

**CLOSED**



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

August 27, 1999

Dorothy A. Harbeck, Esq.  
Graham, Curtin & Sheridan  
50 West State Street, Suite 1008  
Trenton, NJ 08608

RE: MUR 4719  
New Jersey Republican State Committee  
and H. George Buckwald, as treasurer

Dear Ms. Harbeck:

On August 20, 1999, the Federal Election Commission accepted the signed *conciliation agreement and civil penalty submitted on your client's behalf in settlement of violations of 2 U.S.C. §§ 441a and 441b and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i), provisions of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations. Accordingly, the file has been closed in this matter.*

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.


Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's

Dorothy A. Harbeck, Esq.  
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effective date. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

  
Ruth Heilizer  
Attorney

Enclosure  
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) MUR 4719  
New Jersey Republican State Committee )  
and H. George Buckwald, as treasurer )

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RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Renee Steinhagen, Executive Director of the Public Interest Law Center of New Jersey. An investigation was conducted, and the Federal Election Commission ("Commission") found probable cause to believe that the New Jersey Republican State Committee and H. George Buckwald, as treasurer ("Respondents") violated 2 U.S.C. §§ 441a and 441b and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i). The Commission authorized the filing of a civil action against Respondents based on these findings.

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
  - 1. The New Jersey Republican State Committee is a political committee within the meaning of 2 U.S.C. § 431(4).
  - 2. H. George Buckwald is the treasurer of the New Jersey Republican State Committee.

3. An organization which is a political committee under the Federal Election Act of 1971, as amended, (the "Act") must follow prescribed allocation procedures when financing political activity in connection with federal and nonfederal elections. 11 C.F.R. §§ 102.5 and 106.5(g)(1). These rules implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. §§ 441a and 441b.

4. A party committee, such as Respondents, that has established separate federal and nonfederal 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). Only funds subject to the limitations and prohibitions of the Act shall be deposited in the separate federal account. Id. No transfers may be made to the federal account from any other accounts maintained by the committee for the purposes of financing nonfederal activity, except as provided in 11 C.F.R. § 106.5(g). Id.

5. Pursuant to 11 C.F.R. § 106.5(g)(1)(i), state party committees that have established separate federal and nonfederal accounts must pay the entire amount of an allocable expense from the federal account and shall transfer funds from the nonfederal to the federal account solely to cover the nonfederal share of that allocable expense. Further, such committees must allocate both their administrative and generic voter drive expenses between their federal and nonfederal accounts using the "ballot composition method." 11 C.F.R. § 106.5(d).

6. While the allocation ratio generally is calculated at the beginning of a two-year election cycle, in states such as New Jersey that hold federal and nonfederal elections in different years, state committees must allocate generic voter drive costs by applying the ballot composition method to the calendar year in which the election is held. 11 C.F.R. § 106.5(d)(2).

Administrative costs are still allocated to the ballot composition ratio based on the two-year Congressional election cycle. *Id.*

7. Under the ballot composition method, a state committee allocates its administrative and generic voter drive expenses based on the ratio of federal offices expected on the ballot to total federal and nonfederal offices expected on the ballot in the next general election to be held in the state. 11 C.F.R. §106.5(d)(1)(i). In calculating a ballot composition ratio, a state committee shall count the federal offices of President, United States Senator, and United States Representative, if expected on the ballot in the next federal election, as one federal office each. The committee shall count the nonfederal offices of Governor, State Senator, and State Representative, if expected on the ballot in the next general election, as one nonfederal office each, and shall count the total of all other partisan statewide executive candidates, if expected on the ballot in the next general election, as a maximum of two federal offices. Further, the committee shall also include in the ratio one additional nonfederal office if any partisan local candidates are expected on the ballot in any regularly scheduled election during the two-year congressional election cycle. Finally, state committees shall also include in the ratio one additional nonfederal office. 11 C.F.R. § 106.5(d)(1)(ii).

8. The New Jersey legislature consists of two houses: a 40-member Senate and an 80-member General Assembly. Legislators are elected from 40 legislative districts. The voters in each district elect one Senator and two members of the General Assembly. Legislative elections are held in November of each odd-numbered year. General Assembly members serve two-year terms, and Senators serve four year terms, except for the first term of a new decade, which is only two years. Interim appointments are made to fill vacant legislative seats, and the office is on the ballot for the next general election, unless the vacancy occurred within 51 days of the

election, in which case the appointment stands until the next general election. In 1995, the general election was held on November 7. At that time, in addition to local races, all the General Assembly seats were up for election as well as a single vacant Senate seat in District 5, due to the death of the incumbent. In 1996, the general election was held on November 5. In addition to local races, there was one vacant Assembly seat in District 21 on the ballot, due to the death of the incumbent in March 1996. While a State Senator in District 8 died in December of 1996, this occurred after the general election, and the seat was filled by interim appointment until the next general election in 1997.

9. Based on the above, the correct allocation for Respondents' shared administrative expenses for the 1995-1996 election cycle was 50% federal/50% nonfederal, based on the assignment of three federal points, one each for the Presidential, U.S. Senate and U.S. House races and three nonfederal points, one each for the 1995 State Assembly race in which all the Assembly seats were up for election, the local candidates races and the extra nonfederal point. The correct allocation for Respondents' generic voter drive expenses in 1996 was 60% federal/40% nonfederal, based on the assignment of the same three federal points and two nonfederal points, one each for the local candidates and extra nonfederal point categories. No nonfederal points should have been assigned to account for elections for State Senate or State Representative (Assembly) seats held in single legislative districts because the average New Jersey voter would not have had the opportunity to vote for candidates for those seats. See 55 Fed. Reg. 26058, 26064 (June 26, 1990) (ballot composition method is based on an "average ballot" approach); 57 Fed. Reg. 8990, 8991 (March 13, 1992) (discussion of "average ballot" concept); and AO 1991-6 (additional federal point required where each average voter in the state

would have the ability to vote for two Senate seats). See also AO 1993-17 (a state party committee must take the maximum number of federal points that are required).

10. During the 1995-1996 election cycle, the State of New Jersey permitted individuals, corporations and labor organizations to contribute \$25,000 to state political party committees.

11. In 1996, in calculating its ballot composition ratio for shared generic voter drive expenses, while otherwise correct, the Respondents incorrectly assigned nonfederal points to the categories of State Senate and State Representative. Based on the calculated ratio of the total of federal offices (3) to the total federal and nonfederal offices (7), the Respondents' 1996 allocation for shared generic voter expenses was 42.86% federal/57.14% nonfederal, instead of the correct allocation of 60% federal and 40% nonfederal. Using the miscalculated ratio, and based on the Respondents' disbursements for generic voter drive expenses during 1996 amounting to \$50,000, the Respondents transferred \$29,000, instead of the proper \$20,000, to the federal account in 1996 for the nonfederal portion of shared generic voter drive expenses, resulting in an overpayment of \$9,000. All numbers in this agreement are rounded to the nearest thousand dollars.

12. The Respondents also miscalculated the ballot composition ratio for shared administrative expenses for the 1995-1996 election cycle. In calculating the ballot composition ratio for 1995, the Committee erred in not taking a federal point for the Presidential election in 1996, by assigning a point to the State Senator category, and by taking two points, instead of one point, for the local candidates category. Based on the calculation of the ratio of the total of federal offices (2) to the total federal and nonfederal offices (7), the Respondents' 1995 allocation for shared administrative expenses was 28.6% federal/71.4.% nonfederal, instead of the correct allocation of 50% federal and 50% nonfederal. In March 1996, in response to a

Request for Additional Information from the Commission's Reports Analysis Division, the Respondents filed an amended Schedule H1 for shared administrative expenses, which removed one of the points for the local candidates category, resulting in a ratio of 33.33% federal/66.67% nonfederal, and made a corrective transfer of \$40,000 from its federal to its nonfederal account. Even though the ballot composition ratio for shared administrative expenses is supposed to remain constant for both years of the two year election cycle, see 11 C.F.R. § 106.5(d)(2), the Respondents used an allocation ratio of 42.9% federal/57.1% nonfederal for shared administrative expenses during 1996--the same ratio used for shared generic voter drive expenses during 1996. The correct ratio for both 1995 and 1996 was 50% federal/50% nonfederal. In all, the Respondents had \$4,117,000 in shared administrative expenses in 1995 and 1996, and transferred \$2,522,000 to the federal account for the nonfederal portion of those administrative expenses, resulting in an overpayment to the federal account of \$423,000 (taking into account the \$40,000 corrective transfer back in March 1996).

13. In summary, combining the Respondents' overpayment to the federal account for generic voter drive expenses for 1996 of \$9,000 and their overpayment to the federal account for shared administrative expenses for 1995-1996 of \$423,000, the Respondents' total overpayment from the nonfederal to the federal account for shared generic voter drive and administrative expenses in 1995 and 1996 was \$432,000.

14. Respondents contend that once they miscalculated their ballot composition ratios, they consistently allocated their federal and non-federal administrative and generic voter drive expenses in accordance with the miscalculated ratios, resulting during 1995 and 1996 in the overtransfer to the federal account of \$432,000. Respondents further contend that their violations were not knowing and willful.



V. In 1995-1996, the Respondents overfunded their federal account by \$432,000 in violation of 2 U.S.C. §§ 441a and 441b and 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i). At the time of this agreement, Respondents have refunded \$200,000 from their federal account to their nonfederal account.

VI. 1. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Sixty-five Thousand dollars (\$65,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), no later than thirty (30) days from the date of this order.

2. Respondents will refund the remaining \$232,000 from their federal account to their nonfederal account by December 31, 1999.

3. Respondents will not expend any funds from their federal account, except for administrative expenses such as rent and salaries, until they have refunded the remaining \$232,000 in full.

4. Upon transfer, Respondents will provide the Commission with evidence of each transferred payment.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.


VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral,

made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

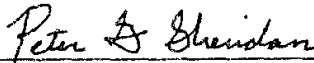
FOR THE COMMISSION:

Lawrence M. Noble  
General Counsel

BY:   
Lois G. Lerner  
Associate General Counsel

8/26/99  
Date

FOR THE RESPONDENTS:

BY:   
Peter G. Sheridan, Esquire  
General Counsel for the  
New Jersey Republican State  
Committee and H. George  
Buckwald, Treasurer

8/12/99  
Date