




FEDERAL ELECTION COMMISSION
Washington, DC 20463

Silberman

SENSITIVE

MEMORANDUM

TO: Commissioners
Staff Director
General Counsel
Director, ADR

FROM: Office of the Commission Secretary 

DATE: August 19, 2005

SUBJECT: Statement of Reasons ADR 196,
ADR 198, ADR 200, and ADR 213
Chairman Scott E. Thomas,
Commissioners David M. Mason,
Bradley A. Smith, and Ellen L. Weintraub

The attached document is being circulated for a 48-hour review prior to public release. Absent objection, the Office of General Counsel will include this statement in the public record file in this case.

cc: Vincent Convery

Attachment

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FEDERAL ELECTION COMMISSION
 WASHINGTON, D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

| | | |
|----------------------------------|---|----------------------|
| In the Matter of |) | |
| |) | |
| LeSueur for Congress '04, |) | ADR 196, ADR 198, |
| Eddie "Edie" Ingram, Treasurer |) | ADR 200, and ADR 213 |
| and Clinton B. LeSueur |) | |
| (MURs 5433, 5435, 5459 and 5596) |) | |

STATEMENT OF REASONS

On July 19, 2005, the Federal Election Commission ("Commission") declined to accept the recommendation of the Alternative Dispute Resolution Office to approve the consolidated negotiated agreement to resolve ADR 196 (MUR 5433), ADR 198 (MUR 5435), ADR 200 (MUR 5459) and ADR 213 (MUR 5596), and voted 4-2 to close the files on these matters. We declined to accept the negotiated agreement as the regulations do not present clear direction to the regulated community on the issue of computing pro-rata salary to a candidate. *See* 11 C.F.R. § 113.1(g)(1)(i)(I).

The Complainant, Friends of Bennie Thompson, alleged in these matters that the Respondents LeSueur for Congress '04 and Eddie "Edie" Ingram, Treasurer, made excessive salary payments to the candidate in February, March and August 2004, as well as a premature salary payment of \$600 on January 6, 2004. The complaints alleged the excessive salary payments totaled \$3,974.50. The Complainant argues that, based on the candidate's 2003 financial disclosure report filed with the U.S. House of Representatives reflecting earnings of \$18,000 in 2003, Respondents would be restricted to paying Mr. LeSueur a salary of no more than \$1,500 per month. The complaint states that the Pre-Primary, April Quarterly, and October Quarterly reports filed by Respondents disclose payments of \$3,200 to Mr. LeSueur in February, \$1,872.50 in March, and \$3,402 in August.

In reply to the complaints, Respondents contend that the regulations allowed the Committee to pay a percentage of the candidate's previous annual salary, in proportion to the number of months, or days, he was a candidate. Respondents argued that the Committee could pay the candidate an aggregate of \$14,695.89, and that they did not exceed that amount. In addition, Respondents filed amended reports that disclosed salary payments to the candidate of \$1,700 in February 2004, \$1,332.50 in March 2004, \$1,500 in April 2004, \$1,581.50 in May 2004, \$1,290 in June 2004, \$3,402 in August 2004 and \$1,519 in October 2004, for an aggregate salary of \$12,125. Respondents' reports also disclosed a refund in April 2004 to the Committee of the \$600 for the premature salary payment made on January 6, 2004.

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The regulations state:

Salary payments by a candidate's principal campaign to a candidate shall be the lesser of: the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the earned income that the candidate received during the year prior to becoming a candidate. . . . Salary shall not be paid to a candidate before the filing deadline for access to the primary election ballot for the Federal office that the candidate seeks, as determined by State law, or in those states that do not conduct primaries, on January 1 of each even-numbered year.


If the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff. If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary payments may be paid beyond the date he or she is no longer a candidate. . . . *During the time period in which a principal campaign committee may pay a salary to a candidate under this paragraph, such payment must be computed on a pro-rata basis.* 11 C.F.R. § 113.1(g)(1)(i)(I) (emphasis added).

As stated above, the regulations do not present clear direction to the regulated community on the issue of computing pro-rata salary to a candidate, in part, due to the definition of " . . . a pro-rata basis." Pro rata is defined as proportionately, or according to a certain rate or proportion, and pro rate is defined as to divide, or distribute proportionally. Black's Law Dictionary (8th ed. 2004). If the regulations intend to use the definition of pro rata, then the regulations could be interpreted such that Respondents did not violate the FECA because the candidate's aggregate salary over the course of his candidacy did not exceed the permissible amount. If on the other hand, the regulations are interpreted to mean that the maximum amount of salary must be prorated, it would suggest that Respondents would have been limited to \$1,500 per month, and thus, there was a violation of the FECA. Because of this ambiguity in the regulations, we voted not to approve the consolidated agreement to resolve ADR 196, ADR 198, ADR 200 and ADR 213.

August 18, 2005



Scott E. Thomas, Chairman



David M. Mason, Commissioner



Bradley A. Smith, Commissioner



Ellen L. Weintraub, Commissioner

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