



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

February 7, 2006

MEMORANDUM

TO: Allan Silberman
Director of Alternative Dispute Resolution

THROUGH: Robert J. Costa *RJC*
Acting Staff Director

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Alex Boniewicz *AB*
Audit Manager

Peggy Jo Gilley *PJG*
Lead Auditor

SUBJECT: Committee to Elect Patsy Kever (A05-01) – Referral Matter

On January 27, 2006, the Commission approved the final audit report on the Committee to Elect Patsy Kever (CPK). The report was released to the public on February 7, 2006. In accordance with the Commission approved materiality thresholds, the final audit report includes a matter that meets the criteria for referral to Alternative Dispute Resolution (ADR): Finding 1. Receipt of Contributions That Exceed Limits.

It should be noted that this matter is quite similar to that referred to your office by memo dated November 21, 2005, from the audit of the Jim Gerlach for Congress Committee. With respect to that matter, the Commission suggested that, in light of the fact that all excessive contributions had been refunded, the resolution of this matter should involve measures, other than fines, such as mandatory attendance at Commission sponsored training sessions.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Peggy Jo Lathan or Alex Boniewicz at 694-1200.

Attachment: Finding 1. Receipt of Contributions That Exceed Limits.

cc: Reports Analysis Division

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Finding 1. Receipt of Contributions That Exceed Limits

Summary

CPK received \$18,890 in excessive contributions from 12 individuals. The Audit staff recommended that CPK demonstrate that these contributions were not excessive or make appropriate refunds to the identified donors. In response to the interim audit report, the Candidate offered why she felt the contributions were not excessive. In addition, the Candidate provided copies of refund checks prepared, but not negotiated, for \$14,140 of the excessive contributions; and, stated the refund checks will be sent to the contributors and the remaining refunds will be issued from her personal account once the final audit report is approved.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(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:
 - o Keep enough money in the account to cover all potential refunds;
 - o Keep a written record explaining why the contribution may be illegal;
 - o Include this explanation on schedule A if the contribution has to be itemized before its legality is established;
 - o Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in Commission regulations (see below for explanations of reattribution and redesignation); and
 - o 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. Presumptive Redesignation of Excessive Contributions: When an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the excessive portion of an undesignated contribution made after the primary, but before the general election may be automatically applied to the primary if the campaign's net debts outstanding from the primary equal or exceed the amount redesignated.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent as required. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

Facts and Analysis

Prior to the primary election, CPK received contributions from twelve individuals that exceeded the \$2,000 limitation for individuals for the primary election. The amounts in excess of the limitation totaled \$18,890. Copies of the contributors' checks located by the Audit staff carried no election designation; no other supporting documentation, such as response cards, was made available. CPK presumptively redesignated the excessive portions of these contributions, but failed to notify contributors of its actions by a written notification that also offered a refund.

At the exit conference, the Audit staff discussed the matter with the Candidate and she was provided a schedule of the excessive contributions. The Candidate indicated that required refunds would be made to the extent funds were available.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CPK:

- Provide evidence that the identified contributions were not excessive; or,
- Refund \$18,890 and provide evidence of such refunds (copies of the front and back of the negotiated checks); or
- If funds were not available to make the necessary refunds, CPK should report the amounts to be refunded as debts on Schedule D (Debts and Obligations Excluding Loans) until funds became available to make the refunds.

In response to the interim audit report, the Candidate expressed concern that the Audit staff recommended that refunds be made to donors who had not contributed more than allowed by law; noting that none of the contributors had given more than the total allowable amount for the primary and general elections combined. She stated that these donations were accurately reported to the FEC and that refunds appeared unnecessary. In addition, since the Candidate was unaware of this potential liability until well after the election, she had donated much of her excess campaign funds. CPK's 2005 October 15th Quarterly Report¹ discloses donations of: \$10,000 to the North Carolina Democratic Party, \$5,000 to Emily's List, \$1,000 to Friends of Nussbaum for Congress and \$1,000 to the Canary Coalition. Had she known about the need to make refunds, she would have held back sufficient funds.

¹ This disclosure report was filed eight days prior to the Candidate being advised of the excessive contributions.

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The response points out a complicating factor. For this race the primary election in North Carolina was postponed from May, 2004 until July, 2004 as the result of court rulings. The Candidate contends that had the primary election occurred in May, there would have been no excessive contribution problem.² CPK was aware that donations above \$2,000 collected prior to the primary election could not be spent during the primary election and must be reported for use in the general election. However the Candidate contends that CPK was not aware of the requirement for donors to designate the contribution to a particular election or receive a letter informing them of CPK's designation if not for the next election. The Candidate notes the campaign's inexperience with "obscure federal elections regulations;" and states that by the time she found out about this rule on October 24, 2005, it was too late to contact the donors who would have gladly verified their understanding that the donations were meant for the general election cycle.

The Commission's regulations on the election designation of contributions are not complicated or obscure. Rather, for the 2004 election cycle they were relaxed allowing the campaign to make designations without prior approval of the contributor. Instead, a simple unacknowledged notification to the contributor is all that is necessary in most cases. That requirement appears not only in the published regulations, but is explained in less technical terms in the campaign guides available from the Commission in either print or from the Commission Web site. The requirements are also contained in the instructions for the disclosure forms.

However, the Candidate's response concluded that, in order to comply with the audit recommendation, she has enclosed copies of the checks written from the campaign account in the amount of \$14,140. The Candidate states these will be sent to the contributors and the remaining refunds will be issued from her personal account once the recommendation is final.

² The Audit staff's analysis indicates that even if the primary had been held on May 4th, a material, albeit lessened (\$9,390), problem would have existed.