11 C.F.R. § 103.3(b)(2).

11 If a contribution made by more than one person does not indicate the amount to be
12 attributed to each contributor, the contribution shall be attributed equally to each contributor. 11
13 C.F.R. § 110.1(k)(2). When an excessive contribution is made by check that has more than one
14 individual's name on it, but only has one signature, the permissible portion will be attributed to
15 the signer and the excessive portion may be attributed to the other individual whose name is
16 printed on the check, without obtaining a second signature. 11 C.F.R. § 110.1(k)(3)(ii)(B)(1).
17 This may be done so long as the reattribution does not cause the other contributor to exceed any

⁵ See also Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530-02 (February 6, 2013).

⁶ If a contribution exceeds the relevant limitation and was not designated in writing for a particular election, the committee's treasurer may request a written redesignation of the contribution from the contributor for a different election. 11 C.F.R. § 110.1(b)(5)(i)(C). The treasurer may treat all or part of the amount of a contribution that exceeds the contribution limit as made with respect to the general election, with certain provisions, including: *inter alia*, the contribution must have been made before the primary election, and was not designated for a particular election. 11 C.F.R. § 110.1(b)(5)(ii)(B). The treasurer is also required to notify the contributor of the amount that was redesignated and that the contributor may request a refund. *Id.* The notice to the contributor regarding redesignation must be sent within 60 days of the receipt of the contribution; otherwise, the excessive contribution must be refunded. *Id.*

1 contribution limit.⁷ *Id.* Political committees employing this attribution presumption must notify
2 all contributors by written method within sixty days of the committee treasurer's receipt of the
3 check. 11 C.F.R. §§ 110.1(k)(3)(ii)(B)(2)-(3). At the time of notification, the committee must
4 also offer the contributor who signed the check a refund of the excessive portion. *Id.*

5 Johnny Jackson made an excessive contribution by contributing \$10,000 to the
6 Committee. Even though there is some information that Jackson told his son-in-law to inform
7 the Committee he wanted the funds to be divided among the primary and primary runoff
8 elections, the contribution would still have exceeded his contribution limits by \$2,200.⁸ While
9 it does not excuse his violation, it is possible that Mr. Jackson may not have understood that this
10 contribution was excessive, as the Commission's records show that this \$10,000 contribution is
11 the first he ever made. Further, it appears the Committee refunded the excessive portion soon
12 after discovering that Ms. Jackson had died. Also, there is some information that the Committee
13 believed it was authorized to redesignate the contribution among elections, as needed, and that it
14 did not know that Ms. Jackson was dead at the time Mr. Jackson made the contribution.⁹ On the
15 other hand, there is no information that the Committee sought written permission from the
16 Jacksons to reattribute or redesignate the apparently excessive contribution, as required by
17 11 C.F.R. § 103.3(b)(3).

⁷ See also Contributions Brochure, *Presumptive Reattributions*,
http://www.fec.gov/pages/brochures/attrib.shtml#Presumptive_Reattributions.

⁸ Because Naomi Jackson was deceased, all of the \$10,000 contribution must be attributed to Johnny Jackson. Ratcliffe was a candidate in three elections in 2014: the primary, primary runoff, and general elections. In 2014, the limitation on individual contributions was \$2,600 per election, thus Johnny Jackson was permitted to contribute a total of \$7,800 (\$2,600 x 3 elections). Therefore, his \$10,000 contribution exceeded the limitations by \$2,200.

⁹ A committee is required to properly identify individuals contributing over \$200 per election cycle. 52 U.S.C. § 30104(b)(3)(A). The Committee states that it believed Ms. Jackson to be alive when it filed its 2014 12-Day Pre-Primary Report, and as a result misidentified her as a contributor.

1 In light of these circumstances, the small amount at issue, the remedial action taken by
2 the Committee in refunding the excessive portion of the contribution, and in furtherance of the
3 Commission's priorities relative to other matters pending on the Enforcement docket, the
4 Commission exercises its prosecutorial discretion and dismisses the allegation that Ratcliffe for
5 Congress and Betsy Roe, in her official capacity as treasurer, violated 52 U.S.C.
6 §§ 30104(b)(3)(A) and 30116(f), and 11 C.F.R. §§ 110.9, 103.3(b), 110.1(b)(5), and 110.1(k),
7 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).