



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 4, 2008

MEMORANDUM

To: Thomasenia P. Duncan
General Counsel

Through: Patrina M. Clark *PC*
Staff Director

From: John D. Gibson *JG*
Chief Compliance Officer

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

Alex Boniewicz *AB*
Audit Manager

By: Kendrick Smith *KS*
Lead Auditor

Subject: Karen Carter for Congress (A07-29) - Referral Matters

AUDIT REFERRAL # 08-13

On May 30, 2008, the final audit report on Karen Carter for Congress (KCC) was forwarded to the Commission. At this time, the Commission does not have a quorum necessary to take any action on the final audit report. However, the final audit report contains the following findings that meet the criteria for referral:

- Finding 2 – Receipt of Contributions that Exceed Limits meets the criteria for referral to your office. The Audit staff identified 42 contributions from individuals that exceeded the limitation by \$65,227. KCC provided copies of letters sent to contributors that were eligible for presumptive redesignation and/or reattribution (\$56,027). KCC also demonstrated that one contribution for \$4,200 had been returned by the bank due to insufficient funds. For the remaining contributions (\$5,000), KCC filed amended reports disclosing them as debts. No refunds have been made.

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- **Finding 3 – Failure to File 48-Hour Notices meets the criteria for referral to RAD for processing under the Administrative Fines Program. However, Audit Division policy dictates if one matter is referred to your office, other matters shall also be referred to your office. KCC failed to file 48-hour notices for 33 contributions totaling \$57,000 received prior to the general and run-off elections. In response to the interim audit report, KCC demonstrated that nine contributions totaling \$14,500 were not received within the 48-hour reporting period.**

Based on the above, the Audit staff suggests careful consideration should be given to the extent of resources utilized by your office to pursue these matters.

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Kendrick Smith or Alex Boniewicz at 694-1200.

Attachments:

Finding 2 - Receipt of Contributions that Exceed Limits

Finding 3 - Failure to File 48-Hour Notices

**cc: Lorenzo Holloway
Lawrence Calvert**

Finding 2. Receipt of Contributions that Exceed Limits

Summary

The Audit staff identified contributions from 40 individuals that exceeded the limitation by \$65,227. Excessive contributions totaling \$56,027 were caused by KCC's failure to send individuals notification of presumptive election redesignation and contributor reattribution. The remaining \$9,200 was not eligible for presumptive redesignation and reattribution and should have been refunded. In response to the interim audit report, KCC provided evidence that redesignation and/or reattribution letters were sent, demonstrated that contributions totaling \$4,200 were not excessive, and disclosed the remaining excessive contributions as debts on amended disclosure reports it filed.

Legal Standard

A. Authorized Committee Limits. For the 2006 election, an authorized committee may not receive more than a total of \$2,100 per election from any one person as adjusted by the Consumer Price Index (CPI). 2 U.S.C. §441a(a)(1)(A), (c) 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 contribution to the donor; or
- deposit the contribution into a campaign depository and keep enough money on account to cover all potential refunds until the legality of the contribution is established. 11 CFR §103.3(b)(3) and (4).

The excessive portion of contributions may also be redesignated to another election or reattributed to another contributor as explained below.

C. Redesignation of Excessive Contributions. The committee may ask the contributor to redesignate the excess portion of the contribution for use in another election.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a signed redesignation letter which informs the contributor that a refund of the excessive portion may be requested; or
- refund the excessive amount. 11 CFR §§110.1(b)(5), 110.1(l)(2) and 103.3(b)(3).

Notwithstanding the above, 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.

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. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

D. Reattribution of Excessive Contributions. When an authorized committee receives an excessive contribution, the committee may ask the contributor if the contribution was intended to be a joint contribution from more than one person.

- The committee must, within 60 days of receipt of the contribution, obtain and retain a reattribution letter signed by all contributors; or
- refund the excessive contribution. 11 CFR §§110.1(k)(3), 110.1(l)(3) and 103.3(b)(3).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- That the contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3)(ii)(B).

For this action to be valid, the committee must retain copies of the notices sent. 11 CFR §110.1(l)(4)(ii).

E. Refund or Disgorge Questionable Contributions. If the identity of the original contributor is known, the committee should either refund the funds to the source of the original contribution or pay the funds to the U.S. Treasury. AO 1996-5.

Facts and Analysis

The Audit staff identified 42 contributions from individuals that exceeded the limitation by \$65,227. Of these excessive contributions, four were excessive by \$5,000 for the primary election, 28 were excessive by \$46,420 for the general election, and 10 were excessive by \$13,807 for the run-off election.

In most instances, KCC either reattributed the excessive amount to another individual, or redesignated the excessive amount to the next election. However, in either case, KCC did not provide evidence of written reattributions or redesignations or provide evidence that the contributors were notified of any presumptive reattribution or redesignation made.

Of the excessive contributions, \$56,027 could have been resolved by KCC sending presumptive redesignations and/or reattributions letters. The remaining excessive contributions totaling \$9,200 appeared resolvable only by refund to the contributor or disgorgement to the U.S. Treasury. In most instances, these contributions were written on checks, imprinted with a single account holder, for the run-off election and the

excessive amounts, therefore, were not eligible for redesignation or reattribution. It should also be noted that KCC did not maintain a sufficient balance in its bank account to refund the excessive contributions.

The Audit staff discussed this matter with KCC representatives at an exit conference and provided a schedule of the excessive contributions. The representatives stated they would review the matter and comply with the Audit staff's recommendation.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that KCC:

- Provide evidence demonstrating that the contributions were not excessive. Evidence should have included documentation that was not made available to the Audit staff during the audit, including copies of solicitation cards completed by the contributors at the time of their contribution that clearly informed the contributors of the limitations; timely notifications sent to contributors eligible for presumptive redesignation and/or reattribution; or, timely refunds (copies of the front and back of negotiated refund checks), redesignations, or reattributions for excessive contributions; or,
- Absent such evidence, KCC should have sent notices to those contributors that were eligible for presumptive redesignation and/or reattribution (\$56,027) to inform those contributors how the contribution was designated and/or attributed and offering the contributors the option of receiving a refund of the excessive amount. KCC should have provided evidence to the Audit staff that the notices were sent. Absent the contributor's request for a refund, these notices would have obviated the need to refund the contributions or make a payment to the U.S. Treasury; and,
- For the remaining excessive contributions, KCC should have refunded the excessive portion to the contributors or paid the amount to the U.S. Treasury. If refunds were made, KCC should have provided evidence of such refunds (copies of the front and back of negotiated refund checks); or
- If funds were not available to make the necessary refunds, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds became available to make such refunds.

In response to the interim audit report recommendation, KCC provided copies of letters sent to contributors that were eligible for presumptive redesignation and/or reattribution (\$56,027). KCC also demonstrated that one contribution for \$4,200 had been returned by the bank due to insufficient funds. For the remaining contributions (\$5,000), KCC filed amended reports disclosing them as debts.

Finding 3. Failure to File 48-Hour Notices

Summary

KCC failed to file 48-hour notices for 33 contributions totaling \$57,000 received prior to the general and run-off elections. In response to the interim audit report, KCC demonstrated that nine contributions totaling \$14,500 were not received within the 48-hour reporting period.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 226 contributions, totaling \$381,688, which were greater than or equal to \$1,000 and received during the 48-hour notice filing periods of the general and run-off elections. KCC did not file 48-hour notices for 33 contributions totaling \$57,000 (\$34,700 for the general and \$22,300 for the run-off elections).

Subsequent to the exit conference, a KCC representative was provided a schedule of the 48-hour notices not filed. The representative stated she would review the schedule and respond accordingly.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended KCC provide:

- documentation to demonstrate the contributions in question were properly included in 48-hour notices; or,
- documentation establishing the contributions were not subject to 48-hour notification; and/or,
- any written comments it considered relevant.

In response to the interim audit report, KCC provided copies of deposit tickets and contributor checks, demonstrating that it had not received nine contributions totaling \$14,500 within the 48-hour reporting period. Of these, one contribution was never received by KCC (duplicate entry).