

PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
(202) 457-6000
FACSIMILE: (202) 457-6315

ORIGINAL

WRITER'S DIRECT DIAL

(202) 457-6405

December 20, 1996

Anne A. Weissenborn, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: MURs 4317 and 4323 -- The Honorable Mike Huckabee,
the Huckabee U.S. Senate Election Committee, and
Prissy Hickerson as Treasurer, and
the Huckabee Election Committee, and
Prissy Hickerson, as Treasurer

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Ms. Weissenborn:

In response to the Federal Election Commission's ("Commission") recent findings of reason to believe that violations of the Federal Election Campaign Act ("Act") occurred in MURs 4317 and 4323, the above-captioned Respondents submit the following statement and responses to Interrogatories and Request for Production of Documents.¹

Respondents do not believe that the Commission's findings are justified in light of the facts presented in these matters, especially since many of the activities occurred in non-federal elections governed by state law. Accordingly, for the reasons set forth below, Respondents respectfully request that, after reviewing these materials, the Commission reassess its position and vote to take no further action on these matters. Nonetheless, since relatively minor sums of money are at issue and since Mike Huckabee is now Governor of Arkansas and no longer a candidate for the United States Senate, Respondents have also included a request to pursue pre-probable cause conciliation in connection with these matters.

¹ The responses to the Commission's Interrogatories and Request For Production of Documents were signed and verified by Ms. Brenda Turner on December 20, 1996. Due to time constraints, a copy of this verification page is attached to the responses. The original verification will be sent to the Commission shortly.

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MUR 4317

In MUR 4317, the Commission found reason to believe that the Huckabee U.S. Senate Election Committee ("Senate Committee"), and Prissy Hickerson, as Treasurer, violated: (1) 2 U.S.C. § 434(b)(3)(A) by mistakenly identifying a \$500 contributor as Roger Meek, a representative from the Coca-Cola Bottling Company partnership, rather than the partnership itself; (2) 2 U.S.C. § 434(b)(3)(A) by mistakenly identifying another \$500 contributor as Richard Cisne of the partnership Hudson, Cisne, Keeling-Culp and Company, rather than the partnership itself; and (3) 2 U.S.C. § 441b by mistakenly accepting a contribution from the Delta Beverage Group, Inc. that was later refunded upon discovery of the mistake.

Respondents believe these findings are unjustified since each apparent violation stems from a good-faith, unintentional mistake that was made in the spirit of full compliance.

Roger Meek was listed as the contributor rather than his partnership as the result of a simple miscommunication. Since Fort Smith Coca Cola Bottling Co. has a political action committee that had contributed to Mr. Huckabee's state elections in the past, Senate Committee personnel initially assumed that the Fort Smith Coca Cola Bottling Co. check signed by Mr. Meek was a contribution from such PAC. It was then reported accordingly. When questions arose concerning this contribution, the Senate Committee researched the matter and was apparently instructed that the check was intended as a personal contribution from Mr. Meek.² Based on this information, the Committee filed an amendment to its 1995 Year End Report listing Mr. Meek as the donor. This information was apparently incorrect given the Commission's statement that Mr. Meek actually intended the contribution to be from the entire partnership. While not done correctly, this is a case of simple error, and nothing more.

Mr. Cisne's incorrect listing resulted from similar circumstances. Since Mr. Cisne signed the check and had contributed to Mr. Huckabee's state campaigns in the past, Senate Committee personnel reported this contribution as an individual contribution rather than a partnership contribution. Mr. Cisne's name was inadvertently omitted from the report due to a computer software glitch. When questions arose concerning this contribution, the Senate Committee researched the matter and was apparently instructed that the check was intended as a personal contribution from Mr. Cisne.³ The Committee then amended its reports to confirm Mr. Cisne as

² Respondents are currently searching for any documents that may confirm this instruction. Should any such documents be found, they will be produced to the Commission promptly.

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the contributor. However, the instruction received by the Committee may have been incorrect since the Commission states on page 4 of its Factual and Legal Analysis that this contribution was "apparently" from the partnership at large. Again, this error was the result of simple miscommunication and there was never any intention on the part of the Senate Committee to conceal this contribution or otherwise fail to disclose information to the Commission.

The Delta Beverage contribution error resulted from an unintentional mistake during the hectic first days of the Senate Committee's exploratory phase when it received a number of contributions from soft drink company political action committees. Committee personnel mistakenly believed that Delta Beverage was one such political action committee and reported the contribution as being from a PAC.⁴ There was also considerable confusion as to whether this check was intended for the Senate Committee or for debt retirement from the 1994 Lt. Governor's race. When it came to the Committee's attention months later that Delta Beverage check was not from its political action committee, but rather the corporation, the contribution was refunded promptly and voluntarily in the spirit of full compliance with the Act.

While the Commission has singled out these three contributions, it is important to remember these are only three contributions totaling only \$2,000 involving inadvertent errors. Respondents request that the Commission take no further action on MUR 4317.

MUR 4323

In MUR 4323, the Commission found reason to believe that Respondents violated 2 U.S.C. § 441b by using state campaign funds to support Senate campaign activities, and 2 U.S.C. § 434(b)(3)(A) by failing to use "best efforts" to identify persons who made over \$200 in contributions.

Respondents believe that these findings are unjustified and inappropriate given that: (1) both the two-page mailing and Washington, D.C. trip questioned by the Commission were solely non-federal activities conducted pursuant to Arkansas law, and (2) "best efforts" were in fact made to obtain all relevant donor information.

With respect to the two-page debt retirement letter and survey issued by the State Committee in May of 1995 (attached as Document No. 9), Respondents reiterate that this mailing

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was for the purely non-federal purposes of retiring debt from the 1994 Lieutenant Governor's campaign and surveying constituents' opinions on a wide range of important state issues. As the Commission will see upon review of this mailing, neither the letter nor the survey ever advocates the election or defeat of Lieutenant Governor Huckabee as a Senate candidate, or solicits money for his Senate campaign in any way. Rather, the purpose of the mailing was to generate interest so potential donors would contribute to the Lt. Governor's debt-retirement efforts. The one question at issue out of a two-page, ten-question survey was important to Arkansas voters at the time it was asked. Moreover, the one brief question regarding the open U.S. Senate seat was a legitimate state issue receiving tremendous media attention at the time. Its inclusion in the general survey in no way transformed a strictly non-federal debt retirement mailing into a "testing the waters" activity. Likewise, the fact that the survey posed some questions regarding issues that happened to have federal as well as state implications does not alter the fundamental non-federal nature or legitimacy of this mailing. Thus, Respondents maintain that the costs of this mailing were appropriately paid out of the state account.

In addition, as the attached Responses to Interrogatories and Requests for Production of Documents show, the Commission's calculation of the cost of this mailing is significantly inflated. As Respondents' answer to Interrogatory No. 1 and the invoice attached as Document No. 1 show, the only cost associated with this mailing was a \$2,824.83 payment to Griffith Enterprises -- not \$13,101.35 as suggested by the Commission. Moreover, the questions raised by the Commission as to the potentially excessive fundraising activities of the State Committee were thoroughly investigated by the Arkansas Ethics Commission. Accordingly, it is not clear why and under what scope of authority the Commission is now looking at this matter.

With respect to the Washington, D.C. trip made by then Lieutenant Governor Huckabee and his state campaign director, Brenda Turner, on August 1-3, 1995, Respondents reiterate that this trip was for the sole purpose of meeting with political consultant Richard Morris to discuss an outstanding debt for services provided during the 1994 Lt. Governor's race. This trip was simply not for the purpose of "testing the waters" for a possible Senate campaign. In fact, Lt. Governor Huckabee and Ms. Turner never even intended to go to Washington since the initial plan was to meet with Mr. Morris in Arkansas. Washington, D.C. was chosen as a convenient alternative site only after certain political realities made it difficult for Mr. Morris to travel to Arkansas, thereby precluding any possibility of a pre-meditated "testing the waters" outing.

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There was no intention that this trip be a Senate campaign "testing the waters" trip and Lt. Governor Huckabee never engaged in any activities while in Washington that would meet the definition of such a purpose. The fact that Mr. Huckabee was asked informally, and not on his own volition, about the open U.S. Senate seat in Arkansas does not automatically transform this trip into a "testing the waters" effort as suggested by the Commission. Moreover, Respondents are puzzled by the Commission's blind reliance on unsubstantiated newspaper stories suggesting that this trip was related to a federal campaign. No foundation or evidence has been presented to verify the accuracy of such newspaper stories. Indeed, newspapers often misquote public figures or report their statements out of context, and the articles cited by the Commission are perfect examples.

Given that the Washington, D.C. trip was for solely non-federal purposes, Respondents believe the Commission's finding of reason to believe is unjustified. Informal conversations and questionable newspaper articles do not provide the necessary support to overcome the clear facts in this matter.

Lastly, Respondents take issue with the Commission's finding of reason to believe that the Senate Committee did not meet the "best efforts" requirements. As a matter of policy and practice, the Senate Committee asked donors to provide the required information (e.g., name, address, occupation, employer) when making a contribution. When the requested information was not provided, the Senate Committee would send the contributor in question a follow-up letter requesting the omitted information. Contrary to the Commission's statement on page 24 of its Factual and Legal Analysis that the Senate Committee has failed to provide such "follow-up communications", the Senate Committee previously produced these documents as an attachment to its April 22, 1996 response to the complaint in MUR 4323. They are again attached to this response as Document No. 10. Respondents believe that these letters serve as clear evidence of compliance with the "best efforts" requirements of the Act. Accordingly, the Commission's reason to believe finding with respect to "best efforts" is unjustified.

Conclusion

For the reasons set forth above, Respondents respectfully request that the Commission either find no probable cause or take no further action on MURs 4317 and 4323. Nonetheless, given the relatively minor amounts at issue in these matters (\$2,000 in MUR 4317 and approximately \$4,000-5,000 in MUR 4323), and the fact that Mike Huckabee is now Governor

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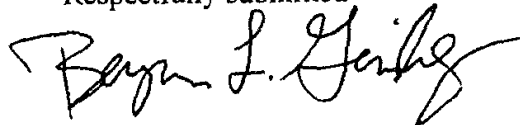
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of Arkansas and no longer a candidate for United States Senate, Respondents hereby formally express their desire to pursue pre-probable cause conciliation with respect to these matters.

Respectfully submitted



Benjamin L. Ginsberg

Robert P. Ritger

Counsel for Respondents

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