

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

AUG 21 11 17 AM '93

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 4785

DATE COMPLAINT FILED: August 10, 1998

DATE OF NOTIFICATION: August 14, 1998

DATE ACTIVATED: April 27, 1999

STAFF MEMBERS: Donald E. Campbell
Anne A. Weissenborn

COMPLAINANT: Paul Berendt

RESPONDENTS: Ron Taber

RELEVANT STATUTE: 2 U.S.C. § 431(2)(A)
2 U.S.C. § 432(e)(1)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Paul Berendt, Chairman of the Washington State Democratic Central Committee, on August 10, 1998. The complaint alleges that Ron Taber ("Taber") failed to file a Statement of Candidacy upon exceeding the \$5,000 threshold for candidacy during the 1998 election for U.S. Representative in Washington State's 9th Congressional District.

99.04.394.40.66

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines "candidate" as "an individual who seeks nomination for election, or election, to Federal office." 2 U.S.C. § 431(2). "[A]n individual shall be deemed to seek nomination for election, or election . . . if such individual has received contributions aggregating in excess of \$5,000 or has made expenditures aggregating in excess of \$5,000." 2 U.S.C. § 431(2)(A). The Act defines "contribution" as including "any gift, subscription, loan advance or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office." 2 U.S.C. § 431(8)(A)(i). The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii).

The Act further states: "Each candidate for Federal office . . . shall designate in writing a political committee . . . to serve as the principal campaign committee of such candidate. Such designation shall be made no later than 15 days after becoming a candidate." 2 U.S.C. § 432(e)(1), 11 C.F.R. § 101.1(a). The candidate shall make such a designation by timely filing a Statement of Candidacy or a letter containing specified information with the Commission. 11 C.F.R. §§ 101.1(a), 105.1. "A document is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date Reports and statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed." 11 C.F.R. § 100.19(b).

B. Complaint and Response

The complaint, dated August 4, 1998, alleged that "it seems probable that at least \$5,000 has been raised [or] spent" by Ron Taber's campaign for Congress, but that the candidate had not

99.04.394.0139

filed a report with the FEC. The complaint identified a series of alleged expenditures which the complainant presupposed had exceeded the \$5,000 threshold.

In his August 25, 1998 response to the complaint, Taber, as candidate and treasurer of Ron Taber for Congress ("the Committee"), addressed the list of alleged expenditures cited in the complaint with an item by item description and accounting for each. In addition, Taber listed other expenditures during the time period in question, accounting and providing invoices for each expenditure. (Attachment 1) In his response, Taber appears to make a distinction between expenditures which were made by him on behalf of his campaign (and which are contributions pursuant to 2 U.S.C. § 431(8)(A)(i)), and direct and in-kind contributions from others to his campaign, by stating that "on the income side. . . we have clearly received less than \$5,000," and attaching in support a copy of a listing only of direct and in-kind contributions from others totaling \$1,325. According to Taber, he did not exceed the \$5,000 threshold for designating an authorized committee until August 16, 1998¹. As anticipated in Taber's response, the Committee also filed a Pre-Primary Report on September 2, 1998, for the period ending August 26, 1998, which correctly included on the Detailed Summary Page not only the \$1,325 in contributions from others, but also a total of \$17,100.10 in contributions from the candidate. The Report also included on Schedule B a series of expenditures which aggregated in the amount of \$17,617.26 as of August 26, and which included the \$17, 100.10 expended by the candidate.² (Attachment 2)

¹ This Office's analysis of the pertinent records shows that Taber actually exceeded the \$5,000 limit on August 12, 1998, with receipt of an in-kind contribution of \$475 on that day. See discussion *infra*.

² The difference of \$517.16 appears to be from an in-kind contribution of \$475 and an apparent failure to include \$42.16 in bank charges as part of Taber's contributions. (See Attachment 2)

C. Analysis

While the Committee's Pre-Primary Report, signed by Taber on August 31, 1998, properly includes his own expenditures for his campaign of \$17,100.10 as contributions from the candidate, it appears that when Taber responded to the complaint, he incorrectly failed to include such expenditures as contributions, which, when combined with outside contributions, counted toward the monetary threshold for candidacy. As shown below, Taber exceeded \$5,000 in contributions as of August 12, 1998.

The following chart contains a listing, by date, of contributions received from other individuals by Taber combined with expenditures which he personally made on behalf of his campaign between February 27, 1998 and August 12, 1998:

| Date of Contribution | Direct Contributions from Individuals and In-kind Contributions by Taber | Purpose | Amount |
|----------------------|--|------------------------------------|----------------------|
| 02/27/98 | Tags Trophies (Taber) | Name badge | \$23.49 |
| 02/28/98 | George D. Lark | Direct campaign contribution | \$50.00 |
| 02/28/98 | Capitol City Press (Taber) | Political business cards | \$1,609.20 |
| 03/05/98 | Bob Drohman | Direct campaign contribution | \$500.00 |
| 06/20/98 | Audrey Kelley | Direct campaign contribution | \$25.00 |
| 06/23/98 | Karen Herd (Taber) | Phone bill reimbursement | \$8.40 |
| 06/25/98 | Jerald Isenhardt | Direct campaign contribution | \$250.00 |
| 07/10/98 | Crown Signs (Taber) | Vinyl truck sign | \$70.00 |
| 07/15/98 | Renton River Days (Taber) | Parade Entry Fee | \$50.00 |
| 07/15/98 | Capitol City Press (Taber) | Political brochure | \$420.35 |
| 07/22/98 | Wells Fargo Bank (Taber) | Bank service charges - 4/98 - 7/98 | \$32.00 |
| 07/24/98 | House of Fabrics (Taber) | Flag tablecloth | \$22.09 ³ |

³ Included in Taber's response but not itemized on the Committee's Pre-Primary Report.

| | | | |
|------------------|--|---|-------------------------------|
| 07/26/98 | K-Mart (Mastercard Purchase) (Taber) | Balloons and candy | \$34.44 |
| 07/27/98 | Country Gazette (Taber) | Campaign Advertisement | \$120.00 |
| 07/28/98 | Washington Secretary of State (Taber) | Filing Fee | \$1,367.00 |
| 01/98-08/98 | (Taber) | Paper and reproduction costs; home photocopy machine | \$30.00 ⁴ |
| 01/98-07/98 | Allen's Press Clippings (Taber) | News Clippings (at \$54 per month) | \$378.00 ⁵ |
| SUB-TOTAL | | | \$4,989.97⁶ |
| 08/12/98 | Jefferson McKinley Strategies ⁷ | In-Kind contribution: Political consulting | \$475.00 |
| TOTAL | | | \$5,464.97 |

Since Taber exceeded \$5,000 in contributions on August 12, 1998, in order to be timely filed, Taber's Statement of Candidacy should have been received by the Commission no later than August 27, if sent by first-class mail. 2 U.S.C. § 432(e)(1) and 11 C.F.R. § 100.19(b). His Statement of Candidacy, sent by first class mail and postmarked on August 25, 1998, was, however, not received by the Commission until August 31, 1998, or four days after the specified 15-day period had ended. (Attachment 2 at 9) As a result, this filing was not timely.⁸

⁴ Included in Taber's response but not itemized on the Committee's Pre-Primary Report.

⁵ Taber lists \$324 for this expenditure in his response, and the Committee, in its report, lists \$440 for this expenditure from January through August 26, 1998. Based on the invoice which shows a monthly charge of \$54, we have used a figure of \$378 for the months of January through July.

⁶ Taber also reported additional expenditures of \$12.14 on July 23, 1998 and of \$32.34 on July 31, 1998. Both were credit card charges for "travel fuel." These payments have not been included among the in-kind contributions listed above, based upon the language of 11 C.F.R. § 100.7(b)(8) which exempts from the definition of "contribution" unreimbursed payments "for transportation expenses incurred by any individual on behalf of any candidate . . . to the extent that: The aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election . . ."

⁷ Jefferson McKinley Strategies is not registered in the State of Washington as a corporation.

⁸ Taber could have ensured timely filing by sending the document by registered or certified mail, which is considered filed as of the date of deposit, not of receipt. 11 C.F.R. § 100.19(b).

2410-463-40-66

Based on the above, this Office recommends that the Commission find reason to believe that Ron Taber, as the candidate, violated 2 U.S.C. § 432(e)(1) as a result of the late filing of his Statement of Candidacy. However, as the filing was mailed two days before the deadline and received only four days late, this Office also recommends that the Commission take no further action with regard to this violation and send an admonishment letter.

III. RECOMMENDATIONS


1. Find reason to believe that Ron Taber, as the candidate, violated 2 U.S.C. § 432(e)(1), but take no further action and send an admonishment letter.
2. Close the file in this matter.
3. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

8/26/99

Date

BY:



Lois G. Lerner
Associate General Counsel

Attachments:

1. Candidate's response
2. 1998 Pre-Primary Report of Receipts and Disbursements,
1998 Statement of Candidacy

99-04-394-043