



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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June 2, 2005

MEMORANDUM

TO: The Commission
THROUGH: James A. Pehrkon
Staff Director
FROM: Allan D. Silberman
Director
SUBJECT: ADR 248 – Jeff Fortenberry for US Congress and Keith May, Treasurer and Nebraska Republican Party and Chris Peterson, Executive Director – Recommendation to Close the File

SENSITIVE

On March 25, 2005 the ADR Office (ADRO) received from OGC/CELA a complaint, MUR 5528, to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 248**, 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 this matter will not be returned to OGC for further action.

Summary: Complainant, Barry R. Rubin, Executive Director of Nebraska Democrats, contends that Jeff Fortenberry for US Congress (“Respondents Fortenberry”) displayed a billboard without the appropriate disclaimer and failed to report operating expenditures for rent or facilities for the last post-primary filing. The Complainant questioned whether Respondent Fortenberry coordinated their activity with the Nebraska Republican Party (“Respondents NE Republicans”), which may have resulted in both an illegal and/or excessive contribution to the Fortenberry campaign. Complainant also contends that Respondents NE Republicans failed to report any in-kind contributions to Respondents Fortenberry for rent or facilities and that the Republican Party’s headquarters were purchased with non-federal funds. Respondents Fortenberry acknowledged the omission of a disclaimer from the subject billboard, however, note that the error was corrected within ten days after being brought to their attention. Respondents Fortenberry argued that their offices were not rented from the State Party Committee and that the building was not owned by the NE Republican Party. Respondents Fortenberry noted that rent for their office was prorated for the month of May and subsequently reported in May, June and thereafter in accordance with provisions in their lease. The aforementioned rent was reported as an in-kind contribution by the building owners. Respondents NE Republicans also noted that the building in which their offices were located was owned by a partnership rather than the Party.

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ADR CASE ANALYSIS REPORT

ADR Case: 248

Respondents: 1) Jeff Fortenberry for US Cong.
Keith May, Treasurer
2) NE Republican Party
Chris Peterson, Ex. Director

MUR: 5528

Respondents' Rep: 1) Liesa Ojeda, Dir. Op.
2) Chris Peterson

OGC Case Open Date: 9-7-04

Committee Type: Authorized

Date Forwarded to ADRO: 3-25-05

Committee's Name: Jeff Fortenberry for US Cong.

Date Reviewed by ADRO: 4-4-05

District #/or State: NE 1st C.D

Tier Level: 3

Election Won/Lost. Won

EPS Rating: 12

Election Cycle: 2004

ADR Rating: 50

Complainant: Barry R. Rubin, for NE Democrats

Summary of Complaint: Complainant contends that Jeff Fortenberry for US Congress ("Respondents Fortenberry") displayed a billboard (on 9/1/04) without the appropriate disclaimer notice and failed to report any operating expenditures for rent or facilities for the last post-primary filing. The Complainant questioned whether Respondent Fortenberry coordinated their activity with the Nebraska Republican Party ("Respondents NE Republicans"), which may have resulted in both an illegal and/or excessive contribution to the Fortenberry campaign. Complainant also contends that Respondents NE Republicans failed to report any in-kind contributions to Respondents Fortenberry for rent or facilities and that the Republican Party's headquarters were purchased with non-federal funds. The Complainant asserts that Respondents NE Republicans failed to disclose both excessive and illegal in-kind contributions.

Respondent's Replies: Respondents Fortenberry acknowledged the omission of a disclaimer from the subject billboard, however, contend that the error was corrected within ten days after being brought to their attention. Respondents Fortenberry argued that their offices were not rented from the State Party Committee or that the building in question was not owned by the NE Republican Party. Respondents Fortenberry advised and confirmed with a copy of a Registration of Deeds from Lancaster County's Assessor's office, that a private partnership owned the building where their offices were located. Respondents Fortenberry noted that rent for their office was prorated for the month of May and subsequently reported for that month and June and thereafter in accordance with provisions in their lease, a copy of which was forwarded to the Commission with their reply to the complaint. However, the aforementioned rent was reported as an in-kind contribution made by the building owners. Respondents NE Republicans also noted that the building in which their offices were located was owned by a partnership rather than the Party.

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Alleged Violations: 2 U.S.C §§ 434(b)(2), 434(b)(3), 434(b)(4)(A), 434(b)(5)(A), 441a(a)(7)(B), 441a(d)(3), 441d and 11 C.F.R §§ 104.3(a), 104.3(b)(1)(i), 104.3(b)(2)(i), 110.11(a)(1), and 104.13(a).

Analysis: Documents that accompanied Respondents Fortenberry's reply to the complaint as well as their reports filed with the Commission reveal that the offices occupied by the Fortenberry campaign and the NE Republican Party were owned by a partnership. Rent for the office of the Fortenberry campaign, listed by the Committee on their third quarter report, was recorded as an in-kind contribution. The NE Republican Party also reported that the building where their offices were housed was rented from Heritage Square Partners. The State Party committee, therefore, was in no position to make an in-kind contribution to the Fortenberry committee. There is no evidence that Respondents NE Republican Party failed to disclose excessive or illegal contributions to the Fortenberry campaign committee nor that they made such contributions. In addition, there is no evidence to substantiate Complainant's assertion regarding coordination between the NE Republican Party and the Fortenberry campaign nor the assertion of excessive contribution to the Fortenberry campaign. Complainant's one assertion that has merit pertains to the omission of the disclaimer notice on the subject billboard. That being the case, the recommendation is that the Commission send a letter of admonishment to Respondent Fortenberry and subsequently close the file as it pertains to the candidate and dismiss the complaint as it pertains to Respondent NE Republican Party.

Issues:

- Disclaimers, 2 U.S.C. § 441d and 11 C.F.R. § 110.11(a)(1)
- Reporting of operating expenditures, 2 U.S.C. §§ 434(b)(2), 434(b)(3), 434(b)(4)(A), 434(b)(5)(A) and 11 C.F.R. §§ 104.3(a), 104.3(b)(1)(i), 104.3(b)(2)(i)
- Reporting of in-kind contributions, 2 U.S.C § 441a(a)(7)(B) and 11 C.F.R. § 104.13(a)

Recommendation: Dismiss

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