



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Michael E. Toner
Bryan Cave LLP
700 Thirteenth Street, NW
Washington, DC 20005

MAR 27 2009

RE: MUR 6034
Manion for Congress and
Richard Durso, in his official
capacity as treasurer

Dear Mr. Toner:

On July 11, 2008, the Federal Election Commission notified your clients, Manion for Congress and Richard Durso, in his official capacity as treasurer, ("Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). A copy of the complaint was forwarded to your clients at that time.

On March 10, 2009, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by knowingly accepting a prohibited in-kind corporate contribution in connection with the costs of the invitations and miscellaneous expenses relating to a fundraiser, because the Committee reimbursed Worth & Company ("Worth") within a commercially reasonable time. Additionally, the Commission has determined to dismiss the other allegations against your clients. Based on the information available to the Commission, however, it appears that the Committee may have violated: 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by knowingly accepting a prohibited in-kind corporate contribution in the form of food and beverages provided by Worth for which the Committee did not pay in advance; 2 U.S.C. § 434(b) and 11 C.F.R. § 104.11(b) by failing to disclose the debt owed to Worth for costs associated with the fundraiser on its 2008 Pre-Primary Report; and 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c) with respect to the Committee's disclaimers on the invitations for the fundraiser. The Commission cautions the Committee to take steps to ensure that its conduct is in compliance with the Act and Commission regulations. The Factual and Legal Analysis, explaining the Commission's findings, is enclosed for your information.

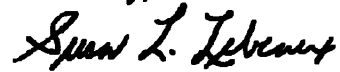
The Commission reminds your clients that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect because this matter is open with respect to other respondents. The Commission will notify you when the entire file has been closed.

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Michael E. Toner, Esquire
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If you have any questions, please contact Roy Q. Lockett, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Manion for Congress and Richard Durso, MUR 6034
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Todd Myers. *See* 2 U.S.C. § 437g(a)(1). The complaint in this matter alleges that Manion for Congress and Richard Durso, in his official capacity as treasurer,¹ ("the Committee") knowingly accepted prohibited in-kind corporate contributions in the form of facilitated corporate resources from Worth & Company, Inc., ("Worth") in violation of 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. § 114.2(f). Specifically, the complaint maintains that the Committee used Worth's corporate facilities, which included its rooms, employees, and its payment for food, beverages and other expenses with corporate funds, for a fundraiser on behalf of then-candidate Tom Manion, who was running for Pennsylvania's 8th Congressional District, without compensation from the Committee. The complaint also asserts that the Committee failed to disclose costs incurred in connection with the fundraiser, which occurred on March 25, 2008, on its 2008 Pre-Primary Report, which covered the time period January 1, 2008 through April 2, 2008.

Additionally, the complaint asserts that the Committee accepted contributions secretly "bundled" by having an unnamed Worth employee collect and forward the contributions checks received at the event to the Committee, in violation of 11 C.F.R. § 110.6(b). Finally, the complaint alleges that the invitations distributed in connection with the event contained a defective and misleading disclaimer, contrary to 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c).

1 In response, the Committee asserts that it committed no substantive violations of the Act, but if it
2 did commit any violations of the Act, they were technical, so the complaint should be dismissed
3 or transferred to the Alternative Dispute Resolution Office.

4 As discussed in further detail below, the Commission has determined to: (1) dismiss the
5 allegation that the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by
6 knowingly accepting a prohibited in-kind corporate contribution in the form of food and
7 beverages provided by Worth for which the Committee did not pay in advance, and send a letter
8 of caution; (2) dismiss the allegation that the Committee violated 2 U.S.C. § 434(b) and
9 11 C.F.R. § 104.11(b) by failing to disclose the debt owed to Worth for costs associated with the
10 fundraiser on its 2008 Pre-Primary Report, and send a letter of caution; (3) find no reason to
11 believe that the Committee violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f) by knowingly
12 accepting a prohibited in-kind corporate contribution in the form of printing and miscellaneous
13 costs, because the Committee reimbursed Worth within a commercially reasonable time;
14 (4) dismiss the allegation that the Committee violated 11 C.F.R. § 114.2(f) by accepting Worth's
15 provision of its facilities without compensating Worth, and by accepting the assistance of one of
16 Worth's employees who worked on the event; and (5) dismiss the allegation that the
17 Committee's disclaimers on the invitations for the Manion fundraiser were defective, in violation
18 of 2 U.S.C. § 441d(c) and 11 C.F.R. § 110.11(c), and send a letter of caution.

¹ Susan Manion was the Committee's treasurer when the alleged violations occurred. Richard Durso replaced her as treasurer on September 11, 2008.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

On March 25, 2008, congressional candidate Tom Manion attended a fundraiser, billed as a “champagne reception,” organized, hosted and paid for by Worth in a room located in its facility, at which attendees could join “Worth & Company and other business leaders” in “support[ing] Republican Candidate Tom Manion.” *See* Invitation (attached to Complaint). Worth provided attendees at the event with \$4,424.17 worth of food and beverages. Committee Response at 8.

Worth also printed and distributed invitations for the fundraiser. *Id.* at 7; Exhibit 1 (Worth Invoice). The invitations requested that attendees, who were asked to donate at least \$250 per person, RSVP to Sara Alexander, a Worth employee, at her corporate email address, , or her office telephone number. *Id.* at 5; Complaint at 2.

The RSVP information is contained in a shaded box at the bottom of the invitation, which also includes the disclaimer “Paid for by Manion for Congress.” Complaint at 5. As shown in Worth’s Invoice (Committee Response, Exhibit 1), the printing costs included \$1,038.80 for 2,000 color copies of “Tom Manion Flyers” (presumably for the invitations to the event), and \$150 for miscellaneous expenses, including Worth’s estimate of the cost of postage. Adding these expenses (\$1,188.80) with the \$4,424.17 in food and beverage costs yields \$5,612.97.

The available information indicates that approximately 75 people attended the fundraiser, many of whom were friends and family of Worth employees. According to the Committee, the event raised approximately \$16,400, after which the contributions were collected by a Manion campaign intern at the event and forwarded to the Committee for reporting and depositing. Committee Response at 2. Worth did not bill the Committee for the \$5,612.97 in food, beverage,

1 printing, and miscellaneous expenses until June 30, 2008, 95 days after the March 25, 2008
2 event. *Id.* The Committee maintains that it paid Worth in full on June 30, 2008, the same date
3 that the Committee received the Invoice from Worth, *see* Committee's disbursement check to
4 Worth, dated June 30, 2008 (attached to the Committee's Response), and its 2008 July Quarterly
5 Report apparently reflects this disbursement. The Committee's 2008 July Quarterly Report
6 discloses a disbursement to Worth for "printing and catering" matching the Invoice amount.

7 The available information indicates that the *Philadelphia Inquirer* contacted Worth
8 executives on June 30, 2008, and that an article raising questions about the Manion fundraiser
9 similar to those raised in the complaint, was dated July 1, 2008, the same date on which the
10 complaint was filed, and one day after the Committee received and paid the Invoice amount. *See*
11 Complaint at 7; *see also* [http://www.philly.com/inquirer/local/20080701_Fund-](http://www.philly.com/inquirer/local/20080701_Fund-raiser_for_candidate_faulted.html)
12 [raiser_for_candidate_faulted.html](http://www.philly.com/inquirer/local/20080701_Fund-raiser_for_candidate_faulted.html).

13 **B. Analysis**

14 **1. Corporate Facilitation**

15 **a. Payment for Food and Beverages and Other Expenses**

16 Political committees are prohibited from accepting corporate resources or facilities to
17 engage in fundraising activities in connection with any federal election beyond certain limited
18 exemptions set forth in the Commission's regulations. *See* 2 U.S.C. § 441b; 11 C.F.R.
19 § 114.2(f). For example, a political committee may not accept catering or other food services
20 from a corporation in connection with fundraising unless it pre-pays the corporation for the fair
21 market value of the goods. *See* 11 C.F.R. § 114.2(f)(2)(i)(E).

22 Here, although the Committee did not pre-pay Worth for the \$4,424.17 in food and
23 beverages served at the fundraiser, as required, it reimbursed Worth for the entire amount the

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1 same day it received the Invoice. Accordingly, the Commission has determined to exercise its
2 prosecutorial discretion and dismiss the allegation that Manion for Congress and Richard
3 Durso, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R.
4 § 114.2(f), and send a letter of caution. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

5 **b. Payment for Other Costs on the Invoice and Reporting**

6 With respect to the other expenses found on the Invoice, printing and miscellaneous
7 expenses that collectively totaled \$1,188.80, the Commission's regulations require that such
8 expenses must be reimbursed by a committee within a "commercially reasonable time" in order
9 to avoid causing corporate facilitation, *see* 11 C.F.R. § 114.2(f)(2)(B). The Commission has
10 found a number of different arrangements to be acceptable, including a situation where the
11 corporation did not bill the campaign for 90 days. *See* MUR 5985 (Tim Burns). As such, the
12 fact that the Committee was billed and paid 95 days after the event in question appears to be
13 reasonable. Therefore, the Commission finds no reason to believe that Manion for Congress and
14 Richard Durso, in his official capacity as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R.
15 § 114.2(f) in connection with the cost of the invitations and miscellaneous expenses. Although
16 the Act requires that political committees disclose debts incurred until extinguished, *see* 2 U.S.C.
17 § 434(b) and 11 C.F.R. § 104.11(a), and disclose debts exceeding \$500 as of the date they are
18 incurred, 11 C.F.R. § 104.11(b), which the Committee failed to do in the case of the costs of the
19 fundraiser, the Commission has determined to exercise its prosecutorial discretion and dismiss
20 the allegation that Manion for Congress and Richard Durso, in his official capacity as treasurer,
21 violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.11(b), and send a letter of caution. *See Heckler*
22 *v. Chaney*, 470 U.S. 821 (1985).

1 **c. Compensation for use of Worth's rooms for fundraiser**

2
3 Corporate facilitation also occurs when a corporation makes its meeting rooms available
4 for a candidate's fundraiser, but does not make the room available for civic or community
5 groups. *See* 11 C.F.R. § 114.2(f)(2)(i)(D). Here, the complaint alleges that the Committee
6 should have paid Worth for the use of the rooms in its corporate facilities where it held the
7 reception. The available information reveals that Worth has made representations that it made
8 the room that was used for the event available to other civic groups. Thus, no payment by the
9 Committee was required. To determine definitively whether this representation is accurate, an
10 investigation would be necessary. However, because it would not be worth the Commission's
11 limited resources to open an investigation with respect to the relatively small amount of money
12 involved in this matter, the Commission exercises its prosecutorial discretion and dismisses the
13 allegation that Manion for Congress and Richard Durso, in his official capacity as treasurer,
14 violated 11 C.F.R. § 114.2(f) by accepting Worth's provision of a room for the fundraiser
15 without compensation. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

16 **d. Use of Worth Employee Sara Alexander**

17 Section 114.9(a)(2) of the Commission's regulations contains a safe harbor from the
18 corporate facilitation rules for volunteers. Individual volunteer activity that does not exceed
19 one hour per week or four hours per month, regardless of whether the activity is undertaken
20 during or after normal working hours, as well as voluntary individual Internet activities, as set
21 forth in 11 C.F.R. § 100.94, fall within the safe harbor, provided that the activity does not
22 prevent an individual from completing the normal amount of his or her compensated work, does
23 not increase the overhead or operating costs of the corporation, and is not performed under
24 coercion. *See* 11 C.F.R. § 114.9(a)(2)(ii).

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1 With respect to Alexander, the employee who allegedly assisted with the Manion
2 fundraiser, the available information indicates that Worth has denied coercing her and maintains
3 that her work on the Manion fundraiser did not prevent her from completing her normal load of
4 compensated work. The available information does not include an affidavit or statement from
5 Alexander regarding this allegation. To establish the full scope of Alexander's purported
6 volunteer activities, further investigation would be necessary. However, due to the *de minimus*
7 dollar amount involved and the need to conserve Commission resources, the Commission
8 exercises its prosecutorial discretion and dismisses the allegation that Manion for Congress and
9 Richard Durso, in his official capacity as treasurer, violated 11 C.F.R. § 114.2(f) with respect to
10 an employee's time spent working on the Manion fundraiser. *See Heckler v. Chaney*, 470 U.S.
11 821 (1985).

12 e. **Alleged Collection and Forwarding of Contributions**

13 Although corporations are prohibited from collecting and forwarding contributions to
14 candidates, 11 C.F.R. § 110.6(b)(2)(i)(E), there is no indication, save for the complaint's
15 unsupported allegation, that Worth acted as a conduit for the contributions raised at the Manion
16 fundraiser. The Committee has stated that a Manion volunteer collected and forwarded the
17 contributions made at the fundraiser. Committee Response at 5. Thus, the Commission finds no
18 reason to believe that Manion for Congress and Richard Durso, in his official capacity as
19 treasurer, accepted illegally collected and forwarded contributions from the fundraiser, in
20 violation of 11 C.F.R. § 110.6(b)(2). *See Statement of Reasons in MUR 4960 (Hillary Rodham*
21 *Clinton for U.S. Senate Exploratory Committee, issued December 21, 2000)* (four
22 Commissioners stated, "Absent personal knowledge, the Complainant, at a minimum, should

1 have made a sufficiently specific allegation . . . so as to warrant a focused investigation that can
2 prove or disprove the charge”).

3 **2. Improper Disclaimer**

4 The Committee states, upon information and belief, that over 500 invitations for the
5 March 25th event were mailed, *see* Committee Response at 8, which constitutes a public
6 communication subject to the Act's disclaimer requirements. *See* 2 U.S.C. § 441d(c) and
7 11 C.F.R. § 110.11(c)(2)(ii). Under the Act, whenever a political committee makes a
8 disbursement for the purpose of financing any communication through any mailing, or solicits
9 any contribution through any mailing, such communication, if paid for and authorized by a
10 candidate, an authorized political committee of a candidate, or its agents, shall clearly state that
11 the communication has been paid for by such authorized political committee. *See* 2 U.S.C.
12 § 441d(a). Among other requirements, disclaimers for printed communications must be
13 contained in a printed box set apart from the other contents of the communication. *See* 2 U.S.C.
14 § 441d(c)(2); 11 C.F.R. § 110.11(c)(2)(ii). As the Committee—who paid for the communication
15 when it reimbursed Worth—acknowledges, the disclaimer on the Manion fundraiser invitation
16 was not in a printed box set apart from the remainder of the invitation, as required by 11 C.F.R.
17 § 110.11(c)(2)(ii). Committee Response at 8. However, due to the *de minimis* nature of the
18 violation, the Commission exercises its prosecutorial discretion and dismisses the allegation that
19 Manion for Congress and Richard Durso, in his official capacity as treasurer, violated 2 U.S.C.
20 § 441d(c) and 11 C.F.R. § 110.11(c) with respect to its disclaimers on the invitations for the
21 Manion fundraiser, and sends the Committee a letter of caution. *See Heckler v. Chaney*, 470
22 U.S. 821 (1985).