



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

NOV 29 2004

**Via Certified Mail, Return Receipt Requested**

Theodore V. Koch, Treasurer  
North Carolina's Salute to  
George W. Bush Committee, Inc.  
PO Box 1154  
Alexandria, Virginia 22313

RE: MUR 5610

Dear Mr. Koch:

On November 9, 2004, the Federal Election Commission found reason to believe the North Carolina's Salute to George W. Bush Committee, Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 432(h)(1), 434(b)(4)(H)(v) and 434(6)(B)(v), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). However, after considering the circumstances of this matter, the Commission also determined to take no further action. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Alexandra Doumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley A. Smith".

Bradley A. Smith  
Chairman

Enclosure  
Factual and Legal Analysis

cc: Cleta Mitchell, Esq, Foley & Lardner

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2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENTS: North Carolina's Salute to George W. Bush MUR: 5610  
6 Committee, Inc. and Theodore V. Koch,  
7 as treasurer  
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10 **I. GENERATION OF THE MATTER**

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12 This matter was generated based on information ascertained by the Federal Election  
13 Commission ("the Commission") in the normal course of carrying out its supervisory  
14 responsibilities. *See* 2 U.S.C. § 437g(a)(2).

15 **II. BACKGROUND**

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17 Earl Allen Haywood served as Assistant Treasurer of North Carolina's Salute to George  
18 W. Bush Committee, Inc. ("Salute Committee" or "the Committee").<sup>1</sup> Between February 2002  
19 and May 2003, Haywood wrote checks totaling approximately \$18,975 from a Committee  
20 account, designating himself as payee. Neither Haywood nor the Committee kept track of the  
21 disbursements nor reported any of them to the Commission, resulting in separate and distinct  
22 violations of the Federal Election Campaign Act of 1971, as amended ("the Act"):<sup>2</sup>  
23 recordkeeping, reporting, and campaign depository violations.  
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<sup>1</sup> The Salute Committee raised funds for the Dole 2002 Committee, Inc., the North Carolina Republican Party and Hayes for Congress.

<sup>2</sup> The facts relative to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA") Pub L No 10-55, 116 Stat 81 (2002) BCRA did not substantively alter the provisions of the Act relevant to the facts in this matter Therefore, unless specifically stated to the contrary, all citations to the Act and all statements of applicable law herein refer to FECA and its implementing regulations, as amended by BCRA

1    **III.    FACTUAL AND LEGAL ANALYSIS**

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3            As Assistant Treasurer of the Salute Committee, Haywood's duties included collecting  
4    and recording political contributions to the Committee, depositing the funds in the appropriate  
5    bank accounts, accounting for funds received by the Committee, tracking all disbursements from  
6    the Committee and reporting this information to the Commission. His work with the Committee  
7    began when he was hired to carry out the accounting and reporting responsibilities for one  
8    fundraising event being co-hosted by the Committee. Eventually, his responsibilities expanded  
9    to other Committee events and he started receiving contributor checks at his home in  
10   Washington, D.C. Haywood claims that he alone was responsible for all of the functions of the  
11   accounting and reporting operation. However, he and Committee officials never finalized a  
12   contract concerning his employment and salary. As there was no mutual understanding regarding  
13   his compensation, Haywood resolved the matter by writing himself checks from Committee  
14   accounts.

15           In 2002, the Salute Committee filed Statements of Organization with the Commission  
16    designating Haywood as Custodian of Records and Assistant Treasurer. In addition, the  
17    Commission's Electronic Filing Office issued passwords for use with the electronic filing of  
18    reports to the Committee's treasurer and to Haywood, as Assistant Treasurer, in response to  
19    written requests by the Committee's treasurer.

20           Between October 2002 and May 2003, the Salute Committee was prompted to conduct an  
21    extensive internal review of its records. After completing its internal investigation, the  
22    Committee filed an amended Statement of Organization removing Haywood from his position  
23    with the Committee. On or about July 15, 2003, the Committee filed amended reports with the

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1 Commission that included the disbursements to Haywood that had not been previously disclosed;  
2 most of those disbursements were designated as "Unauthorized Disbursements" in the reports.  
3 Further, as a result of the findings made during its review, the Committee had previously  
4 reported the matter to the Department of Justice ("DOJ"). The Committee had not, however,  
5 voluntarily disclosed the activity to the Commission at the time the Committee referred the  
6 matter to DOJ.<sup>3</sup>

7 Because a political committee is an artificial entity, it can only act through individuals or  
8 agents. Pursuant to the Act, the Salute Committee, through its treasurer, was required to account  
9 for disbursements and report them to the Commission. 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v),  
10 (6)(B)(v). Furthermore, the Committee was required to deposit all receipts received in  
11 designated campaign accounts. 2 U.S.C. § 432(h)(1); 11 C.F.R. §§ 103.2, 103.3(a). Commission  
12 regulations allow an assistant treasurer to act in place of a treasurer in the event of a vacancy or if  
13 the treasurer is unavailable. 11 C.F.R. § 102.7. Ultimately, however, a committee treasurer is  
14 the person responsible for accounting for disbursements and reporting them to the Commission.  
15 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v), (6)(B)(v). Haywood had actual authority to issue  
16 disbursements, file reports and handle contribution checks on behalf of the Committee. He was  
17 able to sign checks on Committee accounts and possessed a password, which the Committee  
18 treasurer requested on his behalf, for the electronic filing of reports with the Commission. Thus,  
19 in performing his duties, Haywood acted as an agent of the Committee. Cf. 11 C.F.R. § 109.3  
20 (defining agent, albeit with regard to coordinated and independent expenditures, as "any person

<sup>3</sup> In a letter dated July 15, 2003, the Committee advised the Reports Analysis Division ("RAD") of Haywood's scheme and indicated that it had "notified the appropriate law enforcement authorities regarding the situation." RAD had already terminated the Salute Committee, effective May 23, 2003.

1 who has actual authority, either express or implied, to engage in any [number of specified  
2 activities] on behalf of the specific persons.”).

3 A principal is liable for the acts of its agents committed within the scope of his or her  
4 employment. *Weeks v. United States*, 245 U.S. 618, 623 (1918); *Rouse Woodstock Inc. v. Surety*  
5 *Federal Savings & Loan Ass’n*, 630 F. Supp. 1004, 1010-11 (N.D. Ill. 1986). Where a principal  
6 grants an agent express or implied authority, the principal generally is responsible for the agents’  
7 actions that fall within the scope of his authority.<sup>4</sup> See *Weeks v. United States*, 245 U.S. 618, 623  
8 (1918); Restatement (Second) of Agency § 228(1); see also *Rouse Woodstock Inc.*, 630 F. Supp.  
9 at 1010-11 (principal who places agent in position of authority normally must accept the  
10 consequences when the agent abuses that authority).

11 A principal can be held civilly liable even for the tortuous acts of an agent that are done  
12 within the course and scope of the agent’s employment. *Veranda Beach Club Ltd. Partnership v.*  
13 *Western Sur Co.*, 936 F.2d 1364, 1376 (1<sup>st</sup> Cir. 1991). When an agent acts within the scope of  
14 his authority, a principal cannot escape responsibility on the grounds that he lacked knowledge of  
15 the agent’s actions, or that the agent’s actions were unauthorized, tortuous, or even unlawful.  
16 See *Local 1814, Int’l Longshoremen’s Ass’n v. NLRB*, 735 F.2d 1384, 1395 (D.C. Cir. 1984),  
17 cert. denied, 469 U.S. 1072 (holding union liable for scheme in which officer of union conspired  
18 with employer to procure illegal kickbacks).

19 Even if an agent does not enjoy express or implied authority, a principal may be liable for  
20 the agent’s actions on the basis of apparent authority. *Richards v. General Motors Corporation*,

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<sup>4</sup> An agent’s conduct is within the scope of his authority if it is the kind he is employed to perform, takes place within authorized time and space limits and is actuated, at least in part, by a purpose to serve the principal Restatement (Second) of Agency § 228 (1).

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1 991 F.2d 1227 (9<sup>th</sup> Cir. 1993). The Supreme Court has held principals liable for the actions of  
2 agents with apparent authority even where the agent acted in secret with the sole purpose of  
3 benefiting himself. *See, e.g., American Society of Mechanical Engineers, Inc. v. Hydrolevel*  
4 *Corp.*, 456 U.S. 556 (1982); *Gleason v. Seaboard Air Line Railway*, 278 U.S. 349, 353-55  
5 (1929). In *American Society of Mechanical Engineers*, the Supreme Court reasoned that at times  
6 an agent's position facilitates a fraud against third persons when the agent's actions may appear  
7 to be performed in the ordinary course of business. *See* 456 U.S. at 559; Restatement (Second)  
8 of Agency § 261. A principal may be held liable even if the agent's acts are unauthorized, or  
9 even illegal, when the principal placed the agent in the position to commit the acts. *See First*  
10 *Amer. State Bank v. Continental Ins. Co.*, 897 F.2d 319 (8<sup>th</sup> Cir. 1990); *Hester v. New Amsterdam*  
11 *Casualty Co.*, 412 F.2d 505, 508 (4<sup>th</sup> Cir. 1969).

12 In the past, the Commission applied these general agency principles to political  
13 committees and held them liable for the acts of their agents. In MUR 3585, the Commission  
14 imputed liability to the Tsongas for President Committee for reporting violations, among others,  
15 as a result of the actions of its agent who had broad authority over the committee's financial  
16 transactions. In that case, the committee's chief fundraiser, who was responsible for receiving  
17 and accounting for campaign contributions, and assuring compliance with the Act, had opened a  
18 secret checking account under the committee's name but using his own social security number.  
19 He ultimately deposited \$181,000 in campaign contributions to that account, failed to include the  
20 deposits on campaign reports and spent the money for his own personal expenses. Similarly, in  
21 MUR 4389, the Commission made reason to believe findings against the Orange County  
22 Democratic Central Committee for the acts of its chairman. The chairman opened a separate

1 bank account in the committee's name without informing other members of the committee, and  
2 then deposited and spent committee funds through the use of that account. In addition, in MUR  
3 2602, the Commission made knowing and willful findings against the Rhodes Committee for  
4 violations committed through the acts of its Assistant Treasurer/Finance Chairman. In that  
5 matter, the finance chairman accepted corporate contributions and converted them into smaller  
6 amounts as contributions in the names of other persons. He also made out false contributor cards  
7 and tried to prevent the campaign manager from sending out acknowledgement letters to those  
8 fake contributors. Finally, in AO 1992-29, the Commission deemed the committee to have  
9 received contribution checks on the date an employee, who was not the treasurer but was  
10 authorized to receive contributions, received them even though the employee had left the checks  
11 in a drawer until after the 10-day deposit period had expired, had acted without the treasurer's  
12 knowledge, and had acted contrary to express instructions.

13 Based on the fact that he had signatory power on the Committee accounts, Haywood had  
14 actual authority to make disbursements on behalf of the Committee. Likewise, his possession of  
15 an electronic filing password meant to serve as an electronic signature, specifically provided to  
16 him by the Committee's treasurer, also indicates he had actual authority to file reports with the  
17 Commission. Thus, Haywood was acting within the scope of his authority when he wrote checks  
18 for the disbursement of funds and when he completed and filed reports with the Commission on  
19 behalf of the Salute Committee. Although Haywood may not have been authorized to make  
20 disbursements to himself, it appears he was permitted to make disbursements without prior  
21 authorization of other Committee personnel.

MUR 5610

North Carolina's Salute to George W. Bush Committee, Inc.  
and Theodore V Koch, as treasurer  
Factual and Legal Analysis

1           The Salute Committee failed to keep an accurate record of its disbursements and to file  
2 accurate reports with the Commission. Further, the Committee did not deposit all of the  
3 contributions it received into designated campaign accounts. Therefore, based on the foregoing,  
4 there is reason to believe that North Carolina's Salute to George W. Bush Committee, Inc. and  
5 Theodore V. Koch, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 432(h)(1), 434(b)(4)(H)(v) and,  
6 434(6)(B)(v).