




**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D C 20463

**MEMORANDUM**

**TO: The Commissioners**  
**Staff Director**  
**Deputy Staff Director**  
**General Counsel**

**FROM: Office of the Commission Secretary** 

**DATE: December 7, 2001**

**SUBJECT: Statement Of Reasons for MURs 4382 and 4401**

**Attached is a copy of the Statement Of Reasons for**  
**MURs 4382 and 4401 signed by Chairman Danny Lee McDonald,**  
**Commissioner Scott E. Thomas, and Commissioner Karl J. Sandstrom.**

**This was received in the Commission Secretary's Office on**  
**Friday, December 7, 2001 at 10:23 a.m.**

**cc: Vincent J. Convery, Jr.**  
**OGC Docket**  
**Information Division**  
**Press Office**  
**Public Disclosure**

**Attachment**

22-04-405-4424



**FEDERAL ELECTION COMMISSION**

WASHINGTON, D C. 20463

**In the Matter of**

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**MURs 4382 and 4401**

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**Republican National Committee  
and Alec Poitevint, as treasurer**

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**STATEMENT OF REASONS**

**CHAIRMAN DANNY LEE MCDONALD  
COMMISSIONER SCOTT E. THOMAS  
COMMISSIONER KARL J. SANDSTROM**

By the spring of 1996, Senator Bob Dole's presidential primary campaign committee, Dole for President, Inc. ("the Dole Committee"), was essentially out of money. As a result, the Dole Committee was unable to pay a number of staff who worked on the campaign. Twelve of these staffers went off the Dole payroll and went on to the payroll of the Republican National Committee ("the RNC"). While on the RNC payroll, however, these staffers continued to do work for the Dole campaign. Once the Dole campaign received its public funds in August 1996, for the general election, eleven of these twelve staffers went back onto the Dole payroll. Whether they were on the Dole payroll or the RNC payroll, these staffers apparently continued to provide advance and travel services for the Dole campaign throughout the entire time period.

In Matters Under Review ("MURs") 4382 and 4401, the Federal Election Commission considered whether the RNC violated the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act") when it paid for the payroll costs and expenses of these staffers to continue their work on the Dole campaign. Under the Act, a multicandidate political committee may not make contributions to any candidate or his authorized committee with respect to any federal election in excess of \$5,000. 2 U.S.C. § 441a(a)(2). Based upon the statute and the Commission's regulations, the Office of General Counsel recommended the Commission treat the payment of former Dole staffers who continued their work on the Dole campaign as an excessive contribution by the RNC. We agreed with the legal analysis and recommendations of the Office of General Counsel.

Commissioners Mason, Smith and Wold disagreed and rejected the General Counsel's findings. Their decision is not only inconsistent with a Commission regulation squarely on point, but it also ignores prior Commission action in this very same matter.

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As explained below, the evidence on which the Commission relied to find probable cause to believe that the Dole Committee violated the law in *accepting* these services from the RNC is no less compelling in determining whether the RNC violated the law in *providing* the services. Unless the RNC made an excessive contribution, it is hard to fathom how the Dole Committee accepted an excessive contribution. It is this stark inconsistency that renders our colleagues' decision not to proceed in this matter inexplicable.

## I.

The Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042, was enacted in 1974 to provide partial federal financing for the campaigns of qualifying presidential primary candidates. *See Buckley v. Valeo*, 424 U.S. 1, 89 (1976). Eligible candidates may receive federal payments to match individual contributions of up to \$250, *see* 26 U.S.C. §§ 9034(a) and 9037, but in return must abide by the expenditure limitation contained in 2 U.S.C. § 441a(b)(1)(A). *See* 26 U.S.C. § 9035(a). The overall expenditure limitation for the 1996 presidential primary election cycle was \$30,910,000.

The law also provides that no multi-candidate committee—such as a national party committee—may make contributions to any candidate or the candidate's authorized committee with respect to any election for federal office in excess of \$5,000. 2 U.S.C. § 441a(a)(2). Similarly, it is unlawful for any political committee to accept contributions in excess of the contribution limits. 2 U.S.C. § 441a(f). Under the disclosure provisions of the Act, a political committee must report the total amount of all receipts, including contributions from political party committees. 2 U.S.C. § 434(b).

On June 12, 1996, the Democratic National Committee (the "DNC") filed a complaint with the Commission alleging that the Dole Committee had used a variety of methods to evade the expenditure limitation. According to the complaint, one of these methods used party committees, including the RNC, to make expenditures on behalf of the Dole Committee. More specifically, the complaint alleged that party committees paid for Dole Committee travel expenses that were attributable to the overall expenditure limitation.<sup>1</sup>

On April 11, 1997, the Office of General Counsel submitted a report for Commission consideration which contained a factual and legal analysis of the allegations presented in MURs 4382 and 4401 as well as responses to the complaints. On May 6, 1997, the Commission approved the General Counsel's recommendations and found reason to believe that the Dole Committee violated 2 U.S.C. § 441a(b)(1)(A) and 26 U.S.C. § 9035(a) by exceeding the overall expenditure limitation for the presidential primary elections. The Commission also approved a number of other reason to believe findings against both the Dole Committee and other entities arising out of the expenditure limitation violation. With respect to the instant matter, the Commission found reason to

<sup>1</sup> On June 26, 1996, a second complaint was filed by Janet Strawder. This complaint more generally asserted that the Dole Committee was "overspending" in violation of the expenditure limitation.

believe that the RNC violated 2 U.S.C. § 441a(a)(2)(A) by making excessive contributions to the Dole Committee, and that the Dole Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions from the RNC. In addition, the Commission found reason to believe that the RNC and the Dole Committee violated 2 U.S.C. § 434(b) for failing to report these excessive contributions. The Commission also approved the General Counsel's recommendation to conduct an investigation into these matters.

After a full investigation and review of the responses and materials submitted by the Dole Committee, the Office of General Counsel submitted a brief to the respondent and then prepared a report for Commission consideration analyzing the pertinent factual and legal issues. With respect to the RNC payment of advance staff travel expenses for the Dole campaign, the General Counsel recommended the Commission find probable cause to believe that the Dole Committee had accepted excessive contributions in violation of 2 U.S.C. § 441a(f), and had failed to report the contributions in violation of 2 U.S.C. § 434(b). On February 13, 2001, the Commission unanimously approved the General Counsel's probable cause recommendations regarding the Dole Committee.

One month later, however, on March 13, 2001, the Commission split 3-3 on similar General Counsel recommendations regarding the RNC. As with the Dole Committee, the General Counsel submitted a brief to the respondent and then prepared a report for Commission consideration analyzing the pertinent factual and legal issues. Consistent with his recommendations regarding the Dole campaign and the Commission's approval of those recommendations, the General Counsel recommended that the Commission find probable cause to believe the RNC violated 2 U.S.C. § 441a(a)(2) for making excessive contributions to the Dole campaign through the payment of advance staff travel expenses and also violated 2 U.S.C. § 434(b) for failing to report those excessive contributions. A motion to adopt the General Counsel's recommendations failed to secure the four affirmative votes necessary to make a probable cause to believe determination. 2 U.S.C. § 437g(a)(4). Commissioners McDonald, Sandstrom, and Thomas voted to support the General Counsel's recommendations, and Commissioners Mason, Smith, and Wold voted to oppose the recommendations.

Four months later, consistent with their earlier vote to find probable cause with respect to the Dole Committee, Commissioners Mason, Smith, and Wold voted to approve a conciliation agreement with the Dole Committee that cited the RNC payments as a violation. On September 7, 2001, the Commission accepted a signed conciliation agreement and global settlement and release involving the Dole Committee, Dole/Kemp '96, Inc., the Dole/Kemp '96 Compliance Committee, Inc., and Senator Robert Dole.<sup>2</sup> The agreement related to the following admissions: that the Dole Committee violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(a)(1)(A), 2 U.S.C. § 441a(b)(1)(A), 2 U.S.C. § 441a(f), and 26 U.S.C. § 9035(a); and that Dole/Kemp '96, Inc. violated 2 U.S.C. § 434(b), 2 U.S.C. § 441a(b)(1)(B), 2 U.S.C. § 441a(f), 2 U.S.C. § 441b(a), and

<sup>2</sup> As a result of this settlement, the Commission closed the files in MURs 4382, 4401, 4670, 5098, 5099, 5170, and 5171.

26 U.S.C. § 9003(b). The Dole Committee violations regarding §§ 441a(f) and 434(b) involved the receipt of excessive contributions from the RNC. The Commission approved the conciliation agreement and global settlement by a vote of 6-0.

## II.

We believe the evidence is overwhelming that the RNC made an excessive contribution to the Dole Committee when it placed Dole staffers on the RNC payroll to work on the Dole campaign. By the spring of 1996, the Dole Committee had virtually exhausted the spending allowed under the overall expenditure limitation.<sup>3</sup> As a condition of receiving federal matching funds, Senator Dole had agreed to abide by a spending limitation. A review of the Dole Committee financial activity indicated that by the end of March, 1996, the Committee had reportedly spent \$29,260,000 of its \$30,910,000 expenditure limitation. General Counsel's Report #2 at 6 (August 2, 2000). This left the Dole Committee with only \$1.6 million to spend over the next four and a half months until Senator Dole received the Republican nomination in mid-August 1996.

As a result of this financial shortfall, the Dole Committee reduced its staff by over 40 employees in March and April of 1996. At the same time, the RNC began hiring these former Dole staffers and placing them on the RNC payroll. The Office of General Counsel's investigation found that "[b]eginning in April 1996, the RNC hired approximately 44 individuals who previously worked for the Dole campaign." General Counsel's Probable Cause Brief at 3 (December 19, 2000). According to the Office of General Counsel, "[m]any of these former Dole campaign employees appeared on the RNC's payroll in April 1996 with no interim employment with another entity and no change in job duties, and returned to the Dole campaign's payroll with the first general election campaign payday on August 30, 1996." *Id.*

In particular, the General Counsel concluded that "[t]welve employees of the Primary Committee [the Dole Committee] were transferred to the RNC to work on the

<sup>3</sup> The financial difficulties of the Dole Committee and its plans for adapting to this situation were well known. For example, under the headline "Dole Campaign Is Broke, But GOP Will Spare A Dime," the *Wall Street Journal* reported that "As Mr. Dole prepares to campaign full time, his campaign is in a cash-strapped position. It has almost hit the \$37 million spending ceiling for candidates during the preconvention period." *Wall Street Journal* (May 17, 1996). The article further reported, "So the Dole campaign itself will operate on a shoestring. But his biggest budget item, staff, is already being subsidized by the Republican Party, with many campaign staffers now working in their same campaign roles at Republican headquarters." *Id.* Similarly, under the headline "Dole Reports \$177,000 Left Until After Convention," the *Washington Post* stated that "[t]he campaign reported spending about \$1.5 million last month, a period in which it had already cut some staff and closed campaign offices. Dole campaign officials said their monthly spending from May through August will not be nearly that high because it had not cut its staff fully by April." *Washington Post* (May 19, 1996). See also *San Diego Tribune* (May 28, 1996) (Under the headline "Dole team near broke and trying to fix it," the *Tribune* reported "He will get a lot of help from the Republican National Party. It has absorbed much of his staff [and] is paying many campaign costs.")

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*travel plans for Senator Dole.” Id. at 4 (emphasis added). Analyzing Dole Committee travel records, the General Counsel’s investigation revealed:*

Of the twelve staff members in question, two are shown as trip coordinators; three are assigned to the press although most of the party events attended by Senator Dole were closed to the press; three are designated “lead”; three are shown as contact persons for the trips; and one is designated “staff.” *In most instances these functional descriptions appear consistently both while the person was on the Primary Committee’s payroll and while they were being paid by the RNC.*

General Counsel’s Report #2 at 28-29 (August 2, 2000)(emphasis added). In addition, “[o]f the 12 advance staff members transferred to the RNC, 11 were on Primary Committee’s payroll through March of 1996.<sup>4</sup> All twelve were paid by the RNC beginning in April, 1996.” General Counsel’s Probable Cause Brief at 4 (December 19, 2000). From this time until they formally returned to the Dole Committee payroll, the RNC paid the following compensation and expenses to the advance staff of the Dole Committee:

Payee	Compensation	Expenses	Total
Addington, Hugh	\$ 10,914	\$ 1,491	\$12,405
Baker, Brian	\$ 7,729	\$ 1,031	\$ 8,760
Cisnerios, Adrienne	\$ 5,546	\$ 5,215	\$10,761
Fuller, Kim	\$ 7,505	\$ 344	\$ 7,849
Garlikov, Andrew	\$ 5,107	\$ 2,297	\$ 7,404
Karounos, Patricia	\$ 7,756	\$ 300	\$ 8,056
Mlynerczyk, Matt	\$ 9,050	\$10,033	\$19,083
Rettig, David	\$ 10,313	\$ 1,311	\$11,624
Ross, Steve	\$ 7,589	\$ 2,029	\$ 9,618
Snow, Randy	\$ 10,118	\$ 5,162	\$15,280
Webber, Jennifer	\$ 9,775	\$ 742	\$10,517
Weiss, Jeffery	\$ 8,982	\$ 5,404	\$14,386
Total	\$100,384	\$35,359	\$135,743

*Id.*

There is nothing to suggest these staff weren’t performing the same services as before, under the supervision of the same Dole campaign officials. Under the Act, a “contribution” includes a “gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). On the basis of circumstantial evidence alone, the payment of Dole travel staff salaries by the RNC clearly constitutes a contribution from the RNC to the Dole Committee.

<sup>4</sup> One of the individuals received his last salary payment from the Dole Committee on February 16, 1996

This conclusion is appropriate even though a number of the trips undertaken by Senator Dole included both party sponsored events and Dole campaign events. The Commission's regulations plainly state that during an election year, a candidate's appearance at a party-related event is presumed to be for the purpose of influencing the candidate's election. By contrast, a candidate's appearance at a party-related event during a non-election year would not be presumed to be for the purpose of influencing the candidate's election.

To understand the proper meaning of the regulation, one must analyze it as a whole. Section 110.8(e)(1) provides that:

A political party may make reimbursement for the expenses of a candidate who is engaging in party-building activities, without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against [presidential candidate expenditure limitations], as long as—

- (i) The event is a bona fide party event or appearance; and
- (ii) No aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election.

11 C.F.R. § 110.8(e)(1). In deciding whether an event or appearance is "for the purpose of influencing the candidate's nomination or election," the regulation states:

An event or appearance meeting the requirements of paragraph (e)(1) of this section and occurring *prior to January 1* of the year of the election for which the individual is a candidate is *presumptively party-related*.

11 C.F.R. § 110.8(e)(2)(i)(emphasis added). Party expenditures after January 1, however, are presumptively for the purpose of influencing the candidate's election:

*Notwithstanding the requirements of paragraph (e)(1) of this section, an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures are governed by the contribution and expenditure limitations of this part 110.*

11 C.F.R. § 110.8(e)(2)(ii)(emphasis added).

Applying 11 C.F.R. § 110.8(e), we must presume that trips and candidate appearances occurring after January 1, 1996 were made "for the purpose of influencing

the candidate's election," even if associated with party events or fundraisers. 11 C.F.R. § 110.8(e)(2)(ii). As a result, the cost for these trips and candidate appearances should be considered contributions from the party to the candidate, as well.

Our colleagues disagree. As we understand their position, they argue the RNC effectively satisfied whatever burden it might have had simply by characterizing the party events and fundraisers as "party-related." As a result, the burden falls on the Commission itself to rebut the presumption that the events were candidate-related. In their view, the Commission has failed to meet this burden of proof.

It need scarcely be said that it is wholly illogical to suggest the Commission has the burden of rebutting a presumption in its own favor. It is fair to argue that the presumption can be rebutted by showing the event was party-related and no aspect of the solicitations, setting, remarks, or activities was for the purpose of influencing the candidate's election. But the burden of rebuttal must lie with the respondent.

Simply asserting that an event is party-related does not satisfy the respondent's burden. There must be evidence in the record that an event was party-related *and* that no aspect of the solicitations, setting, remarks, or activities was to influence the candidate's election. 11 C.F.R. § 110.8(e)(1). Throughout this entire process, the RNC has had repeated opportunities to demonstrate this to the Commission. It has not done so. Absent that evidence, the Commission's regulations direct us to presume that these events, which took place after January 1, 1996, were candidate related.

Of course, even if our colleagues disregard the costs associated with advancing party events and fundraisers, the costs associated with advancing purely candidate-related events remain. In their June 11, 2001 Statement of Reasons, they suggest that the Dole Committee actually paid its share for the staff at issue, that the presence of other Dole staff indicates the RNC-paid staff were doing RNC work, that it would be impractical to split up the travel entourage, and that any contribution was "not material." The fact is, the vast majority of the expenses were *not* allocated. Comparing the advance staffers at issue with other Dole workers is like comparing apples and oranges, and whatever amount is associated with the advance staffing of purely Dole-related events is still a substantial violation.

Looking at the trips themselves, it is apparent the result we suggest is appropriate. The Dole Committee continued to list these staffers on *official Dole Committee travel itineraries* even after they were listed on the RNC payroll<sup>5</sup>. For example, Jeffrey Weiss is listed on the "Senator Dole Schedule" of May 18, 1996 for Charlotte, North Carolina and

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<sup>5</sup> It is worth noting that only RNC-paid staff are listed on the Dole Committee itineraries as providing advance services. These itineraries were widely distributed in order to provide campaign staff and others with the name and phone numbers of the staff people to contact with respect to the listed events. It would make no sense to have other unidentified advance staff. Notwithstanding the absence of any evidence of the presence of additional advance staff at any of these events, our colleagues must postulate their existence for their decision to cohere.



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Fort Lauderdale, Florida. The Dole campaign listed Mr. Weiss as being the "lead" staff person for that trip and in the lead car for several motorcades that day as well as accompanying Senator and Mrs. Dole for an event at the Charlotte Motor Speedway. See Supporting Material for MURs 4382 and 4401 (March 13, 2001)(Audit Division). There is thus no reason to doubt this person was doing advance work for the Dole campaign entourage. In addition, this trip was obviously for the purpose of influencing an election. For example, it was reported that Senator Dole, before simply delivering the traditional "Gentlemen, start your engines" on the public address system, instead first said: "I love racing. I love country music. And I want to be President of the United States. Vote for Bob Dole." *Washington Post* (May 20, 1996). There were 120,000 racing fans in attendance. While there may have been party-related events added to this trip, it strains credulity to claim no aspect of such events would have been to influence Senator Dole's own election.

There are numerous other examples. The Dole Schedule for a June 12, 1996 trip to Toledo, Ohio names Kim Fuller as "control" person and lists David Rettig as "staff" and Steve Ross as "camera." *Id.* All three individuals had been on the Dole Committee payroll in March of 1996, and had switched to the RNC payroll in April of 1996. Yet, they continued to carry out their travel advance work for the Dole campaign just as they had done before when they were formally on the Dole Committee payroll. Describing Senator Dole's "campaign swing through Overland Park, Kansas, and Toledo Ohio," CNN reported "Bob 'I'm just a man' Dole hits the heartland hoping his round-the-clock presidential quest soars as high as his renamed campaign plane." "Inside Politics" (June 12, 1996) quoted in Hotline (June 13, 1996). CNN further reported: "Aides say this trip is a chance for Dole to showcase himself, yet again, as a regular person." *Id.* As before, even if party-related events were added to this trip, no evidence suggests that Senator Dole and the party officials involved avoided any effort to promote Senator Dole's own campaign. Under these circumstances, it is obvious that the RNC made, and the Dole Committee received, an excessive contribution.

Our conclusion is affirmed by the Commission decision regarding the Dole Committee in these matters. On September 7, 2001, the Commission entered into a conciliation agreement with the Dole Committee settling, *inter alia*, MURs 4382 and MUR 4401. In this conciliation agreement, the Dole Committee specifically admitted that it had "accepted excessive contributions from the Republican National Committee in violation of 2 U.S.C. § 441a(f) and failed to report them in violation of 2 U.S.C. § 434(b)." Conciliation Agreement in MURs 4382, 4401, 4670, 5098, 5099, 5170, and 5171 at 3, ¶ V. 1 (September 7, 2001). The Commission unanimously approved this agreement by a 6-0 vote.

We believe the Commission also should have found that the RNC made an excessive contribution in violation of the Act. Our colleagues, however, voted to reject the Office of General Counsel's recommendation. We fail to understand how, under the circumstances, one could make a finding that the Dole Committee accepted an excessive contribution from the RNC but yet, vote to reject a finding that the RNC made an

excessive contribution to the Dole Committee. Just as we cannot accept our colleagues' interpretation of 11 C.F.R. § 110.8(e)(2) which effectively turns that regulation on its head, we cannot agree with their inconsistent treatment of the legal issues in this matter.

### III.

For all the above reasons, we voted to approve the General Counsel's legal recommendations to find probable cause to believe the Republican National Committee made excessive contributions to the Dole Committee in violation of 2 U.S.C. § 441a(a)(2)(A) and failed to report these excessive contributions in violation of 2 U.S.C. § 434(b).

12-7-01  
Date

Danny L. McDonald  
Danny Lee McDonald  
Chairman

12/7/01  
Date

Scott E. Thomas  
Scott E. Thomas  
Commissioner

12/7/2001  
Date

Karl J. Sandstrom  
Karl J. Sandstrom  
Commissioner

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