



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 28, 1998

Gary S. McClure, Treasurer
Buncombe County Republican Party
P.O. Box 7363
Asheville, NC 28802

RE: MUR 4798
Buncombe County Republican Party
and Gary S. McClure, as Treasurer

Dear Mr. McClure:

On August 18, 1998, the Federal Election Commission found that there is reason to believe that the Buncombe County Republican Party ("Committee") and its treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.5(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit responses to the enclosed questions and documents' request within 30 days of receipt of this letter. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission. This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Xavier McDonnell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures

Factual and Legal Analysis
Questions and Documents Request
Procedures
Designation of Counsel Form

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS *Buncombe County Republican Party* MUR: 4798
 and its treasurer

I. GENERATION OF MATTER

This matter was generated by the Commission in the normal course of carrying out its supervisory duties. *See* 2 U.S.C. § 437g(a)(2). It involves a \$13,925 transfer received by the Buncombe County Republican Committee (“Buncombe County Committee” or “Buncombe Committee”) from the Randolph County Committee (“Randolph Committee”). It also involves an apparent failure by the Buncombe Committee to allocate its administrative or other expenses.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended (the “Act”) and Commission regulations provide that transfers of funds may be made without limit on amount between or among a state party committee and/or any subordinate party committee whether or not they are “political committees” and whether or not such committees are affiliated. 2 U.S.C. § 441a(a)(4), 11 C.F.R. §§ 102.6(a)(1)(ii) and 110.3(c)(1). However, the funds transferred must be in compliance with the Act. *See* 11 C.F.R. §§102.6(a)(1)(iv) and 102.5.

A state or local party organization that makes contributions and expenditures must either establish a separate account into which only funds subject to the prohibitions and limitations of the Act shall be made and from which all contributions and expenditures shall be made or demonstrate through a reasonable accounting method that whenever such organization makes a contribution or expenditure, it has received sufficient funds subject to the prohibitions of and limitations of the Act to make such contributions or expenditures. 11 C.F.R. § 102.5(b)(1).

These rules ensure compliance with the contribution limitations at 2 U.S.C. § 441a, which provides, *inter alia*, that no person or multicandidate committee shall make contributions to a state or local party committee's federal account in any calendar year which in the aggregate exceed \$5,000, and prohibits any political committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a)(1)(C) and (f). Under North Carolina law, individuals and non-party political committees may contribute up to \$4,000 per election. See General Statutes of North Carolina ("GSNC") §§ 163-278.1

The costs for communications made on behalf of clearly identified federal candidates must be reported and attributed in accordance with 11 C.F.R. § 106.1(a). Party committees which maintain both federal and nonfederal accounts must allocate their expenditures and disbursements in accordance with 11 C.F.R. § 106.5(a)..

III. ANALYSIS

The Buncombe County Committee, a registered political committee, received a \$13,925 transfer from the Randolph County Committee. The Randolph County Committee is not registered with the Commission as a "political committee." Such funds were deposited in Buncombe County Committee's federal account. The funds appear to have been derived from an account into which the Randolph County Committee accepted funds deemed impermissible under the Act. By accepting the \$13,925, the Buncombe County Committee and its treasurer, appear to have violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a).

In its response to inquiries from the Commission's Reports Analysis Division ("RAD"), the Buncombe County Committee wrote that the funds were deposited in its federal account in

1 Contributions by corporations and labor unions are prohibited by North Carolina law.

error and that they were used "solely for State legislative races." The Committee stated that to correct the error, it would repay the state operating account.

Although the Buncombe Committee's FEC reports disclose the receipt of the \$13,925 transfer on November 25, 1996, the disclosure reports which the Randolph County Committee filed with state election authorities in North Carolina, indicate that the transfer was made over a month earlier on October 23, 1996, just prior to the 1996 general election. Indeed, this earlier receipt date provided on Randolph Committee's state election reports appears more plausible because, according to the Buncombe Committee's FEC reports, it made a \$13,915 expenditure for an ad on October 24, 1996, just one day after the reported the \$13,925 transfer. Moreover, our initial review of Buncombe County Committee's FEC disclosure reports indicates that it was only after it received the \$13,925 at issue from the *Randolph Committee that it had sufficient funds to make that \$13,915 expenditure*. Thus, it appears that the receipt date for the \$13,925 transfer provided on Buncombe County Committee's FEC reports may be inaccurate.

After being informed by RAD that the \$13,925 transfer from Randolph County appeared impermissible, in its 1997 mid year report, the Buncombe County Committee reported \$8,925 of the \$13,925 as an outstanding debt. It is unclear on what basis the Buncombe County Committee concluded that only \$8,925 of the \$13,925 that it received from Randolph County Committee needed to be transferred out of its federal account. In any event, in its 1997 year end report, the *Buncombe County Committee indicated that the \$8,925 debt had been paid*. However, from our review of its disclosure reports, the Buncombe County Committee did not use funds from its federal account to pay that \$8,925 debt.

Finally, although Buncombe County Committee appears to maintain both federal and nonfederal accounts, it does not appear that it has allocated its expenditures as required by -

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11 C.F.R. § 106.5(a). Its disclosure reports do not provide any allocation formula(s) for operating or other expenditures from 1996-98.

In light of all the above, there is reason to believe that the Buncombe County Republican Party and its treasurer, violated 2 U.S.C. § 441a(f), 11 C.F.R. §§ 102.5(a) and 106.5(a).

92-04-391-452-1

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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MUR 4798

**INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS**

TO: Gary S. McClure, Treasurer
Buncombe County Republican Party
PO Box 7363
Asheville, NC 28802

In furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby requests that you submit answers in writing and under oath to the questions set forth below within 30 days of your receipt of this request. In addition, the Commission hereby requests that you produce the documents specified below, in their entirety, for inspection and copying at the Office of the General Counsel, Federal Election Commission, Room 659, 999 E Street, N.W., Washington, D.C. 20463, on or before the same deadline, and continue to produce those documents each day thereafter as may be necessary for counsel for the Commission to complete their examination and reproduction of those documents. Clear and legible copies or duplicates of the documents which, where applicable, show both sides of the documents may be submitted in lieu of the production of the originals.

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1996 to present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondents in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

QUESTIONS AND DOCUMENT REQUESTS

1. Disclosure reports indicate that during 1996 you received \$13,925 from the Randolph County Republican Party Executive Committee ("Randolph County Committee"). With respect to such transfer/contribution:

- a. State the date on which you received such funds;
- b. State whether the funds were transferred pursuant to any request made by you;
- c. State the purpose of such transfer/contribution;
- d. Identify all persons involved in giving and receiving such funds;

e. Identify and produce all documents related to the transfer, including but not limited to checks, memos, correspondence, etc.

2. State whether you had any discussion with the Randolph County Committee regarding the use of any of the funds referenced above in question 1. If so:

a. State when you had such discussions;

b. State the substance of such discussions, and specifically whether the Randolph County Committee provided you with any instructions, or made any request or suggestion, about the use of the funds, i.e., whether to use the funds on state or federal elections, on advertising, voter mailings, get-out-the-vote activity;

c. Identify all persons involved in such discussions;

d. Identify and produce all documents related to such discussions, including but not limited to memos, correspondence, etc.

3. Disclosure reports indicate that you made a \$13,915.20 payment/expenditure to Advantage Mailing on October 24, 1996. With respect to such payment/expenditure:

a. State whether you had any discussions with the Randolph County Committee about such payment/expenditure, and if so, state the substance of any such discussions;

b. State whether the Randolph County Committee gave you any instructions, or made any request or suggestion, about the \$13,915.20 payment/expenditure, including but not limited to suggesting what vendor to use and the type of goods or services purchased, i.e., whether to use the funds on state or federal elections, on advertising, voter mailings, get-out-the-vote activity;

c. Identify any persons from your committee involved in reviewing, approving or making suggestions regarding the goods or services purchased;

d. Identify and produce all documents related to the payment/expenditure, including but not limited to scripts, tapes, memos, notes, correspondence, information stored on or created by computer.

4. Your 1997 year end report indicates that you paid a \$8,925 debt to your "state operating account."

a. State the date of that payment;

b. Identify the source of the funds used to make that payment, and specifically whether such funds were raised pursuant to the requirements of the Federal Election Campaign Act of 1971, as amended;

c. Identify and produce all documents related to such payment.

5. State whether you made any payments for voter registration, party building or get-out the vote activities. If so, indicate whether you allocated the federal and non-federal portions of such payments in accordance with 11 C.F.R. § 106.5.

6. State whether from 1996 to the present, you allocated any of your operating expenditures or other expenditures in accordance with 11 C.F.R. § 106.5. If so, provide the allocation formulas used for such disbursements/expenditures and state whether such were provided on your disclosure reports.

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