

FEB 10 2005

FEDERAL ELECTION COMMISSION
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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5426

DATE COMPLAINT FILED: March 9, 2004

DATES OF NOTIFICATION: September 1, 2004 and
November 29, 2004

DATE ACTIVATED: October 14, 2004

EXPIRATION OF STATUTE OF LIMITATIONS:
September 8, 2008

COMPLAINANT: Seth Boffeli, Communications Director, Democratic Party of
Wisconsin

RESPONDENTS: Dale Schultz
Dale Schultz for Congress and Joseph J. Hasler, in his official
capacity as treasurer
Friends and Neighbors of Dale Schultz and Dennis Hamilton,
in his official capacity as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441i(e)(1)(A)

INTERNAL REPORTS CHECKED: FEC Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

The complaint in this matter alleges that Wisconsin state senator Dale Schultz ("the candidate"), a candidate for Congress in 2004, and his principal campaign committee, Dale Schultz for Congress and Joseph J. Hasler, in his official capacity as treasurer ("the federal committee"), improperly used more than \$20,000 in funds and assets from Friends and Neighbors of Dale Schultz and Dennis Hamilton, in his official capacity as treasurer ("the state committee"), to benefit his federal race.¹ As discussed in more detail below, this Office recommends that the Commission find

¹ Dale Schultz, the federal committee and the state committee will collectively be referred to as the "Schultz respondents."

1 reason to believe that Dale Schultz, Friends and Neighbors of Dale Schultz and Dennis Hamilton, in
2 his official capacity as treasurer, and Dale Schultz for Congress and Joseph J. Hasler, in his official
3 capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d). We also
4 recommend that the Commission enter into pre-probable cause conciliation with the Schultz
5 respondents.

6 **II. FACTUAL BACKGROUND**

7 On September 8, 2003, Dale Schultz, a Wisconsin state senator,² filed a Statement of
8 Candidacy for a seat in Wisconsin's Third Congressional District.³ In response to complainant's
9 specific allegations that Schultz's state committee disclosed eight expenditures in its 2003 Year-End
10 report that allegedly were used to benefit the candidate's federal race, the Schultz respondents⁴
11 concede that the state committee mistakenly paid for six of the eight expenditures. Four of the six
12 expenditures were made to Ben Lewis, a state committee worker who shifted from working on state
13 matters to the federal campaign. These expenditures focused primarily on consulting and mileage
14 costs and were in the amounts of \$1,010.87, \$683.37, \$500, and \$1,142.41, respectively, for a total
15 of \$3,336.65. The federal committee's response attaches a copy of a January 29, 2004 letter from
16 the federal committee treasurer to the state committee treasurer stating that the federal committee
17 would issue a \$3,291.65 check to Mr. Lewis, which he would then endorse to the state committee.⁵

² Mr. Schultz has been a sitting Wisconsin State Senator since 1991 and was last elected to a full four-year term in 2002.

³ The candidate won the primary on September 14, 2004 but lost the general election held on November 2, 2004.

⁴ Each of the Schultz respondents submitted a separate response. The state committee stated that the federal committee's response and Senator Schultz's affidavit stood as its response to the complaint.

⁵ There is a \$45 difference between the cumulative amount of the four Ben Lewis expenditures, which totals \$3,336.65, and the January 29, 2004 \$3,291.65 check that purportedly reimbursed the state committee for these expenditures.

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1 Regarding two other expenditures, which were the candidate's own mileage and cell phone
2 expenses, the Schultz respondents acknowledge that "some of the cell phone usage and some of the
3 mileage should properly have been charged to the federal campaign committee."⁶ These
4 expenditures were in the amounts of \$642.89 and \$870.75, respectively, for a total of \$1,513.64. In
5 his affidavit, the candidate states that he received reimbursement from the federal committee for
6 these items and had already reimbursed the state committee. *See Schultz Affidavit at ¶ 23.*

7 The Schultz respondents dispute the other two allegedly improper expenditures raised in the
8 complaint. First, they contend that the state committee properly paid the Republican Party of
9 Wisconsin \$15,620.90 for "Polling Data/Voter List." In his sworn affidavit, the candidate states:
10

11 This item reimburses the State Republican Party for services it provided
12 in July 2003 to prepare research specific to my State Senate district. I was
13 concerned because my percentage of the vote for my 2002 re-election was
14 about 3.5% lower than when I was re-elected in 1998. In connection with
15 my 2002 re-election effort, I had commissioned some polling from a national
16 firm, but was not pleased with the work product or the results. I decided to
17 work with the state party, which needed to charge me market rates for their
18 efforts. I commissioned them to compile demographic statistics and analyze
19 past poll information specific to my State Senate District to help understand
20 why I had lost market share in my most recent re-election. They also provided
21 a targeted voter list for my State Senate District for possible use in state
22 fundraising. The list has not been used in the federal campaign. This work
23 product was delivered to me in July 2003, several months before I decided to
24 run for Congress and filed as a candidate. No new polling was done, and none
25 was targeted to a potential run for Congress.
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29 *See Schultz Affidavit at ¶ 18.*

30 Finally, the Schultz respondents contend that the final expenditure specifically challenged
31 by the complaint, an expenditure by the state committee of \$725 for replacement of computer

⁶ Although the Schultz respondents considered dividing each phone and mileage expense between federal and state activities to determine the actual amount of federal expenditures, out of an abundance of caution, they decided to treat them as federal committee expenses erroneously paid by the state committee. *See Federal Committee Resp. at 5,6.*

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equipment, involved a printer that was not used in any way by the federal committee or in Mr. Schultz's Congressional campaign.⁷ See Schultz Affidavit at ¶ 26.

III. DISCUSSION

The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits a federal candidate, a candidate's agent, and entities established, financed, maintained or controlled by, or acting on behalf of, a candidate from soliciting, receiving, directing, transferring or spending funds in connection with a Federal election unless the funds are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A). Moreover, Commission regulations specifically prohibit transfers of funds or assets from a candidate's account for a non-federal election to his or her principal campaign committee for a federal election. 11 C.F.R. § 110.3(d). Both provisions are designed to prevent the use in federal elections of funds raised outside the limits and prohibitions of the Act and to ensure that all funds used in federal elections are reported.

Dale Schultz's state committee admittedly used state campaign funds to pay for expenses incurred in connection with Mr. Schultz's federal election race, including expenses incurred by the candidate, and directed by him to the state committee for payment. Wisconsin law limits individual and political action committee contributions to state senate campaigns to \$1,000 per election, see Wis. Stats. §§ 11.26(1)(b) and 11.26(2)(b), and the available Schultz state committee reports reveal

⁷ The complaint singled out eight expenditures among a list of expenditures disclosed in the state committee's 2003 Year-End report, and appended a page from the state report with the complaint. In the responses, the Schultz respondents discussed each expenditure disclosed on that page, which contained six of the expenditures specifically challenged by the complaint, as well as two other expenditures noted by the complaint that did not appear on the page provided with the complaint. The Schultz respondents, including Dale Schultz in his sworn affidavit, state that while the six Ben Lewis-Dale Schultz expenses at issue were tied to federal election activity, the remaining expenditures were used exclusively for state campaign activity. See Schultz Affidavit at ¶¶ 12-17, 19, 21, 24, and 25. The Schultz respondents' explanations of the additional items not singled out by the complaint do not appear to raise any questions about federal activity, and we do not address these expenditures any further in this report.

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1 no corporate or labor organization contributions for the pertinent time period.⁸ Therefore, it is
2 possible that the state funds used in Schultz's federal campaign may have consisted of permissible
3 funds under the Act. Nevertheless, none of the state campaign funds at issue were subject to the
4 Act's reporting provisions as required by Section 441i(e)(1)(A), and in any case, 11 C.F.R.
5 § 110.3(d) flatly prohibits a candidate's state campaign from transferring funds to the candidate's
6 federal campaign. Thus, Mr. Schultz directed his state committee to pay for expenses that he
7 incurred in connection with his federal race, and the state committee did so. Additionally, the
8 federal committee effectively received such funds from the state committee. *See* conciliation
9 agreement in MUR 4974 (Tiberi for Congress)(candidate's federal and state committees violated
10 11 C.F.R. § 110.3(d) when his state committee made a contribution to, and incurred expenses on
11 behalf of, his federal committee). Moreover, the state and federal committees also violated the Act
12 and 11 C.F.R. § 110.3(d) with respect to the state committee's payments to Ben Lewis.
13 Accordingly, this Office recommends that the Commission find reason to believe that Dale Schultz;
14 Friends and Neighbors of Dale Schultz and Dennis Hamilton, in his official capacity as treasurer;
15 and Dale Schultz for Congress and Joseph J. Hasler, in his official capacity as treasurer, violated
16 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).

17 Of the remaining two expenditures specifically challenged by the complaint, only the state
18 committee's \$15,620.90 payment on September 25, 2003 to the state party for an analysis of past
19 polling data and a voter list, raises questions, based on its timing and seemingly helpful content for
20 Mr. Schultz's federal race. However, Mr. Schultz declared in his sworn affidavit that the polling
21 data expense was merely a new analysis of old polling that had been done for his 2002 state senate

⁸ The federal committee's response to the complaint maintains "all of the funds in State Senator Schultz's state campaign committee came either from individuals or from political action committees who can receive and distribute only individual contributions." *See* Federal Committee Resp. at 7.

1 re-election campaign. Specifically, he explained that during his 2002 campaign, he had
2 commissioned some polling from a national firm, but was not pleased with the work product or the
3 results. Hence, he decided to work with the state party, and commissioned it to compile some
4 demographic statistics and analyze the national firm's polling information that was specific to his
5 State Senate district to help him understand why he had lost market share in his 2002 campaign.
6 Mr. Schultz also avowed that the analysis of past polling data was delivered to him several months
7 before he decided to run for federal office, and that no new polling was done, and none was targeted
8 to a potential run for Congress. Further, he avowed that the voter list was targeted to his State
9 Senate district for possible use in state fundraising and was not used in his federal campaign. In the
10 face of this affidavit that specifically addresses the questions raised, and with no information to the
11 contrary, this Office does not recommend pursuing an investigation concerning this expenditure.

12 **IV. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY**
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V. RECOMMENDATIONS

1. Find reason to believe that Dale Schultz violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).
2. Find reason to believe that Friends and Neighbors of Dale Schultz and Dennis Hamilton, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).
3. Find reason to believe that Dale Schultz for Congress and Joseph J. Hasler, in his official capacity as treasurer, violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).
4. Approve the attached Factual and Legal Analysis.
5. Enter into conciliation with Dale Schultz, Friends and Neighbors of Dale Schultz and Dennis Hamilton, in his official capacity as treasurer, and Dale Schultz for Congress and Joseph J. Hasler, in his official capacity as treasurer, prior to a finding of probable cause to believe.

6. Approve the attached Conciliation Agreement.


7. Approve the appropriate letter.


Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

2/10/05
Date

BY:


Susan L. Lebeaux
Assistant General Counsel


Roy Q. Luckett
Attorney

Attachments

1. Conciliation Agreement
2. Factual and Legal Analysis