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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Commissioners
Staff Director Pehrkon
General Counsel Noble

FROM: Mary W. Dove/Lisa R. Davis

DATE: June 15, 1999

SUBJECT: Statement of Reasons for MURs 4317 & 4323.

Attached is a copy of the Statement of Reasons in MURs 4317 & 4323 signed by Chairman Scott E. Thomas, Vice-Chairman Darryl R. Wold, Commissioner Lee Ann Elliott, Commissioner David M. Mason, Commissioner Danny L. McDonald, and Commissioner Karl J. Sandstrom. This was received in the Commission Secretary's Office on Tuesday, June 15, 1999 at 9:50 a.m.

cc: V. Convery

Attachment

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Huckabee Election Committee (U.S. Senate)	)	MUR 4317 and MUR 4323
Prissy Hickerson, as treasurer	)	
Huckabee Election Committee	)	
Prissy Hickerson, as Treasurer	)	
The Honorable Mike Huckabee	)	

STATEMENT OF REASONS

On April 13, 1999, the Federal Election Commission ("the Commission"), by a vote of 6-0, accepted the recommendation of its Office of General Counsel (OGC) to find probable cause to believe in Matter Under Review (MUR) 4317 that the Huckabee Election Committee (U.S. Senate, hereafter "Senate Committee") and Prissy Hickerson, as treasurer, violated 2 U.S.C. § 441b by accepting a $1,000 corporate contribution from the Delta Beverage Group, Inc. The Commission, however, unanimously voted to exercise its prosecutorial discretion and take no further action as to this violation because of the relatively low amount of money involved and the fact that the Senate Committee refunded the prohibited contribution. *Heckler v. Chaney*, 470 U.S. 821, 831-832 (1985) (agency may consider factors such as best use of resources and seriousness of violation in exercising prosecutorial discretion).

In this MUR, the Commission, also by a vote of 6-0, rejected the OGC's recommendation to find probable cause to believe that the Senate Committee and Ms. Hickerson violated 2 U.S.C. § 434(b)(3)(A) by misreporting a $500 contribution from the Fort Smith Coca Cola Bottling Company and a $500 contribution from Hudson, Cisne, Keeling-Culp and Company. The Senate Committee initially reported these contributions as being received from partnerships. But it amended its reports to list the contributions as being received from a partner of each company. The Commission decided not to find probable cause as to this alleged violation because it was not clear the amendments were erroneous,[1] and any Senate Committee violations were insubstantial. *Heckler, supra.*

[1] Under 11 C.F.R. § 110.1(e), a contribution by a partnership is to be allocated to both the partnership and at least one partner.

In MUR 4323, the Commission unanimously accepted the recommendation of the OGC to find probable cause to believe that the Senate Committee and Ms. Hickerson, the Huckabee Election Committee ("the State Committee") and Ms. Hickerson, also as its treasurer, and The Honorable Mike Huckabee violated 2 U.S.C. § 441b due to the State Committee apparently using prohibited contributions[2] to pay for "testing the waters" expenses on behalf of the Senate Committee. *See* 11 C.F.R. § 100.8(b)(1) ("testing the waters" exception to definition of "expenditure"). The Commission, however, decided to take no further action with respect to these violations because it determined that the amount of the prohibited contributions probably was so small as not warranting the further expenditure of its resources. *Heckler, supra.*

More specifically, the OGC had proposed that 50% (approximately $1,400) of the cost of a mailing the State Committee had sent to Arkansans to raise funds to retire the debt from Mr. Huckabee's 1994 Lieutenant Governor's race was attributable to the Senate Committee as being used to "test the waters" as to a possible United States Senate candidacy. The OGC had similarly proposed that 50% (approximately $1,000) of the cost of Mr. Huckabee's 1995 trip to Washington, D.C.--which, according to Mr. Huckabee, was also related to retiring his state campaign debt--was attributable to the Senate Committee as being for the same exploratory purpose.

The mailing included a fundraising letter and questionnaire (poll) asking potential donors for their views on various subjects. One of the ten questions asked whether Mr. Huckabee should run for the United States Senate and if the donor would consider contributing if he did. The OGC proposed that this question, along with several others on topics such as education and highway funding which had, according to it, allegedly federal components, made 50% of the cost of the solicitation (or $1,400) chargeable as an exploratory expense for Mr. Huckabee's Senate candidacy.

Some Commissioners believe that under the Commission's allocation regulations, none of the costs of the fundraising letter and questionnaire should be allocable to the Senate Committee, given that there is no evidence that it received any proceeds from the fundraiser. *See* 11 C.F.R. § 106.1(a)(1), "Allocation of expenses between candidates."[3] Other Commissioners believe that it might be more appropriate to allocate these costs based on the Commission's polling regulation. *See id.* at § 106.4(e)(3), (4), "Allocation

[2] Unlike the Federal Election Campaign Act (FECA), Arkansas law permits corporate, bank, and labor organization contributions. Ark. Code Ann. § 7-6-203. Thus, the monies the State Committee used to pay for Mr. Huckabee's "testing the waters" expenses most probably contained funds that the FECA prohibits.
[3] "Expenditures . . . made on behalf of more than one clearly identified candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, . . . [i]n the case of a fundraising program or event where funds are collected by one committee for more than one candidate, the attribution shall be determined by the proportion of funds received by each candidate as compared to the total receipts by all candidates." *Id.*

of polling expenses."[4] Under that regulation, arguably, at most only $280 (or 10% of the cost of the fundraising letter and poll, due to the one out of ten questions which reasonably could be viewed as having a federal component) would be attributable as an in-kind contribution to the Senate Committee, not the $1400 the OGC proposed.

Even assuming the fundraising letter and questionnaire here should be in part attributed to Mr. Huckabee's Senate Campaign, the amount, whether $1,400 or $280, is so small as not to warrant pursuing in an enforcement action. *See Heckler, supra.*

Finally, we agree with the OGC that a portion of the cost of Mr. Huckabee's trip to the District of Columbia (*see generally* 11 C.F.R. § 106.3(b)) is related to his possible Senate Candidacy due to his visit at the National Republican Senatorial Committee (NRSC).[5] The trip, though, certainly appears to have had state campaign purposes. (As noted, Mr. Huckabee asserts that the purpose of the trip was to obtain debt relief for his state campaign.) Since only part of the trip was related to Mr. Huckabee's potential Senate candidacy (the OGC suggested $1,000, but Commission discussions focused on even lower amounts), the value was not significant enough to merit pursuit in an enforcement action. *Heckler, supra.*

Scott E. Thomas Chairman	6/14/99 Date	Darryl R. Wold Vice Chairman	Date
Lee Ann Elliott Commissioner	6/14/99 Date	Danny L. McDonald Commissioner	6/14/99 Date
David M. Mason Commissioner	6/14/99 Date	Karl J. Sandstrom Commissioner	6/14/99 Date

[4] "The amount of a contribution . . . or of any expenditure . . . attributable to each candidate-recipient or political committee-recipient shall be . . .

(3) A proportion of the overall cost of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committees; or

(4) An amount computed by any other method which reasonably reflects the benefit derived." *Id.*

[5] The Commission agreed with the OGC that Mr. Huckabee's Arkansas trips, the costs of which the State Committee paid, involved very little public discussion of a potential United States Senate Candidacy (as part of its investigation into these trips, the Commission sent an investigator to Arkansas to review in detail news accounts of then Lieutenant Governor Huckabee's political travel). As a result, we concluded that the vast majority of the State Committee's expenditures for this travel were not attributable to his senate campaign. This conclusion eliminated a significant majority of the alleged exploratory expenditures.