



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 16 2004

Paul Schulte, Treasurer
Minnesota Democratic-Farmer-Labor Party
255 East Plato Boulevard
Saint Paul, MN 55107

RE: MUR 5349

Dear Mr. Schulte:

On August 4, 2004, the Federal Election Commission found reason to believe that the Minnesota Democratic-Farmer-Labor Party (the "Party") and you, as treasurer, violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended (the "Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file as it pertains to you and the Party. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that the receipt of contributions from individual contributors or candidate committees in excess of the contribution limits the Party shares with affiliated committees such as the Minnesota Democratic-Farmer-Labor House Caucus, as set forth in 2 U.S.C. § 441a(a), is a violation of 2 U.S.C. § 441a(f). You should take steps to ensure that this activity does not occur in the future.

You and the Party are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you and the Party when the entire file has been closed.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley A. Smith".

Bradley A. Smith
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Minnesota Democratic-Farmer-Labor Party and Paul Schulte, as Treasurer **MUR: 5349**

I. INTRODUCTION

This matter was generated by complaint with the Federal Election Commission filed by the Republican Party of Minnesota. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that the Minnesota Democratic-Farmer-Labor House Caucus and Paul Rogosheske, as treasurer, (the "Caucus") and the Minnesota Democratic-Farmer-Labor State Party and Paul Schulte, as treasurer, (the "Party"), made \$231,638 in transfers between the Caucus and the Party in the 2002 calendar year, which may constitute excessive contributions if the two committees are not affiliated.¹ Alternatively, the complaint alleges, if the two committees are affiliated, they may have received excessive contributions from individuals or candidate committees through aggregated contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Minnesota Democratic-Farmer-Labor Party is registered with the Commission as a qualified State Committee of the Democratic Party. The DFL House Caucus registered with the Commission on August 24, 2000 and is comprised of all members of the Democratic-Farmer-Labor Party that are elected to the State legislature's House of Representatives.

¹ The transfers from the Caucus's federal account to the Party that are the subject of this Complaint occurred on the following dates: 2/11/02 for \$20,000; 4/5/02 for \$38,000; 5/13/02 for \$12,500; 6/19/02 for \$15,000; 8/21/02 for \$20,000; 9/20/02 for \$26,138.32; 10/7/02 for \$10,000; 10/22/02 for \$30,000; 10/24/02 for \$15,000; 11/3/02 for \$11,000; and 11/19/02 for \$9,000. The Caucus's Amended 2002 July Quarterly report shows that in addition to these sums, the Caucus also transferred to the Party, in the amount of \$10,000 on 5/18/02; thus the total amount transferred to the Party during 2002 was \$241,638.32.

B. Transfers Between Affiliated Committees

The Complaint alleges that the Caucus does not qualify as either a state political party or a subordinate or affiliate of the DFL State Party “because as an FEC-registered committee, [it] can only qualify as a nonconnected political committee under 11 C.F.R. §100.5.” *Complaint* at 5. The Complainant bases this allegation “on information and belief that the Caucus is not under the control for direction of the DFL State Party” and “on information and belief that the DFL State Caucus is not created by the Constitution or Bylaws of the DFL State Party, and the DFL State Party does not otherwise exercise direct or indirect control over the DFL House Caucus in any manner.” *Id.* at 4.²

In its Statement of Organization, filed by the Caucus on August 23, 2000, and again on July 8, 2003, the Caucus registered itself as a subordinate committee of the DFL Party and expressly listed its connection or relationship to the Party as that of “affiliate.” Moreover, there is a regulatory presumption of affiliation between a State party committee and subordinate party committees. *See* 11 C.F.R. § 110.3(b)(3). Each committee has the opportunity to rebut this presumption by demonstrating that it has not “received funds from any other political committee established, financed maintained, or controlled by any party unit” and “does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party unit or

² The Act defines a “party committee” as “a political committee that represents a political party and is part of the official party structure at the national, State or local level.” 11 C.F.R. § 100.5(e)(4). The “state committee” is the organization that by virtue of the by-laws of the political party or by operation of state law is responsible for the day-to-day operations of the political party at the State level, and the “subordinate committee” is the entity that is directly or indirectly established, financed, maintained or controlled by the State, district or local committee and is responsible for the operations of the political party “at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State.” 11 C.F.R. §§ 100.14(a) & (c). “Affiliated committees” are those that are “established, financed, maintained or controlled” by the same person or group of persons. 11 C.F.R. § 100.5(g)(2).

political committee established, financed, maintained, or controlled by another party unit.” 11 C.F.R. §110.3(b)(3)(i)-(ii).³

The Caucus and the Party are affiliated. First, the Caucus registered as a subordinate committee of the Party and has consistently identified itself as a Party “affiliate.”⁴ Membership in the Caucus appears to be based on an individual’s membership in the Party, as the House Caucus is comprised of all members of the Democratic-Farmer-Labor Party that are elected to the State legislature’s House of Representatives. Further, the Party’s website includes a direct link for accessing web pages for the DFL House Caucus and the Caucus’s Campaign. See <http://www.dfl.org>.⁵ Moreover, both committees have made regular and consistent transfers to one another. For example, during the 2002 calendar year the Caucus made eleven transfers to the Party

³ In ascertaining whether committees are affiliated, the Commission considers a number of circumstantial factors in the context of the overall relationship of the committees to determine if the presence of any factor or factors is evidence of affiliation. See 11 C.F.R. § 100.5(g)(4)(ii). Such factors include, but are not limited to, whether the allegedly affiliated committees have “common overlapping officers or employees” or “common overlapping membership...which indicates a formal or ongoing relationship;” whether a committee “provides funds or goods in a significant amount or on an ongoing basis” to another committee, such as through direct or indirect payments for administrative, fundraising or other costs; whether a committee “arranges for funds in a significant amount or on an ongoing basis to be provided to” the allegedly affiliated committee; whether the “committee or its agent had an active or significant role in the formation” of the allegedly affiliated committee; and whether the allegedly affiliated “committees have similar patterns of contributions or contributors which indicate a formal or ongoing relationship.” See 11 C.F.R. §§ 100.5(g)(4)(ii)(D-E, G-J). The Commission may also consider other factors relevant to its inquiry. See 11 C.F.R. § 100.5(g)(4)(ii) (stating “[s]uch factors include, *but are not limited to* ...” the enumerated factors) (emphasis added); see also AO 2000-28 (“The list of ten circumstantial factors set forth in 11 C.F.R. §100.3(a)(3)(ii) is not an exclusive list, and other factors may be considered.”) (citing AOs 1999-39 and 1995-36).

⁴ Contrary to the Complainant’s contention otherwise, the Party and the Caucus are located at the same address, even though the committees maintain separate treasurers and telephone numbers. *Complaint* at 4. When the Caucus first registered with the Commission on August 23, 2000, both the Caucus and the Party listed their address as 352 Wacouta Street, St. Paul, MN 55101. Currently both committees use the address of 255 E. Plato Blvd., St. Paul, MN 55107.

⁵ From the Party’s website a visitor may not only be linked to the Caucus web pages, but may also receive instructions on how to do everything from locating their representative in the House and Senate, to finding town hall meetings and making donations online. Articles on the Caucus website also discuss what the DFL State Party and the House and State Caucuses are doing in furtherance of their collective goals.

for a total of \$231,638.32 (in fact it is these transfers that are partially at issue in this Complaint) and the Party made three transfers to the Caucus for a total of \$39,000.⁶ The Caucus and the Party also have similar patterns of making contributions to third parties and receive contributions from several of the same donors.

Accordingly, because the Caucus and the Party are affiliated committees, as set forth in 11 C.F.R. § 100.5, there is no reason to believe that the Party violated 2 U.S.C. § 441a in connection with transfers from the Caucus to the Party.

C. Excessive Contributions

The Complaint also raises the question of whether the Caucus and Party, as affiliated committees, accepted contributions in the 2002 calendar year, which when aggregated, exceeded their combined contribution limit, in violation of 2 U.S.C. § 441a(f). *Complaint* at 5. After concluding that the Caucus and the Party are affiliated committees, pursuant to 2 U.S.C. § 441a(a)(5), the Commission examined whether the committees exceeded the contribution limits set forth in 2 U.S.C. §§ 441a(a)(1) and (2).

A review of the Receipts and Disbursements reports for the 2002 calendar year shows that the Party received donations from an individual contributor, Gerald L. Seck, which exceeded the committees' shared contribution limit by \$750, in violation of 2 U.S.C. §§ 441a(a)(1) and 441a(f). To date, these excessive contributions have not been refunded.

Accordingly, there is reason to believe that the Democratic-Farmer-Labor Party and Paul Schulte, as treasurer, accepted contributions in excess of the limits set forth in 2 U.S.C. § 441a(a)(1), in violation of 2 U.S.C. § 441a(f).

⁶ In fact, with the exception of a donation of \$250 from Voters Organized to Empower PAC, the Party was the only multicandidate committee to make a contribution to the Caucus in 2002.