



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 18, 2006

VIA FACSIMILE AND FIRST CLASS MAIL

Craig Engle, Esq.
Arent Fox PLLC
1050 Connecticut Avenue, N.W.
Washington, DC 20036

RE: MUR 5648
Broyhill for Congress, *et al.*

Dear Mr. Engle:

On June 26, 2006, the Federal Election Commission (the "Commission") accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of a violation of 2 U.S.C. §§ 441a-1(b)(1)(C)-(E), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. §§ 400.21(b), 400.22(b) and 400.25. Accordingly, the file has been closed in this matter.

Documents related to the case are expected to be placed on the public record within 24 hours. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Schwartz", is written over a horizontal line.

Adam Schwartz
Attorney

Enclosure
Conciliation Agreement

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RECEIVED
FEC MAIL
OPERATIONS CENTER
2006 JUN 19 P 4: 07

In the Matter of 2006 JUN 19 P 4: 58)

MUR: 5648

Broyhill for Congress and Tim Nerhood, in)
his official capacity as treasurer)
J. Edgar Broyhill II)
)

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

After examining the facts and circumstances of this matter, the Commission found probable cause to believe that J. Edgar Broyhill II violated 2 U.S.C. §§ 441a-1(b)(1)(C), 441a-1(b)(1)(D) and 441a-1(b)(1)(E), and Broyhill for Congress and Tim Nerhood, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a-1(b)(1)(C), 441a-1(b)(1)(D), 441a-1(b)(1)(E) and 11 C.F.R. §§ 400.21(b) and 400.22(b).

NOW, THEREFORE, the Commission and J. Edgar Broyhill II, Broyhill for Congress and Tim Nerhood, in his official capacity as treasurer, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over J. Edgar Broyhill II, Broyhill for Congress and Tim Nerhood, in his official capacity as treasurer (collectively, "the Respondents") and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

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IV. The pertinent facts in this matter are as follows:

1. Broyhill for Congress is a political committee within the meaning of 2 U.S.C. § 431(4).

It was the authorized committee for J. Edgar Broyhill II, a candidate for the Republican Party's nomination for the House of Representative from the 5th Congressional District in North Carolina in 2004.

2. Tim Nerhood is the current treasurer of Broyhill for Congress.¹

3. If a candidate makes an aggregate amount of expenditures from personal funds in excess of \$350,000, the candidate or authorized committee shall file a notification of the expenditure within a day of exceeding the threshold (FEC Form 10). 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b). For each additional expenditure of \$10,000 or more, the candidate is required to file additional notifications. 2 U.S.C. § 441a-1(b)(1)(D); 11 C.F.R. § 400.22.

4. These notifications must be filed with the Commission, each candidate in the same election, and the national party of each such candidate. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R. §§ 400.21(b) and 400.22(b).² Although FEC Form 10 is signed by the committee treasurer, the candidate is responsible for ensuring that it is filed in a timely manner. *See* 11 C.F.R. § 400.25.

¹ Mr. Nerhood, who was named treasurer on March 31, 2005, was not the treasurer at the time of the violations. He is named in this matter in his official capacity as treasurer, and not in his individual capacity.

² A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U.S.C. § 441a(a)(1)(A)) and a waiver of the limits on coordinated party expenditures under 2 U.S.C. § 441a(d). *See* 2 U.S.C. § 441a-1(a)(1); 11 C.F.R. § 400.41. Candidates are entitled to higher limits when the "opposition personal funds amount" exceeds \$350,000. The opposition personal funds amount is distinct from the threshold reporting amount of \$350,000 because it takes into account the personal funds expenditures of the other candidates and, depending on the date of calculation, may also take into account the gross receipts of both candidates. 2 U.S.C. § 441a-1(a)(2); 11 C.F.R. § 400.10. A candidate with a significant "gross receipts advantage" is less likely to qualify for the higher limits. *See* 2 U.S.C. § 441a-1(a)(2)(B)(ii); 11 C.F.R. § 400.10. Similarly, a candidate seeking higher limits may be limited by the amount of personal funds that he or she expended. *See* 11 C.F.R. § 400.10.

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5. Each Form 10 filed with the Commission must include, among other things, "the total amount of expenditures from personal funds that the candidate has made, or obligated to make, with respect to an election as of the date of the expenditure that is the subject of the notification."

2 U.S.C. § 441a-1(b)(1)(E)(iii).

6. Mr. Broyhill started to spend personal funds on his campaign on July 1, 2003. Between July 1, 2003 and December 26, 2003, Mr. Broyhill expended \$326,500 in personal funds on his campaign.³

7. On March 1, 2004, Mr. Broyhill made a \$50,000 loan to the Committee, increasing his total personal expenditures to \$376,500. By expending over \$350,000, the Committee and candidate were obligated to file with the Commission and with Mr. Broyhill's opponents an FEC Form 10, Notification of Expenditures from Personal Funds, within 24 hours of the threshold expenditure, or by March 2, 2004. *See* 2 U.S.C. § 441a-1(b)(1)(C). The Committee did not file a Form 10 with the Commission until March 12, 2004.

8. Furthermore, the form filed by the Committee on March 12, 2004 listed the total amount of expenditures from personal funds as \$375,000. This figure omitted \$1,500 in contributions made by Mr. Broyhill in July 2003. *See supra* n.3.

9. In addition, the Commission did not timely receive four additional FEC Form 10s regarding additional loans in excess of \$10,000 made by Mr. Broyhill to the Committee on March 12, 2004, April 30, 2004, June 8, 2004, and June 19, 2004, in the amounts of \$25,000, \$150,000, \$50,000, and \$50,000, respectively. Further, the Committee completely failed to file a Form 10 for a loan made by Mr. Broyhill on June 28, 2004, in the amount of \$90,000.

³ Mr. Broyhill made contributions to the Committee of \$1,000 on July 1, 2003 and \$500 on July 31, 2003. He made loans of \$200,000 and \$125,000 on September 30, 2003 and December 26, 2003, respectively.

10. Each of the FEC Form 10s identified in the previous paragraph, as well as nine FEC Form 10s that were timely filed, also failed to take into account Mr. Broyhill's \$1,500 in contributions from the total amount of personal funds expenditures.

11. The Committee contends that much of the financial activity had already been reported on the Committee's Schedule As and on subsequent Form 10s. Further, the Committee contends that documentation provided by the Committee shows that the Committee timely transmitted the Form 10s for the March 12, 2004, April 30, 2004, and June 8, 2004 loans within the time-frame specified by the Act. Nevertheless, the Commission has no record of receiving the Form 10s for the March 12, 2004, April 30, 2004, and June 8, 2004 loans within the required time-frame. The Committee further contends that it timely filed the Form 10 regarding the June 28, 2004 loan but that it cannot provide documentation to support this contention. The Commission also has no record of receiving this Form 10 within the required time-frame.

V. Respondents violated:

1. 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b) by failing to file timely a notification disclosing that the candidate expended personal funds in excess of \$350,000;
2. 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R. § 400.22(b) because the Commission did not timely receive four additional Form 10s for the candidate loans made on March 12, 2004, April 30, 2004, June 8, 2004, and June 19, 2004;
3. 2 U.S.C. § 441a-1(b)(1)(D) by failing to file a Form 10 notification for the candidate loan made on June 28, 2004; and
4. 2 U.S.C. § 441a-1(b)(1)(E)(iii) by inaccurately reporting the total personal expenditures made by Mr. Broyhill on each Form 10 filed with the Commission.

VI. Respondents will take the following actions:

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1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of seventy-one thousand one hundred dollars (\$71,100), pursuant to 2 U.S.C. § 437g(a)(5)(A).
2. Respondents will cease and desist from violating 2 U.S.C. § 441a-1(b)(1)(C), 2 U.S.C. § 441a-1(b)(1)(D), 2 U.S.C. § 441a-1(b)(1)(E), and 11 C.F.R. § 400.21(b), and 11 C.F.R. § 400.22(b).
3. Respondents will amend the Committee's Form 10 disclosure reports to the Commission to accurately reflect the additional \$1,500 in personal funds expenditures made by Mr. Broyhill, and will file a Form 10 with the Commission disclosing the \$90,000 loan Mr. Broyhill made to the Committee on June 28, 2004.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

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FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY:  7/18/06
Rhonda J. Vosdignh
Associate General Counsel
for Enforcement
Date

FOR THE RESPONDENTS:

 16 JUNE '06
Craig Engle
Date

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