

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Al Salvi for Senate Committee and
Stephanie Mustell, as treasurer

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MUR 4365

MUR 4534

100-20-304-11-197
SENSITIVE

GENERAL COUNSEL'S REPORT

I. BACKGROUND

MUR 4365 arose from a complaint filed by Asa K. Keener alleging that Al Salvi, then a Republican candidate for the U.S. Senate from Illinois, filed inaccurate reports with the Commission. MUR 4534 was opened based on a referral received by the Office of General Counsel from the Reports Analysis Division ("RAD"). The basis for the referral is the Al Salvi for Senate Committee's apparent failure to file three 48 Hour notifications for candidate loans.

On October 22, 1996, the Federal Election Commission ("Commission") found reason to believe that the Al Salvi for Senate Committee and its treasurer^{1/} ("Respondents") violated 2 U.S.C. § 434(a)(6)(A), 2 U.S.C. § 434(b), and 11 C.F.R. § 104.3(d) of the Federal Election Campaign Act of 1971, as amended ("Act" or "FECA") and the Commission's regulations.

This Office issued a General Counsel's Brief to the Respondents on April 18, 1997. The Brief stated this Office's intention to recommend that the Commission find probable cause to believe that violations occurred. After an extension was granted, a timely response was submitted by Respondents on May 23, 1997. This report analyzes the Respondents' response and makes recommendations to the Commission for the further disposition of this matter.

^{1/} Stephanie Mustell is the current treasurer of Al Salvi for Senate Committee. Dana M. Grigoroff was the Salvi Committee treasurer when the Commission found reason to believe that FECA had been violated. Jim Thacker was the Salvi Committee treasurer at the time the complaint was filed. Torrie M. Newsome and Al Salvi have also been campaign treasurers at various time periods at issue during the instant matter.

II. ANALYSIS OF RESPONDENTS' RESPONSE

Respondents' answer to the General Counsel's Brief recommending a finding of probable cause is essentially a letter. Attachment 1. Although the letter asserts that the Commission should not pursue the matter, none of the arguments addresses the legal reasoning underlying this Office's position that there is probable cause to believe that violations have been committed. Indeed, Stephanie Mustell, the most recent treasurer for the Al Salvi for Senate Committee, acknowledges that mistakes were made, but that these were unintentional paperwork errors made due to "the incredibly complicated and vague rules governing paperwork in a federal campaign." However, neither this Office nor the Commission has indicated a belief that the Respondents acted intentionally.

The claim by the Respondents that they have no money to pay a civil penalty is also not a reason for the Commission to find no probable cause. If Respondents continue to make this argument during conciliation, this Office will explore the issue of available resources. In this context, this Office notes that, although the Respondents claim that they "have very little ability to raise money," according to several newspaper accounts, Al Salvi is seriously considering challenging Carol Moseley-Braun for her Senate seat.

Lastly, Ms. Mustell states that the Commission should "just drop this matter, as was done in the case of [Carol Moseley-Braun]." Yet there are some important distinctions that should be made between the Respondents' and the Moseley-Braun case. First, the Moseley-Braun matter was one of eighteen closed in the wake of the decision in FEC v. Williams, 104 F.3d 237 (9th

Cir. 1996).²⁷ Because the allegations in the Moseley-Braun matter arose from the 1992 election cycle, the statute of limitations would have potentially or at least partially expired by the end of this calendar year.

Additionally, the Moseley-Braun case was not in the same posture as the Salvi case. There were no reason to believe findings in the Moseley-Braun case. By contrast, the Commission has found reason to believe and is now at the point of determining probable cause to believe that Al Salvi for Senate Committee and Stephanie Mustell, as treasurer, have violated FECA.

Because nothing additional has been provided by the Respondents, this Office incorporates by reference the General Counsel's Brief submitted on April 18, 1997 and recommends that the Commission find probable cause to believe that the Al Salvi for Senate Committee and Stephanie Mustell, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), 2 U.S.C. § 434(b), and 11 C.F.R. § 104.3(d).

III. CONCILIATION AGREEMENT AND CIVIL PENALTY

²⁷ Williams held, inter alia, that the five-year statute of limitations for filing suit to enforce a civil penalty established at 28 U.S.C. § 2462 applies to proceedings seeking imposition of penalties, including the Commission's law enforcement suits under 2 U.S.C. § 437(g)(a)(6). Id. at 240.

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IV. RECOMMENDATIONS

1. Find probable cause to believe that Al Salvi for Senate Committee and Stephanie Mustell, as treasurer, violated 2 U.S.C. § 434(a)(6)(A).

2. Find probable cause to believe that Al Salvi for Senate Committee and Stephanie Mustell, as treasurer, violated 2 U.S.C. § 434(b).

3. Find probable cause to believe that Al Salvi for Senate Committee and Stephanie Mustell, as treasurer, violated 11 C.F.R. § 104.3(d).

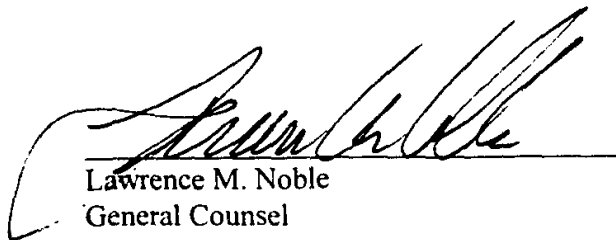
4.

5. Approve the appropriate letters.

Date

8/20/97

Lawrence M. Noble
General Counsel



Staff assigned: April J. Sands