



Federal Election Commission
Washington, DC 20463

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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 221

DATE: December 21, 2004

On November 30, 2004, the ADR Office ("ADRO") received this matter from OGC/CELA to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, ADR 221, 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 the 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 221/MUR 5490: The complaint alleges that Friends of Schumer and Steven Goldenkranz, Treasurer (collectively "Respondents" or "committee"), by using federal funds to pay for travel for political and fundraising events, accepted excessive in-kind contributions and failed to report these contributions. Complainant contends that according to press reports, Respondents admitted that on thirty-five occasions government funds were used to pay for travel that included campaign activities. The Complainant argues that Respondents violated the FECA and Senate ethics rules when the committee did not pay for campaign related travel. Respondents argue that 2 U.S.C. § 431(11) specifically excludes the Federal Government from the definition of a "person." Respondents state that the Commission acknowledged that candidates' travel paid for using funds authorized and appropriated by the Federal Government are not paid for by a "person." 67 Fed. Reg. 5445.

Attached for the Commission's review is the ADR *Case Analysis Report* (CAR) on ADR 221, along with copies of the EPS Rating and ADR Rating reports.

ADR Director's Recommendation: We recommend that the Commission take no further action on ADR 221/MUR 5490, that the file be closed and the appropriate letters sent.

ADR CASE ANALYSIS REPORT

ADR Case: 221

Respondents:

Friends of Schumer
Steven D. Goldenkranz, Treasurer

MUR: 5490

OGC Case Open Date: 7/22/04

Respondents' Rep.: Lyn Utrecht, Esq.

Date Forwarded to ADRO: 11/30/04

Committee Name: Friends of Schumer

Date Reviewed by ADRO: 12/13/04

Committee Type: Authorized

District #/or State: NY

Election - Won/Lost: Won General

Election Cycle: 2004

Complainant: Alexander F. Treadwell

Summary of Complaint: The complaint alleges that Friends of Schumer and Steven Goldenkranz, Treasurer (collectively "Respondents" or "committee"), by using federal funds to pay for travel for political and fundraising events, accepted excessive in-kind contributions and failed to report these contributions. Complainant contends that according to press reports, Respondents admitted that on thirty-five occasions government funds were used to pay for travel that included campaign activities, but that following an internal review, the committee reimbursed the government for approximately \$20,000 for the trips. The Complainant argues that Respondents violated the FECA and Senate ethics rules when the committee did not pay for campaign related travel.

Violations Alleged: 2 U.S.C. § 434(b)(2), 441a(1)(a), 11 C.F.R. § 104.3, 110.1(b)

Respondents' Reply: Respondents contend that the Complainant is incorrect in the assertion that Respondents violated by FECA. Respondents argue that 2 U.S.C. § 431(11) specifically excludes the Federal Government from the definition of a "person." Respondents state that the Commission acknowledged that candidates' travel paid for using funds authorized and appropriated by the Federal Government are not paid for by a "person." 67 Fed. Reg. 5445.

Issues:

- Excessive in-kind contribution 2 U.S.C. § 441a(1)(a), 11 C.F.R. § 110.1(b)
- Reporting contributions 2 U.S.C. § 434(b)(2), 11 C.F.R. § 104.3
- Definition of "person" 2 U.S.C. § 431(11), 11 C.F.R. § 100.10

Related FEC Experience/Guidance: There have been many matters resolved by the OGC and the ADRO relating to the issue of excessive contributions, in-kind contributions and reporting contributions. Those are the allegations raised in the Complaint. The FECA defines contribution as including any gift, subscription, loan, advance, or deposit of money or anything of value made by *any person* for the purpose of influencing any election for Federal Office. However, the Commission said that travel expenses paid for with Federal Government resources are not contributions, as the definition of person specifically excludes the Federal Government or any authority of the Federal Government in Notice 2002-1. AO 2004-14 also speaks to the definition of "person" as excluding the Federal Government or any authority of the Federal Government when a member of Congress requested an Advisory Opinion about whether funds expended by his Congressional Office for a Public Service Announcement would trigger reporting requirements for his campaign committee. The AO goes on reiterate that the use of Federal Government resources by a member of Congress does not qualify as a contribution.

Analysis: The FECA and the regulations define person as not including the Federal Government or any authority of the Federal Government. Specifically, the Commission interpreted C.F.R. § 106.3(b), as it deals with travel allocation, to not be applicable to the extent that a candidate pays for certain travel expenses using funds authorized and appropriated by the Federal Government. 67 Fed. Reg. 5445 (2002). Therefore, even if the Senator's office paid for travel that was, in part, campaign related, there would still be no in-kind contribution as a result, and no contribution to report. As stated at the conclusion of Notice 2002-1 "the Commission notes that the use of Federal funds is governed by the general appropriations law and is subject to Congressional oversight." The Senate provides specific guidance to members regarding mixed-purpose travel in the *Senate Ethics Manual*.

The complaint attaches a news article stating that Respondents said they reimbursed the Federal Government for approximately \$20,000 for travel expenses that should have been allocated to, and paid for, by the campaign committee. If Respondents, pursuant to the *Senate Ethics Manual*, made disbursements to reimburse the Federal Government for campaign related travel expenses, they would report those disbursements to the Commission. As it appears there were no facts to substantiate a violation of the FECA, the matter should be dismissed.

ADR Director's Recommendation: DISMISS
