



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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MAY 3 12 32 PM '99

May 3, 1999

John J. White, Jr., Esq.  
Livengood, Carter, Tjossem,  
Fitzgerald and Alskog, LLP  
620 Kirkland Way, Suite 200  
P.O. Box 908  
Kirkland, WA 98083-0908

RE: MURs 4693, 4737 and 4868  
Washington State Republican Party—  
Federal Account  
and Al Symington, as treasurer

Dear Mr. White:

Based on complaints filed with the Federal Election Commission ("Commission") on November 6, 1997 and April 3, 1998, and on information ascertained in the normal course of carrying out its supervisory responsibilities, on December 4, 1998, the Commission found reason to believe that your client, Washington State Republican Party—Federal Account, and Al Symington, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a), provisions of the Act, and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i) of the Commission's regulations, and instituted an investigation in this matter.

The Commission also offered to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. On April 12, 1999, this Office received your latest conciliation counterproposal. On April 21, 1999, the Commission voted to reject your counterproposal.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and

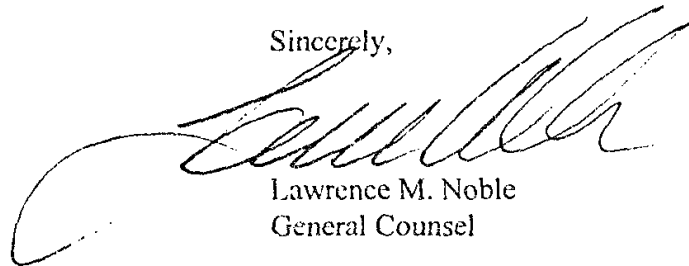
John J. White, Jr., Esq.  
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any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence M. Noble", is written over a printed name and title.

Lawrence M. Noble  
General Counsel

Enclosure  
Brief

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 ) MURs 4693, 4737  
Washington State Republican Party— ) and 4868  
Federal Account )  
and Al Symington, as treasurer )

**GENERAL COUNSEL'S BRIEF**

**I. STATEMENT OF THE CASE**

On December 4, 1998, the Federal Election Commission ("Commission") found reason to believe that Washington State Republican Party--Federal Account and Al Symington, as treasurer (the "Committee"), violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i). The Commission found that the Committee reported an overtransfer of \$285,316.22 from its non-federal account to its federal account on October 18, 1996. In addition, during the same reporting period, the Committee paid \$80,203.89 in 100% non-federal fundraising expenses from its federal account and then reimbursed its federal account from its non-federal account. Finally, the Committee reported overtransfers of \$248,000 from its state-exempt account to its federal account during the second half of 1997. The overtransfers totaled \$613,520.11.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Applicable Law**

An organization which is a political committee under the Act must follow prescribed allocation procedures when financing political activity in connection with federal and non-federal elections. 11 C.F.R. §§ 102.5 and 106.5(g). These rules implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. §§ 441a and 441b. Specifically, the Act prohibits corporations and labor organizations from making contributions in connection with federal elections, and prohibits political committees from knowingly accepting such

contributions. 2 U.S.C. § 441b(a). Moreover, the Act provides that no person shall make contributions to a state committee's federal account in any calendar year which in the aggregate exceed \$5,000, and prohibits the state committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a) and (f).

A party committee, such as the Committee, that has established separate federal and non-federal accounts must make all disbursements, contributions, expenditures and transfers in connection with any federal election from its federal account. 11 C.F.R. § 102.5(a)(1)(i). Except for the limited circumstances provided in 11 C.F.R. § 106.5(g), no transfers may be made to a federal account from any other accounts maintained by the committee for the purpose of financing non-federal election activity. *Id.*

A state party committee that has established separate federal and non-federal accounts must pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense. 11 C.F.R. § 106.5(g)(1)(i). For each transfer of funds from a committee's non-federal account to its federal account, the committee must itemize in its reports the allocable activities for which the transferred funds are intended to pay, as required by 11 C.F.R. § 104.10(b)(3) and 11 C.F.R. § 106.5(g)(2)(ii)(A).

According to 11 C.F.R. § 106.5(g)(2)(ii)(B), funds transferred from a committee's non-federal account to its federal account may not be transferred more than 10 days before or more than 60 days after the payments are made for which the transferred funds are designated. Furthermore, if the requirements of 11 C.F.R. § 106.5(g)(2)(ii)(A) and (B) are not met, any portion of a transfer from a committee's non-federal account to its federal account shall be presumed to be a loan or contribution from the non-federal account to a federal account, in violation of the Act.

11 C.F.R. § 106.5(g)(2)(iii). Because transfers from a non-federal account to a federal account may be made solely to cover the non-federal share of an allocable expense, transfers to a federal account for the purpose of financing purely non-federal activity are prohibited. See MUR 4701 (Vermont State Democratic Federal Campaign Committee); see also MUR 4709 (Philadelphia Democratic County Executive Committee).

**B. Facts**

On February 26, 1997, the Commission sent the Committee a Request for Additional Information ("RFAI"), referencing the Committee's 1996 30 Post-General Report, which, among other items, notified the Committee of transfers from the non-federal account to the federal account that occurred outside of the permissible transfer period (70 days). In addition, the RFAI notified the Committee of impermissible transfers from the non-federal account to the federal account to reimburse the federal account's payment of 100% non-federal expenses.

In response, on April 8, 1997, the Committee filed an amended 1996 30 Day Post-General Report. The Committee's accompanying letter acknowledged that, due to bookkeeping errors, the Committee had transferred \$285,316.22 more from the state (non-federal) account to the federal account than it should have. In another letter, dated January 12, 1998, the Committee elaborated that "As a result of changes in Washington state campaign finance law, contributions to the [Committee] increased greatly...the [Committee's] long-standing accounting system proved inadequate to handle the influx of contributions and expenditures." On May 23, 1997, the Committee confirmed that it had also reimbursed its federal account from its non-federal account for 100% non-federal activity in the amount of \$80,203.89. The total amount overtransferred equaled \$365,520.11.

On February 5, 1998, the Committee filed its Year End Report, which disclosed a \$248,000 overtransfer from its non-federal account to its federal account. The Committee stated that, during preparation of the report, it discovered that the overtransfers had occurred beginning in July 1997. In later correspondence, the Committee asserted that a significant portion of the overtransfer occurred when the Committee hosted a picnic for the Republican rank and file. The 1997 allocation formula required that one-third of the cost of the picnic (\$151,000) be treated as a federal expense.

The Committee's 1998 April Quarterly shows that it repaid the 1997 overtransfer of \$248,000 and \$47,000 of the outstanding balance of the 1996 overtransfers during the reporting period. In an April 24, 1998 letter to the Commission, the Committee explained that it borrowed \$200,000 from its bank to repay the excess transfers and was also able to repay an additional \$95,000 from other funds. The Committee used this \$295,000 to repay the 1997 overtransfer and some of the outstanding balance of the 1996 overtransfers.

The Committee made additional repayments during 1998, and its 1998 October Monthly Report discloses that the Committee finished repaying the overtransfers on September 18, 1998. In order to avoid "future excess transfers," the Committee pledged to begin monthly FEC reporting and to modify or replace its program with one that will "track expenses on a daily or weekly basis to ensure that transfers are supported by allocable expenses paid." In addition, the Committee stated that it has developed a manual for its staff of compliance procedures and requirements, and that it sent its executive director to a two-day seminar on compliance with the Act, including allocation formulae compliance.

C. Analysis

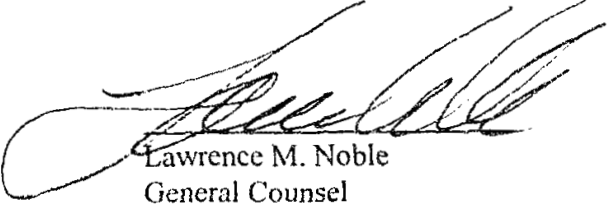
The Committee concedes that it overtransferred \$285,316.22 from its state exempt account to its federal account on October 18, 1996, and that it overtransferred \$248,000 from its state

exempt account to its federal account during the second half of 1997. In addition, the Committee paid \$80,203.89 in 100% non-federal fundraising expenses from its federal account and then reimbursed its federal account from its non-federal account. Therefore, there is probable cause to believe that the Committee violated 2 U.S.C. §§ 441a(f) and 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i).

### III. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that the Washington State Republican Party--Federal Account and Al Symington, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b(a), and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i).

Date: 5/3/95

  
Lawrence M. Noble  
General Counsel