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February 3, 2010

BY FACSIMILE AND U.S. MAIL

Thomasenia Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 6239

Dear Ms. Duncan:

I am counsel to Tom White for Congress and Thomas Monteith, as treasurer – collectively, “the Committee” – in the above-referenced matter. First, the Complaint alleges that the Committee tried to disguise a contribution from the candidate’s state legislative campaign committee. Second, it alleges that that the contribution was a prohibited transfer under 11 C.F.R. § 110.3(d) (2009). The first charge is without merit – the Complaint itself belies it. The second provides no basis for further Commission action.

### FACTS

Tom White is a first-time federal candidate. He is running for United States Congress in Nebraska’s 2nd Congressional District in the November 2010 election. Tom White for Congress is his principal campaign committee. White is a member of the Nebraska Unicameral. White for Legislature raised and spent funds to promote his state legislative campaigns: it is neither a “political committee” nor an “authorized committee” as those terms are defined and used under Commission regulations. See 11 C.F.R. §§ 100.5(a), 100.5(f)(1). Rather, it is registered and reports with the Nebraska Accountability and Disclosure Commission.

White filed his Statement of Candidacy with the Commission on July 14, 2009. Less than two months later, on September 2, White for Legislature made a \$1,000 contribution to Tom White for Congress. Tom White for Congress received the contribution, believing it to be lawful under

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the Federal Election Campaign Act. Specifically, it believed it could accept up to \$1,000 from a nonfederal political organization without triggering political committee status for the donor.

The Executive Director of the Nebraska Republican Party filed the instant Complaint on November 24, 2009. The Complaint noted first that "the Committee received a contribution in the amount of \$1,000 from White for Legislature." It then claimed that the contribution was an illegal "transfer" under 11 C.F.R. § 110.3(d). Finally, it claimed that "the Committee attempted to disguise the illegal transfer as a contribution," because the Committee reported the transaction on line 11C instead of Line 12. The Complaint demanded an "immediate investigation." To preclude any question of non-compliance, the Committee refunded the contribution on November 23. (See Attachment.)

### DISCUSSION

The Complaint's initial charge – that "the Committee attempted to disguise the illegal transfer [*sic*] as a contribution" and improperly reported it on Line 11(c) – lacks merit. The best evidence of this is the Complaint itself. In its third full paragraph, it refers correctly to the payment as a contribution: "On Sept. 2, 2009, the Committee received a contribution in the amount of \$1,000 from White for Legislature." (Emphasis supplied.) Moreover, the Complaint's information is derived entirely from the Committee's own report, which openly disclosed the transaction.<sup>1</sup>

The Complaint's second charge – that the contribution was a transfer prohibited by 11 C.F.R. § 110.3(d) – provides no basis for further Commission review. Section 110.3(d) is meant to restrict the wholesale transfer of funds from a nonfederal campaign to a federal campaign, a practice that was legal until the Commission decided to change its rules in 1992. *See Transfers of Funds from State to Federal Campaigns*, 57 Fed. Reg. 36,344 (1992). To accept the Complaint's interpretation of 110.3(d) does not accord with the rule's purpose of restricting the use of funds raised with "soft money." That interpretation would allow any state legislative campaign potentially to give \$1,000 to the Committee – except White for Legislature. It would allow White for Legislature to give \$1,000 to any candidate for Congress – except Tom White. While the Office of General Counsel has appeared to endorse this interpretation in prior enforcement actions, it has declined to seek penalties on facts like those here, where a candidate's state campaign committee made a lone, \$1,000 contribution. *See First General Counsel's Report*, MUR 5304, at 11; *First General Counsel's Report*, MUR 5446, at 18.

<sup>1</sup> There is no merit to the Complaint's charge that the contribution should have been disclosed on Line 12 instead of Line 11(c). Line 12 expressly requires disclosure of "transfers from other authorized committees." *See* FEC Form 3, Detailed Summary Page. White for Legislature was not an "authorized committee," insofar as it was a nonfederal committee, and not a "political committee authorized by a candidate under 11 C.F.R. § 102.13." 11 C.F.R. § 100.5(f)(1). In any event, disclosure on Line 11(c) does not equal "disguise."

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For the foregoing reasons, we respectfully request that the Commission dismiss the Complaint and take no further action.

Very truly yours,



Brian G. Svoboda

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### SCHEDULE B (FEC Form 3) ITEMIZED DISBURSEMENTS

Use separate schedule(s)  
for each category of the  
Detailed Summary Page

FOR LINE NUMBER:  
(check only one)

PAGE 116 / 121

<input type="checkbox"/> 17	<input type="checkbox"/> 18	<input type="checkbox"/> 19a	<input type="checkbox"/> 19b
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Any information copied from such Reports and Statements may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes, other than using the name and address of any political committee to solicit contributions from such committee

NAME OF COMMITTEE (In Full)  
Tom White for Congress

Full Name (Last, First, Middle Initial) White for Legislature		Transaction ID: D207379	
Mailing Address 2517 N 55th St		Date of Disbursement 11 / 23 / 2009	
City Omaha	State NE	Zip Code 68104-4205	Amount of Each Disbursement this Period 1000.00
Purpose of Disbursement Refund of contribution received		Category/ Type	
Candidate Name White for Legislature			
Office Sought: <input type="checkbox"/> House <input type="checkbox"/> Senate <input type="checkbox"/> President	Disbursement For: 2010 <input checked="" type="checkbox"/> Primary <input type="checkbox"/> General <input type="checkbox"/> Other (specify) ▼		
State:	District:		

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SUBTOTAL of Disbursements This Page (optional)	1000.00
TOTAL This Period (last page this line number only)	1000.00