



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: March 10, 2000

SUBJECT: MUR 4754-General Counsel's Report #2

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of

Republican Campaign Committee of New
Mexico and Laurie Fowler, as treasurer
Heather Wilson for Congress and David
Archuleta, as treasurer

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MUR 4754

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FEDERAL ELECTION
COMMISSION
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GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED: Take no further action, close the file, and send admonishment letters.

II. SUMMARY

The Federal Election Commission ("the Commission") found reason to believe that the Republican Campaign Committee of New Mexico and Laurie Fowler, as treasurer, ("the Committee") made an excessive contribution to Heather Wilson for Congress ("the Wilson Committee") in the form of mailers advocating Ms. Wilson's election in New Mexico's June 23, 1998 special election. The Commission also found reason to believe that the Committee failed to properly report an in-kind contribution to the Wilson Committee of automated phone banks advocating Ms. Wilson's election. The Commission found reason to believe that the Wilson Committee knowingly accepted an excessive contribution in connection with the mailer, and failed to properly report the phone bank contribution.

The Committee has responded to written discovery, and has shown that the mailer was covered by the "volunteer materials exemption." The Committee amended its reports to rectify the reporting violation, and the Wilson Committee has indicated its willingness

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amend its reports to comply with whatever the Commission and the Committee agree is proper. This Office recommends that the Commission take no further action as to both committees, send letters of admonishment as to the reporting problem, and close the file.

III. DISCUSSION

A. The Mailers

In May, 1998, the Committee distributed a mailer which expressly advocated Heather Wilson's election in New Mexico's June 23, 1998 special election. Complainant, the Democratic Party of New Mexico, alleged that the mailers were not covered by the "volunteer materials exemption." In its response to the complaint, the Committee addressed only some of the factors that the Commission had looked to in the past to determine if a mailer was covered by the exemption. The Commission concluded that the Committee had not shown that the mailer was covered by the "volunteer materials exemption," and that therefore there was reason to believe that the Committee had made an excessive in-kind contribution to the Wilson Committee. The Commission also found reason to believe that the Wilson Committee knowingly accepted the contribution. The Commission issued written discovery to the Committee asking for details about the Committee's expenditures and the role of volunteers in producing the mailer.

The Committee's response has satisfied this Office that the mailers fell within the volunteer exemption. Interrogatories and requests for documents directed to the Committee asked the Committee to show that the mailers had not been paid for with national party committee funds. See 11 C.F.R. §§ 100.7(b)(15)(vii) and 100.8(b)(16)(vii). The Committee's response shows that the mailer was not paid for with

national party committee funds. The Committee demonstrates that funds received from the National Republican Congressional Committee shortly before the mailer was paid for were deposited and maintained in a different account than the Committee's "Unity" account; the "Unity" account was used to pay for the mailers. While a small amount of national party committee funds were deposited in the "Unity" account, the Committee provides documents which show that the "Unity" account had sufficient cash in this account from non-national party committee sources to pay for the mailers.

The Commission also asked the Committee whether a commercial mailing list had been used for the mailer, see 11 C.F.R. §§ 100.7(b)(15)(i) and 100.8(b)(16)(i), and asked whether volunteers or the mail vendor had bundled the mailers by zip code before they were delivered to the post office. See 11 C.F.R. § 100.7(b)(15)(iv) and 100.8(b)(16)(iv); see also MUR 3218. The Committee states that the mailing list was not purchased from a commercial vendor, but was gathered during the Committee's regular compilation of voter registration records as part of its party building activity. The Committee also states that its volunteers bundled and sorted the mailers by zip code.¹ Therefore, it appears that the mailers were covered by the "volunteer materials exemption."²

¹ In response to the complaint, the Committee submitted a volunteer sign-in sheet for the date on which the mailers were processed at the Committee's offices and taken to the post office.

² The Wilson Committee's response to the Commission's reason to believe findings reiterates that the Wilson Committee believed that the mailers were covered by the volunteer materials exemption.

B. The Phone Banks

The Commission found reason to believe that the Committee failed to report properly an in-kind contribution to the Wilson Committee in the form of automated phone banks operated in the weeks before the special election. The Committee first reported the cost of the phone banks as a contribution on its Post-Special Election Report, and reported the date of the expenditure as June 23, 1998. However, the complaint stated that the phone banks were operated prior to June 3, 1998, indicating that an in-kind contribution to the Wilson campaign should also have been reported on the Committee's Pre-Special Election Report. See 2 U.S.C. § 434(a)(4)(A)(ii) (pre-election reports of non-authorized committees shall be complete as of the 20th day before the election).

The Committee states that it misunderstood its reporting obligations. The phone banks were apparently operated during several weeks, including on the day of the election. The phone banks were operated both during the Pre-Special Election reporting period and during the Post-Special Election reporting period. The Committee states that it originally reported the full amount of its expenditures for the phone banks on the last day that the phone banks were operated - June 23, 1998.

Pursuant to 11 C.F.R. § 100.8(a), "[a] written contract, including... a promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or agreement is made." 11 C.F.R. § 110.1(b)(6) states that "[a]n in-kind contribution shall be considered to be made on the date that the goods or services are provided by the contributor." With its response to written discovery the Committee has submitted both an amended Pre-Special Election Report showing a disbursement for the phone banks on June 3, 1998, and an amended Post-Special Election Report showing disbursements for

the phone banks on June 10, 17, and 23, 1998, stating that these amendments are in response to "the recommendation of the FEC in MUR 4754." More recently, this Office has ascertained by telephone that the equipment used to make the telephone calls is owned by the Committee, and that therefore there was no contract with an outside vendor.

The Committee should have initially reported in-kind contributions of automated phone banks as having been made when the phone banks were operated, and not waited until the end of the project period for a final figure. The Commission has, however, directed this Office not to pursue the in-kind contribution reporting issue if it is the only issue remaining in this matter.³ As noted above, it appears with regard to the other issue being addressed that the mailers were volunteer exempt. Therefore, this Office recommends taking no further action against either the Republican Campaign Committee of New Mexico or the Wilson Committee with regard to the phone bank reporting issue. However, this Office also recommends sending admonishment letters to the respondent committees with regard to the reporting of in-kind contributions.

IV. RECOMMENDATIONS

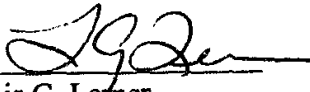
1. Take no further action and send an admonishment letter to Heather Wilson for Congress and David Archuleta, as treasurer.

³ Specifically, the Commission removed language asking about the phone banks from this Office's proposed interrogatories to the Committee, and directed this Office only to pursue those questions if there was a further investigation of the mailers.

2. Take no further action and send an admonishment letter to the Republican Campaign Committee of New Mexico and Laurie Fowler, as treasurer.
3. Approve the appropriate letters.
4. Close the file.

Lawrence M. Noble
General Counsel

3/9/00
Date

BY: 
Lois G. Lerner
Associate General Counsel

Staff Assigned: Anne Weissenborn

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