



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

MAY 4 2004

William Leo Constantine, Treasurer
Keyes 2000, Inc.
4700 Surry Place
Alexandria, VA 22304

RE: MUR 5442

Dear Mr. Constantine:

On April 22, 2004, the Federal Election Commission found that there is reason to believe that Keyes 2000, Inc. and you, as treasurer, violated 2 U.S.C. §§ 432(h), 432(c) and 441a(f), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 110.4 (c)(3), a provision of the Commission's implementing 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 such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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.

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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 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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

Sincerely,



Ellen Weintraub
Vice Chair

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

cc: candidate

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Keyes 2000, Inc.
and William Leo Constantine, as Treasurer

MUR: 5442

I. INTRODUCTION

This matter was generated from an audit of Keyes 2000, Inc. ("Committee") undertaken in accordance with 26 U.S.C. § 9038(a).

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contributions

1. Sample-Based Excessive Contributions

The Audit Division projected, through the use of generally accepted statistical sampling techniques, that the Committee received \$168,200 in excessive contributions. See Attachment at 8-12. This amount included \$72,914 in excessive contributions that were "curable" under the new rules for presumptive reattribution, but had not been resolved pursuant to 11 C.F.R. § 103.3(b)(3).¹ Based upon the information set forth in the audit referral, the Commission found reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting \$168,200 in excessive contributions.

2. Stale-dated Checks

During the audit, the Audit Division identified 27 stale-dated checks totaling \$8,003 and, accordingly, recommended that the Committee make a payment of \$8,003 to

¹ The Audit staff evaluated the \$168,200 projection using the Commission's new rules for presumptive reattribution and redesignation of excessive contributions. Under the new rules, the Committee could have reattributed the excessive portion of a contribution to any person whose name is imprinted on the check, or redesignated the excessive portion to another election in the election cycle without a signed consent. See 67 Fed. Reg. 69,928 (Nov. 19, 2002).

the United States Treasury. *See* 11 C.F.R. § 9038.6 (committee must pay to the United States Treasury amount of outstanding checks to creditors or contributors that have not been cashed).² The stale-dated checks at issue represented attempted refunds of excessive contributions. The Committee's failure to pay the United States Treasury an amount equal to the stale-dated checks resulted in the Committee's receipt of excessive contributions. *See* Explanation and Justification for 11 C.F.R. § 9038.6, 52 Fed. Reg. 20674 (June 3, 1987) (using the amount of outstanding checks could result in the committee's receipt of a prohibited or excessive contribution). Accordingly, the Commission found reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 2 U.S.C. § 441a(f) by receiving \$8,003 in excessive contributions related to its stale-dated checks.

B. Excessive Anonymous Cash Contributions

The Committee made 89 cash deposits in excess of \$50. During the audit, the Committee claimed that none of these deposits include anonymous cash contributions in excess of \$50, which would have required that the Committee promptly dispose of the funds in accordance with 11 C.F.R. § 110.4(c)(3). According to the Committee, each deposit consisted of cash contributions in amounts less than \$50. To support this contention, the Committee submitted to the Audit staff copies of the candidate's daily schedules, candidate and staff travel itineraries, and various media accounts of the candidate's appearances and campaign fundraising efforts. The Committee claimed that this information matched each cash contribution to the candidate's daily schedules, staff

² Stale-dated checks are checks issued that were never negotiated.

travel itineraries, and campaign events where small donor fundraising solicitations were made.

The Commission accepts the Committee's claim in instances where the Committee's documentation complied with the record-keeping requirements for anonymous cash contributions in amounts of \$50 or less. Under Commission regulations, political committees are required to keep an account of all contributions received by any reasonable accounting procedure. *See* 11 C.F.R. § 102.9(a). There are at least two reasonable accounting procedures for contributions of \$50 or less: first, the committee may keep an account of the name and address of each contributor and the date and amount of his or her contribution, as required for contributions in excess of \$50, *see* 2 U.S.C. § 432(c)(2); or, in the alternative, a committee may record the name of the event, the date contributions were received for the event, and the total amount of contributions received on each day of that event. *See* Advisory Opinion 1980-99.

The documentation submitted by the Committee indicates that the Committee substantially complied with the Commission's record-keeping requirements with respect to a majority of the cash deposits: that is, the Committee maintained an account of the total amount of the cash received, the date the receipts were deposited, and the general source of the funds or the fundraising event to which they were associated. At least 35 deposits totaling \$15,013, however, were inadequately documented. Specifically, thirty of the deposits were not made within ten days of the associated event pursuant to 11 C.F.R. § 103.3(a); the treasurer associated several large currency deposits with events that occurred up to 66 days after the deposits were made; explanations for other currency deposits referred to unverifiable events; and the remaining cash deposits were attributed

to "white mail"³ where no attempt was made to identify how many contributions each currency deposit represented. Because the Committee did not provide adequate documentation regarding the general source of the cash or event at which the cash was received, the Committee failed to adhere to a reasonable accounting method for contributions under \$50 as required by 2 U.S.C. § 432(c).

Moreover, given that there is no information to support the Committee's contention that each of the remaining 35 cash deposits was made up of individual contributions of less than \$50, and given the total dollar amount at issue, *i.e.*, \$15,013, it appears likely that the deposits contained individual contributions in excess of \$50. Notwithstanding this likelihood, there is no information available to suggest that the Committee had a practice or procedure in place for disposing of anonymous cash contributions in excess of \$50 and no indication in any of the Committee's records or statements that they ever disposed of excessive cash contributions.

Based on the foregoing and the analysis and recommendation contained in the audit referral, the Commission found reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 11 C.F.R. § 110.4(c)(3) by failing to properly dispose of anonymous cash contributions in excess of \$50. The Commission also found reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 2 U.S.C. § 432(c) by failing to keep adequate records of anonymous cash contributions.

³ "White mail" refers to mail that contains contributions that the recipient committee cannot definitively associate with a particular solicitation or program.

C. Cash Disbursements in Excess of \$100

The Audit Referral identified \$107,863 in cash disbursements that were inadequately documented and exceeded \$100 per transaction in violation of 2 U.S.C. § 432(h)(2). Of this amount, \$27,365 comprised debit card transactions, \$3,450 of which exceeded \$100 only by the bank ATM transaction fee of \$1.00 or \$1.50. Since these debit card transactions appear to be two separate transactions – one that resulted in \$100 to the Committee and the other that resulted in \$1.00 or \$1.50 to the bank – the amount of cash disbursements in excess of \$100 is \$104,413 (\$107,863 minus \$3,450). Accordingly, the Commission found reason to believe that Keyes 2000, Inc. and William Leo Constantine, as Treasurer, violated 2 U.S.C. § 432(h) by making \$104,413 in cash disbursements in excess of \$100.