

BEFORE THE FEDERAL ELECTION COMMISSION

FEB 10 9 59 AM '99

In the Matter of)
)
Sixth Congressional District Republican Party) MUR 4797 & MUR 4798
Randolph County Republican Executive Committee)
Buncombe County Republican Party, *et al*)

GENERAL COUNSEL'S REPORT

SENSITIVE

I. BACKGROUND

On August 18, 1998, the Federal Election Commission found that there is reason to believe that the Sixth Congressional District Republican Party (or "6th District"), the Randolph County Republican Executive Committee ("Randolph Committee") and the Buncombe County Republican Party ("Buncombe Committee") and their respective treasurers violated various provisions of the Federal Election Campaign Act of 1971, as amended ("the Act" or "the FECA") and Commission regulations. See First General Counsel' Report, dated July 9, 1998 ("FGCR"). MUR 4797 involves the 6th District and MUR 4798 includes the Randolph and Buncombe Committees.

The central issue in these related matters is the transfer of impermissible funds, totaling \$46,350, from the Randolph Committee and the acceptance of such funds by the federal accounts of the 6th District and the Buncombe Committee. See 11 C.F.R. § 102.5(a). The Randolph Committee is an unregistered party organization which accepts funds deemed impermissible under the Act.¹ To investigate the transactions at issue, this Office issued written questions and document requests. Responses have been submitted and are analyzed below. Attachments 1 and

¹ North Carolina Law does not impose any limitation on the amount of funds that party committees such as the Randolph Committee may accept. See General Statutes of North Carolina §§ 163-278. It does prohibit the acceptance of corporate contributions.

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2. The respondents have requested preprobable cause conciliation. This Office recommends that the Commission agree to enter into conciliation and approve the attached agreements.

Attachments 3.

II. ANALYSIS OF RESPONSES

A. Overview

The Randolph Committee acknowledges that during October of 1996, it transferred \$46,350 to two other party committees that are registered with the Commission; specifically, \$32,425 to the 6th District and \$13,925 to the Buncombe Committee. Discovery has confirmed that the impermissible funds were deposited into the federal accounts of the 6th District and the Buncombe Committee. As discussed in more detail below, while the communications were primarily devoted to local candidates, some portions of most of the communications had a federal component. Moreover, regardless of whether the communications had a federal component or not, the respondents violated the Act and regulations by making and receiving the transfers containing impermissible funds.

The discovery sought information related to the circumstances surrounding these transfers, specifically the recipients' spending of the funds immediately upon receipt, with most paid to the same vendor. See FGCR at pages 13-15. The responses make clear that the transfers were part of a single plan, assertively undertaken in light of local political considerations. Counsel explained that Mark Stevens of Advantage Mailing, a political consultant/vendor, apparently working for the local parties as well as state candidates, recommended the purchase of communications aimed primarily at defeating state opponents. During a call with this Office, counsel explained that at least some of the state candidates did not wish to be associated with "negative" communications aimed at their opponents. In an effort to ensure a continued majority

in the North Carolina House, the speaker of that House, Harold Brubaker, agreed to arrange for the financing of such communications by the Randolph Committee.² Attachment 2 at pages 12 and 20. Counsel also stated that the reason that the Randolph Committee did not directly pay for the advertising is because the state candidates who were to benefit from the communications were not located within Randolph county, but within counties that are within the 6th District (Alamance and Guilford counties) and in Buncombe County. Thus, to avoid questions that would be raised by having the Randolph Committee identified as the sponsor of these communications, the vendor and/or Mr. Brubaker/the Randolph Committee decided to transfer the funds to the 6th District and the Buncombe Committee so that those recipient committees could be identified as the sponsors.

B. 6th District

The Commission found reason to believe that the 6th District and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a) in connection with its acceptance of impermissible funds transferred from the Randolph Committee. As the 6th District only had a federal account, it was required to only accept funds deemed permissible under the Act “regardless of whether such [funds were used] in connection with federal or non-federal elections.” See 11 C.F. R. 102.5(a)(ii).

To carry out the plan explained above, the Randolph Committee made three payments to the 6th District that were deposited in the 6th District’s federal account, totaling \$32,425. Two of the payments were made on October 22, 1996, when the Randolph Committee issued two checks

² According to counsel, Mr. Brubaker represents a local district within Randolph County and apparently controls the Randolph Committee. The Randolph Committee’s reports disclose a \$42,000 contribution from Mr. Brubaker’s campaign account on October 23, 1996, which was within the same time frame that the transfers at issue were made.

to the 6th District totaling \$22,425. On the same day, the 6th District issued two checks to Advantage Mailing, totaling \$22,376. Attachment 1 at 30-33. The funds were used on voter mailings. Attachment 1 at pages 22-27. Although the focus of the mailings was on state candidates, there was also a federal component. Specifically, one of the mailings, distributed just prior to election day 1996, negatively compared local candidates to Bill Clinton who was then up for re-election (calling the local candidates "Bill Clinton liberals" and stated that the local candidates obtained their campaign money from "the same liberal special interests groups that fund Bill Clinton") and the other mailing had a party building message, disparaging "liberal Democrats" while urging readers to vote for the "Republican Team." Attachment 1 at pages 22-27. The mailings stated that they were paid for by the 6th District.

The Randolph Committee also issued a \$10,000 check to the 6th District on October 17th, and at that time, the 6th District issued a check in the same amount for a radio ad. That radio ad discussed only candidates for state election. Attachment 1 at pages 40-41. The radio script stated that it was paid for by the 6th District.

In short, regardless of the content of the communications and whether they had a federal component or not, the 6th District violated the Act and regulations by accepting impermissible funds from the Randolph Committee, an unregistered organization. Counsel asserts that the 6th District, operated by volunteers, was unaware that it was prohibited from depositing funds from the Randolph Committee into its account and that the funds were spent immediately upon receipt. These factors may be considered as mitigating, but it nevertheless appears that the 6th

District and Collette Hoover, as treasurer, accepted impermissible funds, depositing such funds in a federal account, in violation of 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a).³

C. Buncombe Committee

The Commission found reason to believe that the Buncombe Committee and its treasurer violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a) in connection with a \$13,925 transfer from the Randolph Committee. As the Buncombe Committee has a separate federal account, it was prohibited from receiving any transfers from any other accounts except for in limited circumstances not applicable here. *See* 11 C.F.R. § 102.5(a)(i). The Commission also found reason to believe that the Buncombe Committee violated 11 C.F.R. § 106.5(a) because, although it has both a federal and nonfederal account, none of its disclosure reports indicated that it has allocated any of its administrative expenses or disbursements for party building, voter registration, fundraising, etc., as required by that regulation. The FGCR also noted a number of apparent reporting errors or discrepancies that would be investigated. *See* FGCR at pages 11-12. Each of these violations/areas will now be analyzed.

Responses to this Office's questions indicate that the Randolph Committee issued a check totaling \$13,925 to the Buncombe County Committee on October 23, 1996. In a memo to the Buncombe Committee, dated October 23, 1996, North Carolina House Speaker Brubaker's office requested that the Buncombe Committee's then treasurer, Martin Reidinger, "overnight a

³ As noted in the FGCR, RAD raised questions about the 6th District's failure to report any expenses for rent or utilities during the 1996 election cycle. *See* FGCR at pages 5 and 13. In its response, the 6th District states under oath that no office space was occupied and no staff was retained during the applicable time frame. Attachment 1 at pages 19-20. In addition, the funds at issue were the only major expenditures by the 6th District during the Fall of 1996. Thus, this Office does not recommend pursuing this issue further.

check for \$13,915"⁴ to the vendor, Advantage Mailing, concluding "Thank you for your help and get those Republican voters to the polls!!" Attachment 2 at page 7. The invoice from Advantage Mailing indicates that the \$13,915 payment was received from Buncombe Committee on October 24, 1996. Although the focus of the mailing was on state candidates, it had a federal component. Specifically, the first page of the mailing contained the picture of and references to U.S. Representative Charles Taylor (N.C.), along with local candidates and identified them as "The Republican Team for Buncombe County." Attachment 2 at page 3.⁵ Another page of the mailing, a letter from Representative Taylor in support of a local candidate, states "we must work hard in the next few days to make sure Republicans turn out to vote" and a statement by Representative Taylor that the local candidate "stands for the same kind of traditional Republican principles—conservative principles—that I try to represent in the U.S. Congress." Attachment 2 at page 5. This is the type of activity for which the costs must be allocated to ensure the federal portion is financed with permissible funds. *See* 11 C.F.R. § 106.5(e). In any event, regardless of the content of the mailing, the Buncombe Committee violated the Act and regulations by accepting the impermissible funds from an unregistered organization into its federal account.⁶

From January 1, 1996 through the last report filed to date for 1998, the Buncombe Committee has never allocated its administrative expenses or other disbursements. Attachment 2

⁴ The check was actually for \$13,915.20, but within this report it is rounded to \$13,915.

⁵ This first page of the mailing appears to constitute a slate card, which, though exempt from the definition of "contribution" and "expenditure" must be paid for in part with permissible funds. *See* 2 U.S.C. §§ 431(8)(B)(v) and (9)(B)(iv) and 11 C.F.R. §§ 100.7(b)(9) and 100.8(b)(10).

⁶ As this was not a transfer from the Buncombe Committee's nonfederal account (but rather from the account of a separate unregistered political party organization) it is not the type of transfer permitted by 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g).

at page 22. Party committees that have both federal and nonfederal accounts are required by 11 C.F.R. § 106.5(a) to allocate. They must also state on their reports the allocation ratio to be used at the start of each calendar year. *See* 11 C.F.R. § 104.10(b)(1). The Commission's Report's Analysis Division ("RAD") repeatedly questioned the Buncombe Committee about its lack of allocation, but received no response. *See* FGCR at page 12.

In response to questions from this Office about allocating its administrative expenses, the Buncombe Committee admits "none were allocated" and states that it is willing to now allocate. Attachment 2 at pages 2 and 22. It appears that the total amount of administrative expenses and other disbursements⁷ that should have been allocated from January 1, 1996 through the last report filed in 1998 totals approximately \$111,776 (\$46,018 in 1996, \$39,645 in 1997 and \$26,513 from January 1 through the last report filed in November of 1998, less \$400 contributed directly to candidates).

A review of the Buncombe Committee's responses and disclosure reports shows the following reporting errors: (1) after being informed by RAD that it should take corrective action regarding its acceptance of the impermissible \$13,925, the Committee made a \$9,500 transfer

⁷ In response to a question regarding whether the Buncombe Committee made any payments for party building, voter registration or get-out-the-vote activities and whether any such payments were allocated, the Buncombe Committee answered that no such "activities were paid for on the reports tendered to the [FEC]." Attachment 2 at page 21. The meaning of this answer is unclear, but our review of the Buncombe Committee's disclosure reports from January 1, 1996 through the last report filed (in November of 1998) disclose a number of disbursements that may fall into one of those categories of allocable activities, including payments for "bumper stickers/signs" just prior to the 1996 elections and payments for fundraising events. *See, e.g.,* Attachment 2 at pages 41 and 52. Our interactions with counsel for this committee and with the current treasurer indicate a misunderstanding and/or lack of any knowledge about what activities are allocable and the requirements of the allocation regulations at issue. In any event, the vast majority of the committee's disbursements during this time frame were for administrative expenses such as rent, utilities, and equipment which, as noted, also must be allocated but were not. *See* Attachment 2 at pages 26-84.

from its federal account to its nonfederal account on January 21, 1998, but reported it as a \$8,925 transfer on December 30, 1997; (2) in its 1998 reports, the Buncombe Committee never reduced its reported cash-on-hand by the \$9,500 that was transferred out of its federal account, so that the reported cash-on-hand on its 1998 reports is in error, and; (3) it reported the receipt date of the initial \$13,925 transfer-in from the Randolph Committee as November 25, 1996 when it was actually received just before election day on October 25, 1996. Attachment 2 at pages 14, 18, 23, 25, 55, 63 and 69. Accordingly, this Office now recommends that the Commission find reason to believe that the Buncombe Committee and its treasurer, Gary S. McClure, violated 2 U.S.C. § 434(b).

The Buncombe Committee asserts that after reviewing its reports going back to 1995, it has concluded that neither its federal nor nonfederal account have accepted any contributions in excess of the FECA limits or transfers containing impermissible funds (other than the transfer at issue). Attachment 2 at page 15. It also points out that even those impermissible funds totaling \$13,925 were used immediately on the expenditures at issue. Counsel informed this Office that upon conclusion of this matter, the Buncombe Committee intends to terminate.⁸ Counsel further explained that the treasurer in 1996 was replaced by the current treasurer who has not had any

⁸ During a telephone call, counsel claimed that the Buncombe Committee's "exempt activities" did not meet the \$5,000 threshold for "political committee" status and that it should no longer be registered with the Commission. Although this could be accurate, counsel offers nothing in support of this assertion. Moreover, as discussed in footnote 7 with respect to the Committee's lack of allocation, there appears to be some misunderstanding regarding the financing and reporting of exempt activities and other activities that have a federal component, e.g., party building and get-out-the vote activities.

training in the FECA or regulations.⁹ Our review of the Committee's reports does not disclose the receipt of any other transfers from impermissible sources and only minimal contributions made to federal candidates. Although the factors set out by counsel may be considered mitigating, it nevertheless appears that the Buncombe Committee and its treasurer, Gary S. McClure, violated 2 U.S.C. §§ 441a(f) and 434(b) and 11 C.F.R. §§ 102.5(a) and 106.5(a).

D. Randolph Committee

The Commission found reason to believe that the Randolph Committee and its treasurer violated 2 U.S.C. § 441a and 11 C.F.R. § 102.5(a) by making the transfers totaling \$46,350 to the federal accounts of registered political committees.¹⁰ The investigation has confirmed that the Randolph Committee made the transfers and the Randolph Committee has not shown that the funds transferred were from permissible sources. It thus appears that these respondents violated the foregoing provisions. Despite being informed by RAD and this Office that the transfers were not permissible, there is no indication that the Randolph Committee ever sought refunds from the recipient committees.

The Commission also found reason to believe that the Randolph Committee violated 2 U.S.C. §§ 433 and 434 by operating an unregistered and non-reporting "political committee."

⁹ Mr. McClure replaced Martin Reidinger, who was the treasurer at the time of the initial transfer and also at the time the Commission found reason to believe the violations occurred.

¹⁰ As the 6th District only had a federal account, the Randolph Committee was prohibited from making the transfer to it altogether. Regarding the Buncombe Committee, there is no indication that the Randolph Committee instructed it to place the funds in its nonfederal account. Additionally, as previously discussed, some of the communications had a federal component and the vendor who created the communications appeared to be working under the direction of the Randolph Committee and this committee appears to have been most involved in the purchase of the communications at issue.

However, discovery indicates that the transfers to these federal committees or accounts appear to have been undertaken primarily to affect state elections and were isolated occurrences.

Accordingly, this Office recommends that the Commission take no further action with respect to the political committee findings.

III. DISCUSSION OF PREPROBABLE CAUSE CONCILIATION

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IV. RECOMMENDATIONS

MUR 4797

1. Enter into preprobable cause conciliation with the Sixth Congressional District Republican Party and Collette Hoover, as treasurer.
2. Approve the attached agreement with the Sixth Congressional District Republican Party and Collette Hoover, as treasurer.

3. Approve the appropriate letter.

MUR 4798

4. Find reason to believe that the Buncombe County Republican Party and Gary S. McClure, as treasurer violated 2 U.S.C. § 434(b).

5. Approve the attached factual and legal analysis for the Buncombe County Republican Party and Gary S. McClure, as treasurer.


6. Enter into preprobable cause conciliation with the Randolph County Republican Executive Committee and Laverne A. Williams, as treasurer and the Buncombe County Republican Party and Gary S. McClure, as treasurer.

7. Approve the attached agreements with the Randolph County Republican Executive Committee and Laverne A. Williams, as treasurer and the Buncombe County Republican Party and Gary S. McClure, as treasurer.

8. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

2/9/99
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments

1. Responses from Randolph/6th District
2. Response from Buncombe Committee
3. Proposed Conciliation Agreements (3)
4. Factual and Legal Analysis (1)

Staff Assigned: Xavier McDonnell
Cynthia Nixon

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/LISA R. DAVIS
COMMISSION SECRETARY

DATE: FEBRUARY 16, 1999

SUBJECT: MURs 4797 & 4798 - General Counsel's Report
dated February 9, 1999.

A handwritten signature, likely of Lisa R. Davis, is written in a circle next to the "FROM" line.

The above-captioned document was circulated to the Commission
on Wednesday, February 10, 1999.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Elliott	—
Commissioner Mason	XXX
Commissioner McDonald	—
Commissioner Sandstrom	XXX
Commissioner Thomas	XXX
Commissioner Wold	—

This matter will be placed on the meeting agenda for
Tuesday, February 23, 1999.

Please notify us who will represent your Division before the Commission on this
matter.

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