



Federal Election Commission
Washington, DC 20463

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2004 MAY -6 A 11:46

MEMORANDUM

SENSITIVE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director, ADR Office

BY: Lynn M. Fraser
Assistant Director, ADR Office

SUBJECT: Recommendation to Close the File on ADR 165

DATE: May 5, 2004

On April 23, 2004, the ADR Office (ADRO) received MUR 5399 from OGC/CELA to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 165 is inappropriate for ADR and recommend that the case be closed. Following the procedures approved by the Commission on March 3, 2003, this matter will be closed by ADRO if the Commission approves the recommendation in this memorandum. The Office of General Counsel (OGC) concurs in the description of this matter and also concurs that it will not be returned to OGC for further action.

ADR 165/MUR 5399: The complaint states that an amended Post-General Report filed by Respondents Gutknecht for Congress and David Byer, Treasurer ("Respondents Gutknecht") on March 31, 2003 discloses a contribution of \$1000 from Respondent Prescott to Respondents Gutknecht. Complainant alleges that the report discloses that Respondent Prescott is a lobbyist for the Mystic Lake Casino. However, Mystic Lake Casino is owned and operated by the Complainant, and while Respondent Prescott is a member of the Shakopee Mdewakanton Sioux Community, he is not employed by the tribal community in any capacity.

Respondents contend that the committee staff made an error due to an inability to exactly define Respondent Prescott's occupation. While he is not employed by the Shakopee Mdewakanton Sioux Community, it is reportedly the primary source of his income as a tribal member. Respondents Gutknecht further contend that Respondent Prescott did not tell the committee that he was a lobbyist for, or employed by, Mystic Lake Casino. Respondents Gutknecht filed another amended 30 Day Post Election Report on January 28, 2004 correcting the information about Respondent Prescott.

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Respondent Prescott contends that he made the contribution, but at no time did he portray himself as employed by, or a lobbyist for, Mystic Lake Casino. He did inform the committee that he was a member of the Shakopee Mdewakanton Sioux Community

Attached for the Commission's review is the ADR *Case Analysis Report* (CAR) on ADR 165,

Recommendation: We recommend that ADR 165/MUR 5399 be closed and the appropriate letters sent.

24-19-023-2903

ADR CASE ANALYSIS REPORT

ADR Case: 165

Respondents: 1. Gutknecht for US Congress
David Byer, Treasurer
2. Leonard Prescott

MUR: 5399

OGC Case Open Date: 12/23/2003

Respondents' Rep.: 1. Nels Pierson
2. Elizabeth T. Walker, Esq.

Date Forwarded to ADRO: 04/23/2004

Committee Name: Gutknecht for US Congress

Date Reviewed by ADRO: 04/29/2004

Committee Type: Authorized

District #/or State: MN 1st CD

Election - Won/Lost: Won

Complainant: Shakopee Mdewakanton Sioux
Community

Election Cycle: 2002

Summary of Complaint: The complaint states that an amended Post-General Report filed on March 31, 2003 discloses a contribution of \$1000 from Respondent Prescott to Respondents Gutknecht for US Congress and David Byer. Complainant alleges that the report discloses that Respondent Prescott is a lobbyist for the Mystic Lake Casino. However, Mystic Lake Casino is owned and operated by the Complainant, and while Respondent Prescott is a member of the Shakopee Mdewakanton Sioux Community, he is not employed by the tribal community in any capacity.

Violations Alleged: 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 100.12, 100.20, 100.21

Respondents' Replies: Respondents Gutknecht for Congress and David Byer, Treasurer ("Respondents Gutknecht") contend that the committee staff made an error due to an inability to exactly define Respondent Prescott's occupation. While he is not employed by the Shakopee Mdewakanton Sioux Community, it is reportedly the primary source of his income as a tribal member. Respondents Gutknecht further contend that Respondent Prescott did not tell the committee that he was a lobbyist for, or employed by, Mystic Lake Casino. Respondents Gutknecht filed another amended 30 Day Post Election Report on January 28, 2004 correcting the information about Respondent Prescott.

Respondent Prescott contends that he made the contribution, but at no time did he portray himself as employed by, or a lobbyist for, Mystic Lake Casino. He did inform the committee that he was a member of the Shakopee Mdewakanton Sioux Community.

Issues:

- Identifying each person who makes a contribution to the reporting committee in excess of \$200 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 100.12

Related FEC Experience/Guidance: The statute clearly states that reports must identify the contributor. The regulations go on to specify that the reporting committee must also use best efforts to obtain the information as to a contributor's occupation and employer.

Analysis: In reviewing previous matters that came before the Commission in related matters, the referral or complaint was that committees did not report information beyond the name and address of their contributors. In addition, in those matters, the reporting committee did not demonstrate any "best efforts" to obtain the required information. The resolution of those matters ranged from closing the file with no further action, to a letter of admonishment, or a civil penalty. In this matter, the committee staff did not understand that a member of a tribe could receive income from the tribe, or from tribal businesses, and yet not be employed by the tribe or the related business. 4

ADR Recommendation: DISMISS

64-19-025-2905