



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 10, 2018

MEMORANDUM

TO: Krista Roche
Director of Alternative Dispute Resolution

FROM: Thomas Hintermister
Assistant Staff Director *TH*
Audit Division

Kendrick Smith *KDS*
Audit Manager

Sheraline Thomas *st*
Lead Auditor

SUBJECT: Brian Higgins for Congress (A17-03) – Referral Matter

On August 21, 2018, the Commission approved the Proposed Final Audit Report on the Brian Higgins for Congress. The report was released to the public on September 6, 2018. In accordance with the Materiality Thresholds for Authorized Committees, the Final Audit Report of the Commission includes a matter that meets the criteria for referral to the Office of Alternative Dispute Resolution.

Finding 2 – Receipt of Contributions in Excess of the Limit

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

Attachments: Finding 2 – Receipt of Contributions in Excess of the Limit
Designation of Counsel

cc: Patricia C. Orrock

Finding 2. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that BHFC received apparent excessive contributions totaling \$41,424. These errors occurred as a result of BHFC not resolving the excessive portions of contributions by forwarding presumptive redesignation or reattribution letters to its contributors, obtaining signed redesignation or reattribution letters from its contributors, or issuing refunds of the excessive portions of contributions in a timely manner. In response to the exit conference, BHFC untimely resolved excessive contributions from individuals totaling \$36,024. In response to the Interim Audit Report recommendation, BHFC provided a completed reattribution letter signed by both contributors which untimely resolved the remaining excessive contributions. In response to the Draft Final Audit Report, BHFC stated its response to the Interim Audit Report would suffice. The Audit staff concluded BHFC received excessive contributions totaling \$41,424.

The Commission approved a finding that BHFC received excessive contributions totaling \$41,424.

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C §30116; 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 check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds or establish a separate account in a campaign depository for such contributions;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Joint Contributions. Any contribution made by more than one person, except for a contribution made by a partnership, must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

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 presumptively attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

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

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount. 11 CFR §110.1(b)(5).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain

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written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign 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. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor 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.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized sample testing and a review of other contributions not included in the sample population to identify apparent excessive contributions from individuals. These reviews revealed that BHFC received apparent excessive contributions from individuals totaling \$41,424. This included contributions that could still be resolved, albeit untimely, via written presumptive reattribution or redesignation notifications to the contributors (\$35,964²). The remaining excessive contributions (\$5,460³) could only be timely resolved through demonstration that timely redesignation and/or reattribution letters were sent and signed by the contributors. If sent in response to the audit, these excessive contributions would be untimely resolved by BHFC.

The excessive contributions that could still be resolved by BHFC (\$35,964) were the result of BHFC not resolving the excessive portion of contributions by timely forwarding a presumptive letter to its contributors informing them how their contribution had been redesignated and/or reattributed, or refunding the excessive portion of contributions.

For the remaining excessive contributions (\$5,460), these errors were the result of BHFC reattributing the excessive portion of contributions written on checks imprinted with a single account holder to another individual without authorization from its contributors.

² The sample error amount (\$13,864) was projected using a Monetary Unit Sample with a 95 percent confidence level. A review of high dollar contributions not included in the sample error population identified excessive contributions totaling \$22,100. The sample estimate could be as low as \$7,638 or as high as \$23,955.

³ In addition to the \$22,100 that could be resolved with a presumptive letter, the review of high dollar contributions identified excessive contributions totaling \$5,460 that could be resolved via a redesignation, reattribution, and/or refund to the contributor.

BHFC did not maintain a separate account for questionable contributions. However, based on its cash-on-hand at the end of the audit period (\$760,264), it appears that BHFC did maintain sufficient funds to make refunds of the apparent excessive contributions.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with BHFC representatives at the exit conference and provided schedules of the apparent excessive contributions. BHFC representatives asked questions regarding the presumptive reattribution and/or redesignation letters that could be issued. The Audit staff explained that the presumptive letters sent in response to the exit conference would untimely resolve the excessive contributions of \$35,964. In response to the exit conference, BHFC representatives submitted presumptive reattribution and redesignation letters that were sent to all the contributors identified by the Audit staff as having given apparent excessive contributions. In addition, BHFC searched its contribution records and identified additional excessive contributions which could be resolved via presumptive reattribution/redesignation letter. BHFC sent letters to these contributors as well and submitted them to the Audit staff for review. In total, BHFC identified and resolved, albeit untimely, excessive contributions totaling \$36,100. As such, the Audit staff concludes that BHFC has untimely resolved all excessive contributions which could have been remedied with a presumptive reattribution and/or redesignation letter.

For the excessive amount of \$5,460, BHFC representatives provided documentation demonstrating that some of the excessive portion (\$60) has been refunded, albeit untimely. However, the remaining \$5,400 had not been reattributed and remained unresolved.

The Interim Audit Report recommended that BHFC provide documentation which demonstrated that the unresolved excessive contributions in question, totaling \$5,400, were resolved through the receipt of authorization from its contributors or refunded. Absent such demonstration, it was further recommended that BHFC refund the contributions and provide evidence of such refunds or disgorge the funds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, BHFC untimely resolved the remaining excessive contributions (\$5,400) by providing a completed reattribution letter signed by both contributors.

In summary, the Audit staff's review of contributions from individuals identified that BHFC received excessive contributions totaling \$41,424 that were resolved, but not in a timely manner. BHFC's response provided evidence that resolved, albeit in an untimely manner, \$41,560 in excessive contributions.⁴

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that BHFC provided evidence that resolved, albeit untimely, the excessive contributions.

⁴ BHFC resolved more excessive contributions than identified by the Audit staff.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, BHFC stated its response to the Interim Audit Report would suffice.

Commission Conclusion

On August 1, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that BHFC received excessive contributions totaling \$41,424.

The Commission approved the Audit staff's recommendation.

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