

REPORTS ANALYSIS DIVISION REFERRAL
TO
OFFICE OF GENERAL COUNSEL

DATE: February 27, 2014

ANALYST: Carolina Mongeon

- I. COMMITTEE: Joe Kyrillos for US Senate Inc.
C00511238
Ronald Gravino, Treasurer
P.O. Box 225
Colonia, NJ 07067
- II. RELEVANT STATUTES: 11 CFR § 110.1(b)(1)
11 CFR § 110.1(e)
2 U.S.C. § 441a(a)

III. BACKGROUND:

**Excessive, Prohibited and Other Impermissible Contributions or Transfers
(Receipt of Excessive Contributions from Individuals and Partnerships)**

Joe Kyrillos for US Senate Inc. ("the Committee") received excessive contributions totaling \$138,950.00 from two (2) individuals, eight (8) partnerships, and one (1) federal political action committee (PAC) not qualified for multicandidate status. Of these, the Committee failed to remedy the contributions totaling \$45,833.32 from one (1) individual and two (2) partnerships; and refunded the contributions totaling \$93,116.68 from one (1) individual, eight (8) partnerships, and one (1) non-multicandidate PAC outside of the permissible timeframes (Attachments 2 and 3).

2012 April Quarterly Report

During the 2012 April Quarterly reporting period, the Committee received excessive contributions totaling \$33,950.00 from one (1) individual and three (3) partnerships that were not remedied within the permissible timeframe. All of these contributions were refunded outside of the permissible timeframe (Attachment 2).

On April 13, 2012, the Committee filed a 2012 April Quarterly Report, covering the period from May 16, 2011 through March 31, 2012.² The report disclosed excessive contributions totaling \$47,800.00 from ten (10) individuals and three (3) partnerships (Image 12020331256).

On July 13, 2012, the Committee filed a 2012 July Quarterly Report, covering the period from May 17, 2012 through June 30, 2012. The report disclosed a \$2,000.00 refund for one (1) individual that was issued outside of the permissible timeframe (Image 12020522851; Attachment 3).

On August 30, 2012, a Request for Additional Information (RFAI) was sent to the Committee referencing the 2012 April Quarterly Report. Among other issues, the RFAI noted the Committee's receipt of excessive contributions and requested that the Committee take corrective action (Image 12330011727).³

On October 4, 2012, the Committee filed an Amended 2012 April Quarterly Report which disclosed election designation corrections and explanations for nine (9) individuals, resolving the issue of the apparently excessive contributions from these contributors. No corrective action was reported for excessive contributions totaling \$31,950.00 from three (3) partnerships (Image 12020711497; Attachment 2).

On October 15, 2013, the Committee filed the 2013 October Quarterly Report covering the period from July 1, 2013 through September 30, 2013, which disclosed refunds of the remaining excessive contributions totaling \$31,950.00 from three (3) partnerships received during the 2012 April Quarterly reporting period (Images 13020493467-69; Attachment 2).

2012 12 Day Pre-Primary Report

During the 2012 12 Day Pre-Primary reporting period, the Committee received excessive contributions totaling \$87,500.00 from four (4) partnerships that were not remedied within the permissible timeframe. The Committee refunded \$46,666.68 of the excessive amount outside of the permissible timeframe (Attachment 2).

On May 21, 2012, the Committee filed a 2012 12 Day Pre-Primary Report, covering the period from April 1, 2012 through May 16, 2012. The report disclosed excessive contributions totaling \$103,394.44 from six (6) individuals and four (4) partnerships (Image 12020384242).

² This was the first report filed by the Committee, which included exploratory activity prior to the Committee's registration with the Federal Election Commission (FEC) on 1/19/12.

³ The RFAI also requested clarification on the status of unregistered organizations and limited liability companies (LLCs) that made contributions to the Committee during the reporting period. The Committee subsequently clarified that these contributions were permissible, and the LLCs had partnership status for federal tax purposes.

On August 30, 2012, a RFAI was sent to the Committee referencing the 2012 12 Day Pre-Primary Report. Among other issues, the RFAI noted the Committee's receipt of excessive contributions and requested that the Committee take corrective action (Image 12330011737).⁴

On October 4, 2012, the Committee filed an Amended 2012 12 Day Pre-Primary Report which disclosed corrections to election designations for contributions and refunds for six (6) individuals, resolving the issue of the apparently excessive individual contributions cited in the RFAI. No corrective action was reported for excessive contributions totaling \$92,500.00 from four (4) partnerships (Image 12020711295).

On October 15, 2013, the Committee filed the 2013 October Quarterly Report, covering the period from July 1, 2013 through September 30, 2013, which disclosed refunds of contributions totaling \$46,666.68 from four (4) partnerships received during the 2012 12 Day Pre-Primary reporting period. The Committee also clarified election designations for contributions from two (2) partnerships in question, resolving \$5,000.00 of the amount previously identified as potentially excessive. No corrective action was reported for the excessive contribution of \$40,833.32 from one (1) partnership (Images 13020493467-69; Attachment 2).

2012 July Quarterly Report

During the 2012 July Quarterly reporting period, the Committee received excessive contributions totaling \$5,000.00 from one (1) partnership and one (1) non-multicandidate PAC that were not remedied within the permissible timeframe. All of these contributions were refunded outside of the permissible timeframe (Attachment 2).

On July 13, 2012, the Committee filed a 2012 July Quarterly Report, covering the period from May 17, 2012 through June 30, 2012. The report disclosed excessive contributions totaling \$7,500.00 from one (1) individual, one (1) partnership, and one (1) non-multicandidate PAC (Image 12020522851).

On November 8, 2012, an RFAI was sent to the Committee referencing the 2012 July Quarterly Report. Among other issues, the RFAI noted the Committee's receipt of excessive contributions and requested that the Committee take corrective action (Image 12330015611).⁵

On December 12, 2012, the Committee filed an Amended 2012 July Quarterly Report which corrected an incorrectly designated refund for the excessive contribution from one (1) individual. The amendment disclosed a copy of a refund check issued outside of the permissible timeframe for the excessive contribution totaling \$2,500.00 from one (1) PAC not qualified for multicandidate status (Image 12021293242; Attachment 2).

⁴ See Footnote 3.

⁵ See Footnote 3.

On November 25, 2013, the Committee filed a Miscellaneous Paper Document (Form 99) stating that on November 22, 2013, the Committee refunded the \$2,500.00 excessive partnership contribution received during the 2012 July Quarterly reporting period (Image 13020551041, Attachment 2).

2012 12 Day Pre-General Report

During the 2012 12 Day Pre-General reporting period, the Committee received excessive contributions totaling \$12,500.00 from one (1) individual and two (2) partnerships that were not remedied within the permissible timeframe. The Committee refunded \$7,500.00 of the excessive amount outside of the permissible timeframe (Attachment 2).

On October 19, 2012, the Committee filed a 2012 12 Day Pre-General Report, covering the period from October 1, 2012 through October 17, 2012. The report disclosed excessive contributions totaling \$12,500.00 from one (1) individual and two (2) partnerships (Image 12021073679).

On March 18, 2013, an RFAI was sent to the Committee referencing the 2012 12 Day Pre-General Report. Among other matters, the RFAI noted the Committee's receipt of excessive contributions and requested that the Committee take corrective action (Image 13330027242).⁶

On April 16, 2013, the Committee filed a Form 99 referencing the RFAI for the 2012 12 Day Pre-General Report. No corrective action was reported for excessive contributions totaling \$12,500.00 from one (1) individual and two (2) partnerships (Image 13020223154).

On May 15, 2013, the Reports Analysis Division (RAD) Analyst spoke with the Committee's Treasurer, Ronald Gravino. The Analyst informed Mr. Gravino that the Committee would be referred to another office within the Commission for further action for failure to remedy excessive contributions, including partnership contributions. Mr. Gravino stated that it was not his understanding that partnerships were held to specific contribution limits. The Analyst explained that partnerships are subject to the same contribution limits as individuals (Attachment 4).

On June 26, 2013, the RAD Analyst received an email from Brian Nelson, Attorney for the Committee, requesting clarification of the issue of excessive contributions from the partnerships. The Analyst called Mr. Nelson and explained that a partnership is held to the same contribution limit as an individual. The Analyst cited 11 CFR §110.1(e) and (b) as well as Advisory Opinion 1975-17 as regulatory guidance (Attachment 4).

On June 27, 2013, the RAD Analyst made a follow up call to Mr. Nelson. Mr. Nelson reiterated that it was neither Mr. Gravino's nor his understanding that the

⁶ See Footnote 3.

contributions from partnerships as reported were excessive. The Analyst again explained that a partnership is defined as an individual for the purpose of contribution limits. Mr. Nelson asked about potential remedy solutions for the excessive contributions from partnerships. The Analyst said that the Committee would need to refund the excessive contributions. The Analyst explained that since the 2012 Primary and General Election dates had passed, it would not be permissible for the individual contributors to reissue their checks unless the Committee had net debts outstanding from the applicable elections. Mr. Nelson said he did not think this was the case, and that the Committee did not have enough cash on hand to refund all the excessive amounts. The Analyst advised Mr. Nelson that the Committee should refund as much as feasible (Attachment 4).

On June 28, 2013, the RAD Analyst spoke with Mr. Gravino and offered to send him a spreadsheet of the outstanding excessive contributions as well as information about debt retirement and net debts outstanding (Attachment 4).

On July 1 and 2, 2013, the Committee filed a Form 99 referencing the RFAs for the 2012 April Quarterly, 2012 12 Day Pre-Primary, 2012 July Quarterly, and 2012 12 Day Pre-General Reports. The Form 99s stated, in part:

"On October 10, 2012, December 18, 2012, and again on April 13, 2013, correspondence along with amended reports from the treasurer of the above candidate's committee, provided clarification as to the status and partner allocations for all the LLCs requested. In each instance, the treasurer has determined that the portions of these contributions attributed to each partner do not exceed the individual partners' contribution limits as required under 11 C.F.R. § 110.1(e). Accordingly, it is the committee's position that none of the questioned contributions received are excessive" (Images 13020270711 and 13020270772).

On July 2, 2013, RAD Management emailed Mr. Gravino the outstanding excessive contribution spreadsheet and accompanying information about debt retirement and net debts outstanding (Attachment 4).

On July 9, 2013, Matthew Sanderson, Committee Counsel, called RAD Management. He explained that the Committee misunderstood the regulations applicable to partnership contributions, and would like to take corrective action to remedy the excessive contributions. Mr. Sanderson requested additional time to respond, to allow the Committee's Treasurer to contact the partnerships, issue refunds, and also to attempt to solicit debt retirement contributions to cover the refunds, as the Committee had net debts outstanding from the 2012 election cycle (Attachment 4).

On July 10, 2013, August 2, 2013, and August 9, 2013, the RAD Analyst and RAD Management spoke with Mr. Sanderson and Mr. Gravino concerning the Committee's efforts to refund excessive partnership contributions and related reporting issues (Attachment 4).

On August 9, 2013, the Committee filed an Amended 2013 July Quarterly Report covering the period from April 1, 2013 through June 30, 2013 (Image 13020382214). Schedule D supporting Line 10 (Debts and Obligations Owed by the Committee) of the Summary Page disclosed outstanding debts totaling \$134,450.00 owed to one (1) individual and eight (8) partnerships with the description "Refund of Excessive Contribution" (Images 13020382222-27).⁷

On August 12, 2013, RAD Management contacted Mr. Sanderson for an update on the Committee's efforts to refund excessive partnership contributions. Mr. Sanderson indicated that the Committee expected to make progress in the next month (Attachment 4).

On August 13, 2013, the Committee filed a Form 99. The Form 99 stated, in full:

"The committee issues the following refunds for Primary Election 2012 on 8/7/13 from existing cash-on-hand: \$2500 to Crystal Springs Acquisitions LLC, \$2500 to Gluckwalrath LLP, and \$36,666.68 to McElroy, Deutsche Mulvaney & Carpenter. The refunds will be shown on the Committee's upcoming October Quarterly report." (Image 13020382231).

Between September 12, 2013 and September 19, 2013, RAD Management had several communications with Mr. Sanderson concerning the Committee's progress in issuing refunds of excessive partnership contributions. Mr. Sanderson indicated that the bulk of refunds would be made at the end of September 2013, and would be reflected on the Committee's 2013 October Quarterly Report (Attachment 4).

On October 15, 2013, the Committee filed the 2013 October Quarterly Report covering the period from July 1, 2013 through September 30, 2013 (Image 13020493461). Schedule B supporting Line 20(a) (Refunds of Contributions to Individuals/Persons Other Than Political Committees) of the Detailed Summary Page disclosed refunds of contributions totaling \$78,616.68 issued to six (6) partnerships (Images 13020493467-69).⁸ Schedule D supporting Line 10 of the Summary Page disclosed outstanding debts totaling \$55,833.32 owed to one (1) individual and four (4) partnerships with the description "Refund of Excessive Contribution" (Images 13020493471-76). The report also included an attachment itemizing the partnership attribution of the refunded contributions reported on Schedule B for Line 20(a) (Images 13020493477-79).

On November 12, 2013, RAD Management contacted Mr. Sanderson and Mr. Gravino to confirm that the Committee has not made any additional refunds of excessive partnership contributions since the close of the 2013 October Quarterly Report. Later

⁷ These debts were not disclosed on the original 2013 July Quarterly Report, filed on July 15, 2013 (Image 13020311679).

⁸ Schedule A supporting Line 13(a) (Loans Made or Guaranteed by the Candidate) of the Detailed Summary Page disclosed a \$35,000.00 loan from the candidate on September 27, 2013 (Image 13020493465). The cash-on-hand balance at the close of the reporting period, after the refunds were issued was \$342.35.

that day, Mr. Sanderson responded that he would confer with Mr. Gravino and provide an update to RAD by the end of the week (Attachment 4).

On November 15, 2013, RAD Management contacted Mr. Sanderson and Mr. Gravino concerning the refunds of the remaining excessive partnership contributions. Mr. Gravino indicated in a phone conversation that the Committee was working on making additional refunds and would be able to provide a confirmation of corrective action the following week (Attachment 4).

On November 22, 2013, RAD Management contacted Mr. Sanderson and Mr. Gravino for an update. Mr. Gravino stated that the Committee refunded an additional \$2,500.00 to one (1) partnership, and was preparing to issue refund checks totaling \$48,333.32 to two (2) other partnerships (Attachment 4).

On November 25, 2013, Mr. Gravino filed a Form 99, that stated, in full:

"On November 22, 2013 the Committee issued an additional refund for the General 2012 cycle to Fox Rothschild LLP, further reducing the original committee debt of \$134,450 to \$53,333.32.

We anticipate issuing 2 additional refunds of \$40,833.32 and \$7500.00 by the first week of December 2013 and the final 2 refunds of \$2500 each on or before 12/31/13, thus bringing this outstanding debt to zero as of year-end. This will be reflected on the next quarterly report due in January 2014" (Image 13020551041).

That same day, Mr. Gravino contacted RAD Management to explain that the Committee issued an additional refund of \$7,500.00 to one (1) partnership that day (Attachment 4):

On November 26, 2013, Mr. Gravino filed a Form 99 that stated, in part:

"Please revise my FEC Form 99 dated 23 November 2013 to reflect an additional refund made today to the firm of OTOOLE FERNANDEZ WEINER VAN LIEU LLC of \$7,500. This reduces the original debt now to \$45,833.32 from \$134,450" (Image 13020551038).

To date, no further communications have been received from the Committee regarding this matter.

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