

cc: Norton  
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AUDIT REFERRAL # 04-02



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

January 15, 2004

**MEMORANDUM**

TO: Lawrence H. Norton  
General Counsel

THROUGH: James A. Pehrkon  
Staff Director

Robert J. Costa  
Deputy Staff Director

FROM: Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Martin L. Favin  
Audit Manager

Thomas Hintermister  
Lead Auditor

SUBJECT: Battles for Congress (A03-01) – Referral Matter

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OFFICE OF GENERAL  
COUNSEL

On January 6, 2004, the Commission approved the final audit report on Battles for Congress (BFC). The final audit report includes a matter that meets the criteria for referral to your office: Finding 2—Receipt of Contributions that Exceed Limits (see attachment). Please note the date of the earliest violation in this finding was August 13, 2001 and no single contributor from this finding had an excessive amount greater than \$2,000. Due to the small amounts involved and acknowledgement of the issue by BFC officials by disclosing the recommended refund amounts as debts owed, the Audit staff feels that this matter would be appropriate for referral to the Office of Alternative Dispute Resolution.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Tom Hintermister or Marty Favin at 694-1200.

Attachment: Finding 2—Receipt of Contributions that Exceed Limits

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## **Finding 2. Receipt of Contributions that Exceed Limits**

### **Summary**

BFC received contributions from 20 individuals which exceeded the contribution limitation for the Primary election by \$12,775. In response to the interim report, BFC stated that funds were not available to make refunds and disclosed the amounts due to these individuals on Schedule D.

### **Legal Standard**

**A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$1,000 per election from any one contributor. A candidate who loses the primary (or otherwise does not participate in the general election) does not have a separate limit for the general election. If the candidate accepts contributions for the general election before the primary is held and loses the primary, then general election contributions must be redesignated or the contributions must be refunded within 60 days of the primary. 2 U.S.C. §§441a(a)(1)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - Keep enough money in the account to cover all potential refunds;
  - Keep a written record explaining why the contribution may be illegal;
  - Include this explanation on schedule A if the contribution has to be itemized before its legality is established;
  - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in FEC regulations (see below for explanations of reattribution and redesignation); and
  - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

**C. Revised Regulations Applied.** The Commission recently adopted new regulations that allow committees greater latitude to reattribute contributions to joint account holders and has decided to apply these regulations to current matters. The Audit staff has evaluated the excessive contributions discussed below using the new regulations.

### **Facts and Analysis**

A review of contributions identified 13 individuals that exceeded the limitation for the primary election by \$8,350. Ten of the individuals contributed more than the limitation using a check with a single account holder (one name imprinted on the check). For these individuals, BFC could not presumptively reattribute portions of the contributions to another individual.<sup>1</sup> Two of the 13 individuals gave \$2,000 each using their joint bank

<sup>1</sup> Since the candidate lost in the Primary election, BFC could not redesignate contributions to the General election.

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account. Since each spouse had already contributed the maximum amount to the primary election, no presumptive reattribution could be applied to the excessive amounts. The remaining individual gave an in-kind contribution in the amount of \$1,900. The excessive portion of this contribution also could not be reattributed to another individual.

In addition, since the candidate was not involved in the general election, BFC was required to reattribute, redesignate, or refund those contributions designated to the general election. The Audit staff identified another seven contributors who had given contributions totaling \$4,425 which BFC disclosed as designated to the general election. These seven individuals had contributed the maximum \$1,000 to the primary election.

At the exit conference, the candidate stated that the contributors who had given to the general election were contacted by BFC and asked to redesignate their contribution to a future campaign. No evidence has been provided to support this statement or to show what future campaign was anticipated.

BFC did not establish a separate account for questionable contributions and did not maintain a sufficient balance during the campaign to refund these contributions for the periods of June 5 through July 19, 2002, and August 2 through August 30, 2002. Currently, the campaign account balance is not sufficient to make all necessary refunds.

#### **Interim Audit Report Recommendation and Committee Response**

In response to the recommendation in the interim audit report, BFC stated that funds were not available to make contribution refunds. Therefore, BFC disclosed the refund amounts due to these individuals as debts on its 2003 July 15<sup>th</sup> Quarterly Report.

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