



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

**TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel**

FROM: Office of the Commission Secretary

DATE: February 1, 2002

SUBJECT: Supplemental Statement Of Reasons for MURs 4382 and 4401

**Attached is a copy of the Supplemental Statement Of Reasons for
MURs 4382 and 4401 signed by Chairman David M. Mason,
Commissioner Bradley A. Smith and Commissioner Darryl R. Wold.**

**This was received in the Commission Secretary's Office on
Thursday, January 31, 2002 at 4:09 p.m.**

**cc: Vincent J. Convery, Jr.
OGC Docket (5)
Information Division
Press Office
Public Disclosure**

Attachment

22-04-405-4435



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

Republican National Committee
And Alec Pointevint, as Treasurer

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MURs 4382 and 4401

**SUPPLEMENTAL STATEMENT OF REASONS
BY CHAIRMAN DAVID M. MASON AND COMMISSIONERS BRADLEY A.
SMITH AND DARRYL R. WOLD**

In this matter, the General Counsel recommended that the Commission find probable cause to believe that the RNC violated the Act by paying and not reporting the full \$135,743 in salaries and expenses of 12 RNC staff members who the General Counsel contended did advance work on behalf of Senator Dole at various events he attended from April into August, 1996.

Those of us who voted against finding probable cause explained our reasons -- both factual and legal -- in a Statement of Reasons dated June 11, 2001. Our colleagues who voted in favor of finding probable cause, Commissioners McDonald, Thomas, and Sandstrom, have now filed their own Statement of Reasons dated December 7, 2001 ("the McDonald SOR"), describing our decision not to proceed as "inexplicable" and giving their view of the facts and the law.

We write this Supplemental Statement of Reasons to clarify certain matters both of fact and law as set out in the McDonald SOR, so no reader will be misled.

The McDonald SOR appears to rest its conclusion that the RNC payments for advance staff constituted a contribution to the Dole Committee on three independent theories: (1) The application of the presumption in 11 C.F.R. 110.8(e) based on the timing of the events; (2) The facts supposedly show the RNC employees worked on Dole campaign events; and (3) Our previous vote concerning these same issues in connection with the enforcement action against Senator Dole is inconsistent with our vote in this MUR.

22-04-405-4436

22-04-405-4437

Before the McDonald SOR gets to these arguments, however, it indulges in a little rhetorical license by repeatedly asserting the matters in issue as established in fact: "While on the RNC payroll . . . these staffers continued to do work for the Dole campaign"; "these staffers apparently continued to provide advance and travel services for the Dole campaign throughout the entire time period" (both statements in the opening paragraph); "the RNC . . . paid for the payroll costs and expenses of these staffers to continue their work on the Dole campaign" (second paragraph); and "[the Dole Committee] placed staffers on the RNC payroll to work on the Dole campaign" (p. 4). By the bottom of page 5, however, the uncertain nature of these assertions becomes a little clearer: "There is nothing to suggest these staff *weren't* performing the same services [while with the RNC] as before, under the supervision of the same Dole campaign . . . officials" (italics added for emphasis), and "On the basis of *circumstantial* evidence alone, the payment of Dole travel staff salaries by the RNC clearly constitutes a contribution" to the Dole Committee (bottom of p. 5). At that point, the SOR gets to the first of its three arguments that the RNC staff should be considered a contribution to the Dole Committee.

(1) The Effect of the Regulation.

In our SOR explaining why we voted against probable cause, we pointed out that the General Counsel's recommendation was based entirely on the presumption in 11 C.F.R. 110.8(e), subparagraph (2)(ii), that events occurring on or after January 1 of an election year are for the purpose of influencing the candidate's election. We found, however, that the presumption was rebutted by the evidence before the Commission showing that the events were party-related, as provided in subparagraph (2)(iii).¹

The McDonald SOR responds to this argument by quoting the entire text of § 110.8(e) *except* subparagraph (2)(iii), which was the basis for our analysis.² The McDonald SOR then concludes that as a result of the presumption, "the cost for these trips and candidate appearances should be considered contributions from the party to the candidate" (pp. 6-7). It is easy to see how our colleagues reach that conclusion without taking into account the provision of subparagraph (2)(iii) specifying what will rebut the presumption, but we felt that the Commission must, as our colleagues suggested but did not do, analyze the regulation as a whole.

In our SOR, we pointed out that the itineraries provided by the Dole Committee for the trips on which he was accompanied by RNC staff included a number of events that

¹ Subparagraph (2)(iii) reads in full: "The presumptions in paragraphs (e)(2)(i) and (ii) of this section may be rebutted by a showing to the Commission that the appearance or event was, or was not, party-related, as the case may be."

² The omission of subparagraph (2)(iii) is especially ironic in light of the sentence in the McDonald SOR that introduces the text that the SOR relies on: "To understand the proper meaning of the regulation, one must analyze it *as a whole*." (McDonald SOR, at p. 6; italics added for emphasis.)

22-04-405-4438

were clearly "party-related." The "party-related" nature of those events was shown on the itineraries by a combination of the name of the event (e.g., "GOP Convention" or "GOP Unity Rally"), in some cases reinforced by additional information identifying persons at the event as Republican officials, and by other information provided in the audit of the Dole Committee (e.g., that "Victory '96" events were fund-raising events for the RNC, which were closed to the public and press). We felt the evidence was sufficient to show that those events were party-related, and thereby rebut the presumption of subparagraph (2)(ii).³

(2) The Facts of the RNC Staff Time.

The McDonald SOR then proceeds to a review of the Dole Committee's itineraries for two days of his travel and concludes that those itineraries show that the RNC staff in fact worked on Dole's campaign events.

As an initial matter, it is not clear how these two trips were selected to examine their itineraries, and why only one day of each multi-day trip was considered. The purpose of examining the itineraries is to determine whether 12 RNC employees spent enough of their time doing advance work for Dole campaign events over a four and one-half month period so that it would be fair to conclude that the full amount of their salaries and benefits for that entire time was a contribution to the Dole Committee. On the face of it, itineraries for two days out of 135, in which only a few of the RNC employees even appear, cannot be considered a sufficient sample to be representative of all of the staff in question for that full period of time.

By contrast, our conclusion that there was not probable cause to believe that the RNC staff worked on Dole campaign events was based on a detailed analysis of the full itineraries for four different trips (including one selected at random by the Audit Staff) spread out over time during the relevant period, covering a total of 12 days and 49 different events. This analysis showed that on these trips, there were 29 party-related events and 20 non-party (i.e., campaign) events, but that various of the 12 RNC staff were identified on the itineraries a total of only 37 times, compared to Dole Committee and other non-RNC staff identified a total of 131 times. The obvious implication is that party-related events were understaffed by the RNC compared to the non-RNC staff resources available for the Dole campaign events. This ratio led us to the conclusion that the itineraries, at least, could not support probable cause to believe that RNC staff likely worked on Dole campaign events.

Even the facts in the two days of itineraries examined in the McDonald SOR do not support the conclusion that the RNC staff in fact worked on Dole campaign events.

³ The McDonald SOR asserted that we argued that the RNC had rebutted the presumption "simply by characterizing the party events and fundraisers as 'party-related' (p. 7). To the contrary, we did not point to any "characterization" by the RNC; we relied on the evidence provided by the Commission's audit of the Dole Committee's records, primarily in the itineraries, as reiterated above.

The first of the two days examined was May 18, the first day of a three-day trip. On that day the Dole entourage flew from Washington, D.C. to Charlotte, North Carolina, for two events: a Victory '96 meeting (a party-related event), and the Winston Select Race.

The McDonald SOR first points out that the RNC staff was listed on the *official Dole Committee travel itineraries* (italics in McDonald SOR). The McDonald SOR does not explain the significance of this, but presumably takes it as an indication that the Dole Committee considered the RNC staff to be the Dole Committee's own staff. To the contrary, however, it would be surprising to not list RNC staff, because the itineraries listed everyone traveling with the Dole entourage. The RNC staff was traveling with the Dole entourage because Dole was attending RNC events during the trip. (The itineraries also list, among others, Richard Petty, the race car owner, and Humpy Wheeler, owner of the Charlotte Motor Speedway, scene of both the party-related and non-party events that day -- the itineraries list everyone along for the ride, so to speak, so one cannot conclude that the mere listing proves that they were working for the Dole Committee.)

The McDonald SOR next contends (in footnote 5) that only the RNC staff are shown on the itineraries as providing advance services -- apparently implying that the RNC staff therefore must have done the advance work for the Dole campaign events also. That characterization of the itineraries is factually incorrect. The itinerary for May 18 shows a number of non-RNC staff as having key advance-work roles, including the "trip coordinator," Don Skillman, the "site" staffer at Charlotte, Bobby Peede, J. Rider, on the press bus, and Byron Nelson, who met the Dole entourage when it arrived at Charlotte.

Next, the McDonald SOR points out that one of the RNC staff, Jeffrey Weiss, was not only "in the lead car for several motorcades that day" as the Dole entourage traveled between stops, but he also accompanied Senator and Mrs. Dole for the event at the Charlotte Motor Speedway. Based on this evidence, our colleagues conclude "there is thus no reason to doubt this person was doing advance work for the Dole campaign." What they don't mention, however, was that the first motorcade was from the airport to the Charlotte Motor Speedway, where the Victory '96 meeting, the party-related event, was held. Of course Mr. Weiss was in that motorcade; the motorcade was going to an RNC event. The second motorcade was from the suites to the racetrack area, where Dole was to be introduced at the race. Mr. Weiss was in that motorcade, along with Dole staffer Byron Nelson and "DFP Traveling Staff" according to the itinerary. The race was not a party-related event, to be sure, but there is no requirement to split up the traveling entourage to prevent RNC staff from being present at a non-party event along the way. Mere presence, especially at a spectacle like a Winston Select race at the Charlotte Motor Speedway, does not establish probable cause that the individual was doing advance work for the Dole campaign while there. The third and last motorcade that day was from the racetrack to the hotel where the group stayed. Naturally, Mr. Weiss was in that motorcade also, since he was traveling with the entourage and staying at the same location.

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Lastly, concerning this day, the McDonald SOR quotes newspaper reports as reporting Senator Dole having said, over the public address system at the start of the race, "I want to be President of the United States. Vote for Bob Dole." It is not clear what the point of this is. It is clearly "express advocacy" but that is to be expected at a Dole campaign stop. Is the point that the tender ears of the RNC staff present at that time were exposed to this express advocacy? That doesn't mean their salaries that day -- let alone for four and one-half months -- constituted a contribution to the Dole campaign.

The McDonald SOR briefly reviews the itinerary for a second travel day, on June 12, and identifies three RNC staff shown on that itinerary. The SOR quotes CNN as reporting in general terms that Dole aides said they hoped the trip would help his campaign. The SOR then concludes that because "no evidence suggests that Senator Dole and the party officials involved avoided any effort to promote Senator Dole's own campaign . . . it is obvious that the RNC made . . . a contribution" to the Dole Committee.

What the McDonald SOR leaves out is that the June 12 itinerary included two party-related events, a GOP Heartland Unity Rally and a Victory '96 meeting, and meetings with Republican elected officials and party leaders at several other stops along the way. The itinerary also included a Chamber of Commerce speech and attendance at two shows in Branson, Missouri, presumably non-party events. Once again, the presence of RNC staff in the traveling entourage is explained and justified by the party-related events that were part of the day's trip. Their presence in the entourage for the entire day does not support finding probable cause to believe that they worked on non-party events also.

(3) Our Previous Vote as to the Dole Committee.

Lastly, the McDonald SOR briefly makes the point that we previously found probable cause to believe that the Dole Committee had *accepted* a contribution from the RNC in the form of the services of the 12 RNC employees at issue in this matter. That is true. Our vote for that finding was, in hindsight, a mistake. The General Counsel's recommendation concerning that finding against the Dole Committee was one item in a report that dealt with a number of such issues. Had we focused on this particular item at that time, instead of relying on the General Counsel's analysis and recommendation, we would have reached the same conclusion then as we did when this was presented to us in this action against the RNC, and we took a closer look at it.

The finding against the Dole Committee in connection with these RNC employees did not, however, have a direct or material effect on the recommended penalty for the Dole Committee. The recommended penalty was based on a number of items and reflected a compromise amount. The elimination of the supposed RNC contribution for these 12 staff members would not have changed the amount offered or accepted in settlement during conciliation. The general language in the conciliation agreement acknowledging a violation included a number of specific transactions, of which the RNC staff was only one.

As the McDonald SOR notes, the two different results are inconsistent. It was the earlier vote, however, to find probable cause that the Dole Committee violated the Act in regard to the 12 RNC staff members that was in error, not the vote against the finding concerning the RNC. The McDonald SOR tries to make too much of this, but it also makes too much of the other weak facts in its analysis.

Dated: January 31, 2002

1/31/02
Date

David M. Mason
David M. Mason, Vice-Chairman

1/31/02
Date

Darryl R. Wold
Darryl R. Wold, Commissioner

1/31/02
Date

Bradley A. Smith
Bradley A. Smith, Commissioner

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