

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

MAR 2 2001

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5033

DATE COMPLAINT FILED: June 19, 2000

DATE OF NOTIFICATION: June 26, 2000

DATE ACTIVATED: February 14, 2001

EXPIRATION OF STATUTE OF LIMITATIONS:

February 23, 2000

STAFF MEMBER: Dawn R. Jackson

COMPLAINANT: Allison M. Thomas

RESPONDENTS: Allison M. Thomas

Alexander Audit Fund, Inc.
and Todd Eardensohn, as treasurer

Alexander for President 1996
and Todd Eardensohn, as treasurer

Princeton's Restaurant

RELEVANT STATUTES:

2 U.S.C. § 441b(a)
2 U.S.C. § 441f
2 U.S.C. § 431(11)
2 U.S.C. § 434(b)
28 U.S.C. § 2462
11 C.F.R. § 104
11 C.F.R. § 103.3(b)
11 C.F.R. § 9038.2(a)(2)

INTERNAL REPORTS CHECKED:

Audit Documents
Contributor Index

FEDERAL AGENCIES CHECKED:

None

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COMMISSION

641-504-12

I. GENERATION OF MATTER

MUR 5033 arose from a *sua sponte* submission from a complaint filed by Allison M. Thomas ("complainant") on June 19, 2000.¹ Attachment 1. The complainant alleges that he and other employees of Princeton's Restaurant were required to make donations to the Alexander Exploratory Committee, which were later reimbursed in their respective paychecks. *Id.* The complainant argues that he was unaware the contribution was prohibited at the time of the transaction.² Attachment 2. On June 26, 2000, the Commission sent a notification letter to the Alexander Audit Fund, Inc.³ However, the Alexander Audit Fund, Inc. is a separate entity that was notified in error.⁴ Therefore, on January 9, 2001, Alexander for President 1996 ("Committee") was sent a notification letter. The Committee did not respond to the complaint notification.⁵

¹ On June 26, 2000, the Commission notified the complainant that he might have violated the Federal Election Campaign Act.

² Dr. Hightower, President of Princeton's Restaurant, was initially named as a respondent in this matter. However, Dr. Hightower requested an opportunity to engage in "pre-reason to believe" conciliation. On November 13, 2000, the Commission decided to sever the portion of MUR 5033 relating to Dr. Hightower, open MUR 5152 and permanently transfer the new MUR to the Alternative Dispute Resolution Office ("ADR"). The Commission accepted ADR's recommended \$1,200 civil penalty to settle the matter with Dr. Hightower. Therefore, this report does not include a recommendation that addresses Dr. Hightower.

³ The Alexander Audit Fund, Inc. denied the allegations in the complaint. Attachment 3.

⁴ This Office discovered the error while preparing this report that Alexander for President 1996 should have been named as a respondent in this matter. The Alexander Exploratory Committee became Alexander for President 1996 once it was determined that there was sufficient support for Lamar Alexander's candidacy. Alexander for President 1996 was listed as the Primary Campaign Committee for Lamar Alexander. Both committees are deemed the same committee for the purpose of this report. This Office made this determination based on the information disclosed in the Committee's Statement of Organization.

⁵ On May 7, 1999, the Commission administratively terminated Alexander for President 1996.

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II. FACTUAL AND LEGAL ANALYSIS

A. LAW

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits corporations from making contributions or expenditures in connection with a Federal election. 2 U.S.C. § 441b(a). The Act further prohibits any officer or any director of any corporation from consenting to any contribution or expenditure by the corporation. *Id.* This provision also makes it unlawful for a political committee to knowingly accept or receive corporate contributions. *Id.*

Section 441f prohibits any person from making a contribution in the name of another or from knowingly permitting his name to be used to effect such a contribution. 2 U.S.C. § 441f. It also prohibits any person from knowingly accepting a contribution made by one person in the name of another person. *Id.* Corporations are considered persons under the Act. 2 U.S.C. § 431(11).

Pursuant to 2 U.S.C. § 431(11), political committees are also persons, and therefore, are prohibited from knowingly accepting contributions in the name of another. Additionally, political committees are required to report contributions completely and accurately. 2 U.S.C. § 434(b); 11 C.F.R. § 104. The treasurer of a committee has a responsibility to examine all contributions for evidence of illegality. 11 C.F.R. § 103.3(b).

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B. ANALYSIS

The complainant alleges that he was required to make a contribution to the Committee. Attachment 1. The complainant contends that his employer, Princeton's Restaurant, required him to make the contribution by the "fear of losing" his job.

Attachment 2. The complainant further alleges that his employer reimbursed him for the contribution. *Id.*

The complainant submitted a copy of his canceled check, dated February 23, 1995, made payable to the Committee. Attachment 1. The complainant did not provide a copy of his paystub or any other information to corroborate the alleged reimbursement from his employer. However, the complainant believes that he was reimbursed on the payroll that occurred the last week in February or the first week in March 1995. *Id.*

The complainant alleges there were approximately fourteen managers and four corporate staff of Princeton's Restaurant who were required to write checks to the Committee, which were later reimbursed in their respective paychecks.⁶ Attachment 1. The complainant failed to provide the names of other managers and corporate staff who allegedly made contributions. However, the contributor index disclosed eight employees (including complainant) of Princeton's Restaurant who made contributions to the Committee that were disclosed by the Committee on either March 1, 1995 or June 22, 1995.⁷ Attachment 5.

⁶ The complainant did not specify if he included himself with the fourteen managers or four corporate staff that allegedly made contributions to the Committee.

⁷ The employees listed on the contributor index as making contributions to the Committee were Allison M. Thomas, Shawn F. Meehan, Timothy L. Anderson, Tim Causey, Benjamin C. Letson, Stopha F.

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The contributor index shows a correlation in making contributions to the Committee with Princeton's Restaurant employees. Attachment 5. There were two reported contributions on March 1, 1995 for \$1,000 each by Princeton's Restaurant employees to the Committee. On June 22, 1995, there were six contributions reported from Princeton's Restaurant employees for \$250 each to the Committee. The fact that they all worked for the same employer, reported by the Committee on the same date, and in the same amounts suggests some form of collaboration between Princeton's Restaurant and its employees in making contributions to the Committee.

The complainant contends that he was unaware that the contribution was prohibited at the time of the transaction. Attachment 2. However, the information in the complaint suggests that the complainant knew or should have known that there was a problem with the contributions.⁸ Attachment 1. The complainant stated that Dr. Daniel Hightower, President of Princeton's Restaurant, asked him to get the managers and the corporate staff to each write a check for \$1,000 to the Committee which would be reimbursed plus any extra income taxes on their next paycheck. *Id.* The complainant argues that he responded to Dr. Daniel Hightower by noting, "that [the transaction] did

Joseph Jr., Paul W. Tompkins, and Mark Womack. The contributor index does not specify if the checks at issue were made payable or drawn by the Committee on the given dates. Given the current status of this matter, this Office makes no recommendations with respect to these employees except for Allison M. Thomas. The earliest alleged violation occurred February 23, 1995. Therefore, the five year statute of limitations in this MUR expired February 23, 2000. 28 U.S.C. § 2462.

⁸ A knowing standard, as opposed to a knowing and willful one does not require knowledge that one is violating a law, but merely requires an intent to act. *FEC v. Damesi for Congress*, 640 F. Supp. 985, 987 (D.N.J. 1986); citing *United States v. Marvin*, 687 F.2d 1221, 1225 (8th Cir. 1992).

not sound right and that some of the managers may object." *Id.* The complainant contends that the objection he had with Dr. Daniel Hightower was that the staff may not support the candidate. Attachment 2. The complainant maintains that he was unaware at the time that the contribution was illegal. *Id.*

The contributions at issue were allegedly made with funds provided by the respondent company, not from the personal funds of the employees in whose names the contributions were made. The complainant maintains that the employees were reimbursed on their paychecks for the contribution plus any extra income taxes. Accordingly, the Office of General Counsel recommends that the Commission find reason to believe that the complainant, Allison M. Thomas, violated 2 U.S.C. § 441f. Princeton's Restaurant is an incorporated entity. Therefore, this Office also recommends that the Commission find reason to believe that Princeton's Restaurant violated 2 U.S.C. §§ 441b(a) and 441f.

The Alexander Audit Fund, Inc. contends that it had no knowledge of any wrongdoing. Attachment 3. Since the Alexander Audit Fund, Inc. was named as a respondent in error, this Office recommends that the Commission find no reason to believe that the Alexander Audit Fund, Inc. and Todd Eardensohn, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f.

Since Alexander for President 1996 has not responded to the complaint notification letter, it is not clear to what extent the Committee was aware of the alleged contribution scheme. It is not known how the checks were transmitted to the Committee

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or who provided the requisite contributor identification information about the employees.⁹ However, the contributions were made by checks from employees of the same company, on the same date and for the same amount. The Committee's treasurer has a duty to ascertain whether contributions are lawful.¹⁰ 2 U.S.C. § 434(b); 11 C.F.R. § 104. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Alexander for President 1996 and Todd Eardensohn, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441f.¹¹

The alleged violations took place February 23, 1995, and June 22, 1995. Consequently, the five year statute of limitations has expired. Accordingly, this Office recommends that the Commission take no further action with respect to Allison M. Thomas, Princeton's Restaurant, Alexander for President 1996 and Todd Eardensohn, as treasurer.

⁹ The treasurer of a political committee has certain recordkeeping duties. 11 C.F.R. § 102.9. These duties include providing identification of all persons who make contributions in excess of \$200. 11 C.F.R. § 102.9(a)(2).

¹⁰ The instant case is similar to the findings in MUR 4879 which was referred from the Department of Justice. On March 8, 1995, a Georgia corporation required its employees to attend a \$1,000-a-plate fundraiser dinner for Lamar Alexander, which the corporation later reimbursed. The Commission found reason to believe that the corporation and its chief executive officer, knowingly and willfully violated 2 U.S.C. §§ 441(b) and 441f. In the public financing context, the Commission also determined that Lamar Alexander and Alexander for President 1996 must repay \$8,500 and disgorge \$36,000 to the United States Treasury with respect to the corporate contributions in MUR 4879.

¹¹ The Committee may also owe a repayment to the United States Treasury for receiving funds in excess of its entitlement since the contributions from the individuals listed on the contributor index were matched for public funds. 11 C.F.R. § 9038.2(b)(1)(iii). However, this Office is not recommending a repayment from the Committee since three years have passed from the closing of the matching fund period. 11 C.F.R. § 9038.2(a)(2).

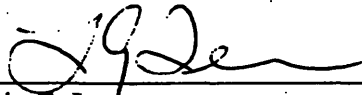
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III. RECOMMENDATIONS

1. Find reason to believe that Allison M. Thomas violated 2 U.S.C. § 441f, but take no further action, and send an admonishment letter.
2. Find reason to believe that Princeton's Restaurant violated 2 U.S.C. §§ 441b(a) and 441f, but take no further action, and send an admonishment letter.
3. Find no reason to believe that the Alexander Audit Fund, Inc. and Todd Eardensohn, as treasurer, violated 2 U.S.C. §§ 441f and 441b(a).
4. Find reason to believe that Alexander for President 1996 and Todd Eardensohn, as treasurer, violated 2 U.S.C. §§ 441f and 441b(a), but take no further action, and send an admonishment letter.
5. Approve the appropriate letters.
6. Close the file.

Date

3/2/01


Lois G. Lerner
Acting General Counsel

Attachments:

1. Complaint by Allison M. Thomas dated May 18, 2000.
2. Response from Allison M. Thomas dated July 3, 2000.
3. Response from O'Melveny & O'Melveny LLP, on behalf of the Alexander Audit Fund, Inc. and Todd Eardensohn, as treasurer, dated August 10, 2000.
4. Response from Brand & Fulla on behalf of Princeton's Restaurant and its president Dr. Daniel Hightower, dated July 7, 2000 and July 27, 2000.
5. Disclosure report dated September 25, 2000.

21-04-405-1506



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel **KCS**

DATE: March 2, 2001

SUBJECT: MUR 5033-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE ☒
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒
24 Hour TALLY VOTE ☐
24 Hour NO OBJECTION ☐
INFORMATION ☐
96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE ☒
Open/Closed Letters ☐
MUR ☐
DSP ☐
STATUS SHEETS ☐
Enforcement ☐
Litigation ☐
PFESP ☐
RATING SHEETS ☐
AUDIT MATTERS ☐
LITIGATION ☐
ADVISORY OPINIONS ☐
REGULATIONS ☐
OTHER ☐

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lois Lerner
Acting General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Office of the Commission Secretary

DATE: March 7, 2001

SUBJECT: MUR 5033 - First General Counsel's Report
dated March 2, 2001.

The above-captioned document was circulated to the Commission
on Friday, March 2, 2001.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	<u>XXX</u>

This matter will be placed on the meeting agenda for
Tuesday, March 13, 2001.

Please notify us who will represent your Division before the Commission on this
matter.

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