



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 27 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Kimberly Bostic
6864 West Philadelphia Dr.
McCordsville, IN 46055

RE: MUR 5933

Dear Ms. Bostic:

On August 13, 2007, the Federal Election Commission found that there is reason to believe that you violated 2 U.S.C. § 432(b)(3), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was 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). Enclosed is a Factual and Legal Analysis, which more fully explains the Commission's finding.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, 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. In the meantime, 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.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to you as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that you violated the law. Enclosed is a conciliation agreement for your consideration.

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If you are interested in engaging in pre-probable cause conciliation, please contact Wanda D. Brown, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Similarly, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel 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.

We look forward to your response.

Sincerely,



David M. Mason
Vice Chairman

Enclosures

Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Kimberly Bostic

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 Kimberly Bostic knowingly and willfully violated 2 U.S.C. § 432(b)(3) by commingling Indiana Democratic Congressional Victory Committee funds with her personal funds.

II. FACTUAL AND LEGAL ANALYSIS

The Indiana Democratic Congressional Victory Committee (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 Committee's bank account, which allowed for payments of the unauthorized charges to be debited directly from the Committee's bank account.

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The Act prohibits the commingling of committee Federal funds with “the personal funds of any individual, including officers of a committee.” 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15. In this matter, Bostic knowingly and willfully commingled Committee funds with her personal funds, in violation of 2 U.S.C. § 432(b)(3), by utilizing a debit card connected to the Committee’s bank account to pay for personal expenses totaling over \$70,000 and allowing the Committee to pay for the charges with Committee funds.¹ Further, it appears that Bostic disguised this activity for a two-year period.

Accordingly, there is reason to believe that Kimberly Bostic knowingly and willfully violated 2 U.S.C. § 432(b)(3) by commingling Committee funds with her personal funds.

¹ To establish a knowing and willful violation, there must be knowledge that one is violating the law. *See FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established “by proof that the defendant acted deliberately and with knowledge that the representation was false.” *US v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful act may be drawn “from the defendant’s elaborate scheme for disguising” his or her actions. *Id.* at 214-15.

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