



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 27 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mrs. Linda M. Buzinec, Treasurer
Indiana Democratic Congressional Victory Committee
One North Capitol, Suite 200
Indianapolis, IN 46204

RE: MUR 5933

Dear Mrs. Buzinec:

On August 13, 2007, the Federal Election Commission found that there is reason to believe that the Indiana Democratic Congressional Victory Committee ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6)(B)(v), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 10 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



David M. Mason
Vice Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Indiana Democratic Congressional
Victory Committee and Linda M. Buzinec,
in her official capacity as treasurer

MUR: 5933

I. BACKGROUND

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). Based on available information, there is reason to believe that the Indiana Democratic Congressional Victory Committee and Linda M. Buzinec, in her official capacity as treasurer (the "Committee"), violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6)(B)(v), by failing to accurately keep an account of and report disbursements in the Committee's disclosure reports.

II. FACTUAL AND LEGAL ANALYSIS

The Committee is a political committee within the meaning of 2 U.S.C. § 431(4) and is the state committee of the Democratic Party in Indiana as defined at 2 U.S.C. § 431(15) and 11 C.F.R. § 100.14(a). According to the Committee's June 28, 2005 Statement of Organization, Kimberly Bostic was employed as comptroller for the Committee and was designated as the custodian of records. As comptroller, Bostic's responsibilities included, *inter alia*, ordering credit cards for certain party officials on behalf of the party.

At some point during her tenure with the Committee, Bostic reportedly ordered a credit card in her own name without authorization and, over a two-year period, charged personal expenses in the amount of \$70,000. This unauthorized card was apparently connected to the

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Committee's bank account, which allowed for payments of the unauthorized charges to be debited directly from the Committee's bank account. The Committee contends that no one else knew that the credit card existed until Bostic ended her employment with the Committee during the third week of January 2007, at which time Committee personnel discovered the unauthorized disbursements.

On January 24, 2007, after Bostic's departure, counsel for the Committee contacted the Commission and informed them of the apparent embezzlement. At that time, the Committee estimated that the amount embezzled was between \$50,000 and \$60,000. Counsel also requested guidance on reporting the Committee's beginning cash-on-hand balance for its upcoming 2006 Year-End Report, because the discovery of the embezzlement revealed a discrepancy between its bank statements and the information disclosed in the Committee's previously filed reports. Specifically, the Committee had discovered that its actual beginning cash-on-hand balance for the upcoming 2006 Year-End Report, as reflected in its bank statements, differed from the ending cash-on-hand balance previously reported in its last report, the 2006 Post-General Election Report, by \$38,432. RAD advised the Committee to report an accurate cash-on-hand balance in its upcoming 2006 Year-End Report and requested that the Committee attach a memo "explaining the situation." The Committee followed this instruction when it filed its 2006 Year-End Report on January 31, 2007 and included a memo that stated the Committee "was working to resolve financial discrepancies" and said that the Committee would accordingly amend disclosure reports as soon as possible.

On February 8, 2007, counsel informed the Commission that the Committee had commissioned an independent audit of its financial records, and that the audit concluded that

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Bostic embezzled approximately \$70,000 in Committee funds. The Commission advised counsel to have the Committee amend its reports throughout its internal audit process to reflect the misappropriation of Committee funds. The Committee later filed an Amended 2006 Post-General Election Report correcting the erroneous ending cash-on-hand balance.

Although the Committee's failure to accurately keep an account of and report receipts and disbursements stems from Bostic's embezzlement of Committee funds, the Committee nevertheless violated the Act when it filed the resulting inaccurate reports. Under the Act, the Committee, through its treasurer, is ultimately required to accurately keep an account of and report disbursements. *See* 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6)(B)(v). Committee treasurers are responsible for the timely and complete filing of disclosure reports and for the accuracy of the information contained therein. *See* 11 C.F.R. § 104.14(d). The failure to implement adequate internal control procedures over Committee finances (*e.g.*, regular audits, control procedures over receipts and disbursements, segregated duties, or periodic review of finances) is a consideration when determining Committee liability. *See* MUR 5721 (Lockheed Martin Employees' PAC); MUR 5811 (Doggett for U.S. Congress).¹

In this matter, it appears from the \$38,432 discrepancy between the cash-on-hand balance reported in the Committee's original 2006 Post-General Election Report and its original 2006 Year-End Report that the Committee's disclosure reports failed to report at least \$38,432 of unauthorized disbursements that were reportedly automatically debited from the Committee's bank account to pay for Bostic's unauthorized charges to a Committee credit card. Based on this

¹ The Commission has created a safe harbor from monetary penalties for committees that have five basic internal controls in place at the time of an embezzlement, immediately inform law enforcement and the Commission of the embezzlement, and voluntarily amend their reports to correct the inaccuracies. *See* Statement of Policy; Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (April 5, 2007).

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pattern, it appears that the Committee may have failed to disclose the entire \$70,000 amount of embezzled funds. And, although the Committee amended its 2006 Post-General Election Report to resolve the cash-on-hand discrepancy, it is unclear whether the Committee has amended its reports to accurately disclose the underlying unauthorized disbursements and/or to correct any other information that may have been inaccurately reported due to the embezzlement.

Further, the discrepancy between the cash-on-hand reported in the Committee's original 2006 Post-General Election Report and the Committee's bank statements indicates that the committee did not have someone other than Bostic review its bank statements for unauthorized transactions or reconcile them to the disclosure reports prior to filing. And, the fact that Bostic was able to make unauthorized disbursements over a two-year period without detection indicates that the Committee may not have had in place other minimal internal controls that would have prevented the embezzlement, or that may have allowed for earlier detection of the embezzlement.

Accordingly, there is reason to believe that the Indiana Democratic Congressional Victory Committee and Linda Buzinec, in her official capacity as treasurer, violated 2 U.S.C. §§ 432(c)(5), 434(b)(4) and (6)(B)(v) by failing to accurately keep an account of and report approximately \$70,000 in disbursements in its disclosure reports.

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