

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

MAR 16 1 28 PM '99

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4752

DATE COMPLAINT FILED: June 2, 1998

DATE OF NOTIFICATION: June 8, 1998

DATE ACTIVATED: February 25, 1999

STAFF MEMBERS: Donald E. Campbell
Thomas J. Andersen

COMPLAINANT: John Dendahl for the Republican Party of New Mexico

RESPONDENTS: Democratic Party of New Mexico and Thomas Atcitty, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 434(a)(4)(A)(i) and (ii)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed by John Dendahl, Chairman of the Republican Party of New Mexico, on June 2, 1998, alleging that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer ("Respondents"), knowingly and willfully failed to file either a 1998 April Quarterly Report or a 1998 Pre-Primary Report.

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended ("Act"), requires treasurers of political committees, other than authorized committees of a candidate, to file periodic reports of receipts and disbursements. In any calendar year in which a regularly scheduled election is held, all political committees that choose not to file on a monthly basis shall file quarterly reports,

9067-263-40-66

which shall be filed no later than the 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(4)(A)(i). Treasurers of such committees shall also file a pre-election report, which shall be filed no later than the 12th day before (or posted by registered or certified mail no later than the 15th day before) any election in which the committee makes a contribution to or expenditure on behalf of a candidate in such election, and which shall be complete as of the 20th day before the election. 2 U.S.C. § 434(a)(4)(A)(ii).

The Democratic Party of New Mexico ("DPNM") is a political committee not authorized by any candidate, and has elected to report on a quarterly basis. The Committee's treasurer is Thomas Atcitty. Complainant alleges that the DPNM "knowingly and willfully failed to file disclosure reports required by law. . . . Specifically, the DPNM has refused to reveal its 1998 receipts and expenditures in either a first quarter report . . . or a pre-primary report" The DPNM did not respond to the complaint.

Pursuant to 2 U.S.C. § 434(a)(4)(A)(i), the due date for the DPNM's 1998 April Quarterly Report was April 15, 1998. On March 20, 1998, the DPNM was notified in writing of that deadline. A Non-Filer Notice was sent on May 7, 1998, stating that the DPNM had failed to file the Report and advising it to file immediately. By letter dated May 11, 1998, Thomas Atcitty, the treasurer of the DPNM, responded to the Non-Filer Notice, stating that the DPNM's bookkeeper had "left at the first of the year," and that the Report would be sent "in the next few days." Mr. Atcitty further noted that "[we] thought we filed semi-annually. . . . Obviously, we were in error." The DPNM filed the Report on June 2, 1998, 48 days late,

¹ Complainant mistakenly cites to 2 U.S.C. § 434(a)(2)(A) as the relevant statutory provision. That provision, however, applies only to authorized committees of a candidate, rather than political party committees.

disclosing receipts totaling \$65,820 and disbursements of \$53,431. The DPNM subsequently amended these figures, listing total receipts of \$72,030 and disbursements of \$83,059.

Complainant asserts that the DPNM's "claim of innocence and confusion about dates . . . appears to be incredible and made in bad faith." Complainant adds that "[o]ne must presume that the DPNM is knowingly and willfully violating federal law . . . to conceal its . . . illegal actions from the citizens of New Mexico." The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of knowing and willful may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *Id.* at 214-15.

In his response to the Non-Filer Notice, Mr. Atcitty concedes that the DPNM's 1998 April Quarterly Report was not filed in a timely manner. Therefore, this Office recommends that the Commission find reason to believe that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i). It does not appear that this failure to file was a knowing and willful violation of the Act. Mr. Atcitty became treasurer of the DPNM in May of 1997 and therefore had not filed quarterly reports for the DPNM in previous election years. Although the DPNM appears to have timely filed such reports in prior years, Mr. Atcitty's explanation for not filing the 1998 April Quarterly Report does not evince a deliberate intent to circumvent the Act's reporting requirements.

The regularly scheduled congressional primary election in New Mexico was held on June 2, 1998, followed by a special general election in the First Congressional District on

June 23 to fill the vacant House seat of the late Congressman Steve Schiff. The DPNM filed a pre-election report for the special election, but did not file a pre-election report for the regularly scheduled primary election. However, the DPNM's pre-election report for the special election, covering the period from April 1, 1998 through June 3, 1998, did not disclose any "contribution to or expenditure on behalf of a candidate" in the primary election. *See* 2 U.S.C.

§ 434(a)(4)(A)(ii). Accordingly, the DPNM was not required to file a report for the primary election. *See* MURs 4549, 4558 (Democratic National Committee). Therefore, this Office recommends that the Commission find no reason to believe that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(ii).

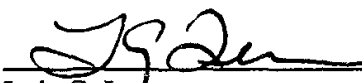
III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Find reason to believe that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i), and enter into conciliation prior to a finding of probable cause to believe.
2. Find no reason to believe that the Democratic Party of New Mexico and Thomas Atcitty, as treasurer, violated 2 U.S.C. § 434(a)(4)(A)(ii).
3. Approve the attached Factual and Legal Analysis, proposed conciliation agreement and the appropriate letter.

Lawrence M. Noble
General Counsel

3/16/99
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Factual and Legal Analysis
2. Proposed conciliation agreement