

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION COMMISSION
JUL 10 10 50 AM '98

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRALS 97L-22 A & B
DATE ACTIVATED: FEBRUARY 12, 1998

STAFF MEMBERS: Xavier K. McDonnell
Cynthia Nixon

SOURCE: INTERNALLY GENERATED

RESPONDENTS Sixth Congressional District Republican Party
and Collette Hoover, as treasurer
Randolph County Republican Party Executive Committee
and Laverne A. Williams, as treasurer
Buncombe County Republican Party
and Martin Reidinger, as treasurer

RELEVANT STATUTES: 2 U.S.C. § 441a
2 U.S.C. § 434
2 U.S.C. § 433
11 C.F.R. § 102.5
11 C.F.R. § 106.5

INTERNAL REPORTS CHECKED: DISCLOSURE REPORTS

FEDERAL AGENCIES CHECKED: NONE

I. GENERATION OF MATTER

The Office of General Counsel received these referrals from the Reports Analysis Division ("RAD"). The basis for the referral in 97L-22A is the Sixth Congressional District Republican Party's (or "6th District's") receipt of \$32,425 in transfers from an unregistered organization: the Randolph County Republican Party Executive Committee ("Randolph County" or "Randolph County Committee"). RAD referral 97L-22A is also based upon the 6th District's

failure to report any operating expenses during the 1996 election period, i.e., rent, staff time, utilities.

The basis of RAD referral 97L-22B is the Randolph County Committee's making transfers to party committees, totaling \$46,350, including the aforementioned \$32,425 transfer to the 6th District, as well as \$13,925 transferred to the Buncombe County Republican Party ("Buncombe County Committee" or "Buncombe Committee"). The Buncombe County Committee is registered with the Commission. The committees have not disclosed and/or demonstrated that they have made any refunds or transfers of the impermissible funds.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act") and Commission regulations provide that transfers of funds may be made without limit on amount between or among a state party committee and/or any subordinate party committee whether or not they are "political committees" and whether or not such committees are affiliated. 2 U.S.C. § 441a(a)(4); 11 C.F.R. §§ 102.6(a)(1)(ii) and 110.3(c)(1). However, the funds transferred must be in compliance with the Act. See 11 C.F.R. §§ 102.6(a)(1)(iv) and 102.5. In addition, such transfers shall count against the reporting thresholds of the Act for determining whether an organization is a "political committee." 11 C.F.R. § 102.6(a)(2).

The Act requires local party organizations to register with the Commission if, *inter alia*, they make contributions or expenditures aggregating in excess of \$1000 during a calender year.

2 U.S.C. §§ 431(4)(C) and 433(a). Each "political committee," including a party committee, which finances political activity in connection with both federal and non-federal elections, is required to either establish a separate federal account from which all disbursements, contributions, expenditures and transfers made in connection with any federal election shall be made, or establish a political committee which shall receive only contributions subject to the limitations and prohibitions of the Act regardless of whether such funds are used in connection with federal or non-federal elections. 11 C.F.R. § 102.5(a)(1).

A state or local party organization that makes contributions and expenditures must either establish a separate account into which only funds subject to the prohibitions and limitations of the Act shall be made and from which all contributions and expenditures shall be made or demonstrate through a reasonable accounting method that whenever such organization makes a contribution or expenditure, it has received sufficient funds subject to the prohibitions of and limitations of the Act to make such contributions or expenditures. 11 C.F.R. § 102.5(b)(1). These rules ensure compliance with the contribution limitations at 2 U.S.C. § 441a, which provides, *inter alia*, that no person or multicandidate committee shall make contributions to a state or local party committee's federal account in any calendar year which in the aggregate

exceed \$5,000, and prohibits any political committee from knowingly accepting such contributions. *See* 2 U.S.C. § 441a(a)(1)(C) and (f). Under North Carolina law, individuals and non-party political committees may contribute up to \$4,000 per election. *See* General Statutes of North Carolina ("GSNC") §§ 163-278.²

Political committees are required to report all expenditures and disbursements, including operating expenses. 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(b). Party committees must report all transfers from other party committees, regardless of whether they are affiliated. 2 U.S.C. § 434(b)(2)(F); 11 C.F.R. § 104.3(a)(2)(v). The costs for communications made on behalf of clearly identified federal candidates must be reported and attributed in accordance with 11 C.F.R. § 106.1(a). Party committees which maintain both federal and nonfederal accounts must allocate their expenditures and disbursements in accordance with 11 C.F.R. § 106.5(a).

B. Factual Background

The 6th District, a registered party committee, received a \$10,000 transfer on or about October 16, 1996, and a \$22,425 transfer on October 22, 1996. The transfers, totaling \$32,425 were derived from the Randolph County Committee, an unregistered organization. According to the 6th District's 30 day post general election report, these funds from Randolph County, totaling \$32,425, were the only funds received from October 15 through November 25, 1996.

The 6th District's disclosure reports also indicate that on October 17, 1996, just one day after receiving the \$10,000 transfer from Randolph County, it spent \$10,000 for "radio

² Contributions by corporations and labor unions are prohibited by North Carolina law.

advertising." In addition, the 6th District reports making two expenditures totaling \$22,376 for "voter mailings" on October 23, 1996, just one day after receiving the \$22,425 from Randolph County. The \$22,376 was paid to "Advantage Mailing." These three disbursements by the 6th District, totaling \$32,376, constituted all but \$3,000 in disbursements made from October 15 through November 25, 1996. In addition, disclosure reports filed by the 6th District during 1996 do not disclose any disbursements for expenses such as rent, utilities or staff salary.

Upon reviewing the 6th District's 1996 reports, RAD sent requests for information on June 25 and July 11, 1997. RAD informed the 6th District that since the Randolph County Committee was not a registered political committee, the receipt of funds from that committee raised questions. RAD advised the 6th District to take steps to ensure that the funds received from Randolph County were permissible, and if they were not, to immediately transfer such funds from its federal account. RAD also questioned the 6th District about its lack of ordinary operating expenses, i.e., rent, utilities and staff salary.

RAD spoke several times with the 6th District's treasurer, who indicated that she would contact Randolph County's attorney regarding the source of the \$32,425 in transfers. However, the 6th District's treasurer failed to provide any further information about the source of the funds. In its 1997 year end report, the 6th District reported a debt of \$32,425 to the Randolph County Committee. Attachment 2 at page 3. To date, the 6th District has not demonstrated that it has repaid or transferred out the impermissible amount.

By letters dated May 23, June 12 and June 20, 1997, RAD questioned the Randolph

County Committee, an unregistered organization, about the amounts that it had transferred to the 6th District (the aforementioned \$10,000 on October 16, 1996, and \$22,425 on October 22, 1996). RAD also questioned the Randolph County Committee about \$13,925 that it had transferred to the Buncombe County Committee, a party committee that is registered with the Commission. Randolph County reported making that transfer on October 23, 1996, just one day after the second transfer to the 6th District.

RAD informed Randolph County that it should either register with the Commission and file reports, receive a full refund of the transfers or direct the recipient committees to transfer the funds to accounts that are not used to influence federal elections.

In a response letter dated July 7, 1997, counsel for Randolph County claimed that his client acted in accordance with North Carolina law and that the Act does not apply to it. Counsel also stated that the Randolph County Committee has not been able to determine if the \$32,425 transfer to the 6th District was "unrestricted" and surmised that the funds were used on polls for state candidates. RAD responded on July 17, 1997, informing the Randolph County Committee that the 6th District was a federally registered political committee and that the \$32,425 transferred was the only amount received by the 6th District from October 15 through November 25, 1996. Thus, RAD's letter concluded, the Randolph County Committee appears to have made transfers to influence federal elections. RAD reiterated that if the Randolph County Committee did not wish to register and file reports with the Commission, it should obtain

a full refund or direct the recipient committee to seek a transfer of the funds out of its federal account. RAD's letter of July 17th stated the Randolph County Committee had 15 days to provide a response. No response was submitted. RAD also called counsel for the Randolph County Committee on August 21, 1997 and left a message. RAD's call was not returned.

As noted, the Buncombe County Committee received \$13,925 from the Randolph County Committee. The Buncombe County Committee's FEC reports disclose the receipt of that transfer on November 25, 1996. However, the disclosure reports which the Randolph County Committee filed with state election authorities in North Carolina, indicate that the transfer was made over a month earlier on October 23, 1996, just prior to the 1996 general election. According to FEC reports, on October 24, 1996 the Buncombe Committee made a \$13,915 expenditure for a "Cansler/Sherill House ad."³ An initial review of the Buncombe County Committee's FEC disclosure reports indicate that it was only after it received the \$13,925 at issue from Randolph County that it had sufficient funds to make that \$13,915 expenditure. The \$13,915 was paid to Advantage Mailing, the same vendor which reportedly received the payments totaling \$22,425 from the 6th District just a day before.

In a response to RAD's inquiries to the Buncombe County Committee, that committee claimed that the \$13,925 which it received from the Randolph County Committee was used "solely for state legislative races and should have gone into a state operating account and not the

³ This disclosure report appears to be referring to Lanier Cansler and Wilma Sherill, two candidates for state election in North Carolina during 1996.

Federal account.” The Committee’s representative informed RAD that it would transfer \$8,925 to its “State operating account.” In its 1997 mid year report, the Buncombe County Committee reported \$8,925 of the \$13,925 as an outstanding debt owed to its “State operating account.”

Attachment 2 at page 6. On its 1997 year end report, submitted on February 3, 1998, the Buncombe County Committee reported that the \$8,925 debt had been paid. *Id.* at page 18.

However, no corresponding disbursement for that \$8,925 was reported on its disbursement schedule. *Id.* at pages 8-9, 13-17. In addition, from our review of disclosure reports, the Buncombe County Committee did not use funds from its federal account to pay that \$8,925 debt. As discussed in more detail later in this report at pages 11-12, RAD sent inquiries to the Buncombe County Committee about this and other issues. Attachment 2 at pages 7, 20-22.

III. ANALYSIS

A. 6th District

The 6th District is a registered political committee that appears to only maintain a federal account in accordance with Section 102.5(a)(1)(ii). It received \$32,425 in transfers from the Randolph County Committee, an unregistered organization. The referral materials suggest that the Randolph County Committee accepts funds deemed impermissible under the Act; specifically, contributions of up to \$4,000 per election pursuant to North Carolina law. In fact, in a written response to RAD’s inquiries, counsel for Randolph County never claims that his client could demonstrate through a reasonable accounting method that it had received sufficient permissible funds to make the transfers at issue. *See* 11 C.F.R. § 102.5(b). Rather, counsel indicates that his client is unaware whether the funds were “unrestricted.” Additionally, the 6th District’s most recent report discloses a debt to Randolph County of the entire \$32,425, which suggests an inability to show that the funds meet the permissibility requirements of Section

102.5. Attachment 2 at page 3. As the transfers provided by the Randolph County Committee appear to have come from impermissible sources, this Office recommends that the Commission find 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).⁴

B. Randolph County Committee

As previously discussed, the Randolph County Committee transferred funds totaling \$46,350 to other party committees; \$32,425 to the 6th District and \$13,925 to the Buncombe County Committee. Such transfers to registered political committees count towards the transferring committee's threshold as a "political committee." See 11 C.F.R. § 102.6(a)(2). The Randolph County Committee thus appears to have qualified as a "political committee" on or about October 16, 1996, when it first transferred \$10,000 to the 6th District. Accordingly, this Office recommends that the Commission find reason to believe that the Randolph County Committee and its treasurer violated 2 U.S.C. §§ 433 and 434 by failing to register and file disclosure reports with the Commission.⁵

⁴ As noted, North Carolina law prohibits contributions from corporations and labor unions. Thus, this Office does not recommend any Section 441b(a) violations by any of the respondents in this matter. In addition, as discussed *infra* at page 13, this Office intends to question the 6th District about its lack of any reported operating expenditures during the 1996 election period.

⁵ In its July 7, 1997, response to RAD's inquiries, the Randolph County Committee claims that its donations were not made for the purpose of directly or indirectly influencing any federal elections and as a "donor committee" it is not responsible for filing reports with the Act. It also states that it had been unable to determine if the \$32,425 transfer to the 6th District was "unrestricted" but asserts its belief that the funds were probably used for state races only. There is nothing that suggests that the Randolph County Committee sought to restrict the use of the transfers to nonfederal elections. Moreover, there is no dispute that the transfers were received into the federal accounts of both the 6th District and the Buncombe County Committee. Indeed the 6th District, the recipient of most of the funds, only appears to have a federal account and never claims that the communications paid for with such funds, a radio ad and mailing totaling \$32,376, were restricted to state elections. In any event, party committees such as Randolph

After the Randolph County Committee became a "political committee" on or about October 16, 1996, it was required to either establish a separate federal account from which all disbursements, contributions, expenditures and transfers made in connection with any federal election were to be made, or to establish a political committee which would receive only contributions subject to the limitations and prohibitions of the Act, regardless of whether such funds were used in connection with federal or non-federal elections. 11 C.F.R. § 102.5(a)(1). There is no indication that the Randolph County Committee adhered to the requirements of Section 102.5(a). In fact, counsel for the Randolph County Committee suggested that his clients made no effort to comply with federal law, asserting that his client believed that only North Carolina law applied. See *supra* footnote 5. By accepting funds deemed impermissible under the Act and transferring impermissible funds to the federal accounts of the 6th District and the Buncombe County Committee, the Randolph County Committee and its treasurer appear to have violated 2 U.S.C. § 441a and 11 C.F.R. § 102.5(a). Accordingly, this Office recommends the Commission find reason to believe that the Randolph County Committee and its treasurer violated 2 U.S.C. § 441a and 11 C.F.R. § 102.5(a).

C. Buncombe County Committee

The Buncombe County Committee, a registered political committee, received a \$13,925 transfer from the Randolph County Committee. Such funds were deposited in the Buncombe County Committee's federal account. As discussed above, the \$13,925 was derived from an account of the Randolph County Committee that contained funds deemed impermissible under

County are required to adhere to 11 C.F.R. §§ 102.5(b) and 106.5 whether or not they qualify as "political committees."

the Act. By accepting that \$13,925 transfer, the Buncombe County Committee and its treasurer appear to have violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a).

In its response to RAD's inquiries, the Buncombe County Committee wrote that the funds were deposited in its federal account in error and that they were used "solely for State legislative races." The Committee stated that to correct the error, it would repay the "State operating account."

Although the Buncombe Committee's FEC reports disclose the receipt of the \$13,925 transfer on November 25, 1996, the disclosure reports which the Randolph County Committee filed with state election authorities in North Carolina, indicate that the transfer was made over a month earlier on October 23, 1996, just prior to the 1996 general election. Indeed, this earlier receipt date provided on Randolph County's state election reports appears more plausible because, according to the Buncombe Committee's FEC reports, it made a \$13,915 expenditure to Advantage Mailing for an ad on October 24, 1996, just one day after the Randolph County Committee reported making the \$13,925 transfer. Moreover, our initial review of Buncombe County's FEC disclosure reports indicates that it was only after it received the \$13,925 at issue from Randolph County that it had sufficient funds to make that \$13,915 expenditure. Thus, it appears that the receipt date of that \$13,925 transfer provided on Buncombe County's FEC reports may be inaccurate.

After being informed by RAD that the \$13,925 transfer from Randolph County appeared impermissible, in its 1997 mid year report, the Buncombe County Committee reported \$8,925 of the \$13,925 as an outstanding debt to its "State operating account." Attachment 2 at page 6. It is unclear on what basis the Buncombe County Committee concluded that only \$8,925 of the

\$13,925 that it received from Randolph County needed to be transferred out of its federal account.⁶ In any event, in its 1997 year end report, the Buncombe County Committee indicated that the \$8,925 debt had been paid to its "State operating account." See Attachment 2 at page 18. However, it did not report any corresponding disbursement for that alleged payment of the \$8,925 debt to the "State operating account." In addition, from our review of its disclosure reports, the Buncombe County Committee did not use funds from its federal account to pay that \$8,925 debt. *Id.* at pages 8-9, 13-17. On March 25, 1998, RAD inquired about the lack of any \$8,925 disbursement corresponding with the payment of the debt for that amount. *Id.* at pages 20-22. To date, no response has been received.

Finally, upon reviewing the Buncombe County's disclosure reports, this Office discovered it did not allocate the \$13,915 expenditure which it made with the funds transferred from the Randolph County Committee. Upon further review, it became apparent that the Buncombe County Committee's disclosure reports from 1996-98 lack any allocation formula(s) for its operating or other expenditures. In fact, in a letter dated March 25, 1998, RAD inquired about the absence of any allocation formula on Buncombe County's disclosure reports. See Attachment 2 at pages 20-22. However, as of the date of this report, no response has been received. Accordingly, this Office recommends that the Commission find reason to believe that the Buncombe County Republican Party and its treasurer violated 2 U.S.C. § 441a(f), 11 C.F.R. §§ 102.5(a) and 106.5(a).⁷

⁶ The committee may have mistakenly concluded that it would be in violation of 2 U.S.C. § 441a(a)(1)(C) for it to accept any amount in excess of \$5,000. In any event, as there has been no showing that any portion was permissible, it appears that the entire \$13,925 must be repaid.

IV. QUESTIONS RAISED

Although there is reason to believe that the violations by these three party committees occurred, several crucial questions have arisen which make it appropriate to send discovery prior to attempting conciliation. First of all, although the 6th District reports that it spent the funds received from Randolph County on a radio ad and a mailing, counsel for Randolph County has suggested that it was for polling. In addition, although counsel for Randolph County has suggested that the funds were probably used for state legislative races, there is nothing on the 6th District's disclosure reports which supports that assertion. Indeed, it is currently unclear whether the funds which the 6th District received from Randolph County were spent on get-out-the-vote activities, on behalf of federal candidates or, as suggested by Randolph County, for state races only.⁸ In addition, it is unclear why the 6th District did not report any operating expenditures during the 1996 election period.

In keeping with Commission practice, this Office recommends opening a separate MUR with respect to each of these two RAD referrals (97L-22A & B). As the transaction in which the Buncombe County Committee was involved is part of RAD Referral 97L-22B, the Buncombe County Committee and its treasurer will become respondents in the MUR that is opened with respect to 97L-22B.

⁸ If the funds were spent by the 6th District on communications made on behalf of clearly identified federal candidates, then they should have been reported and attributed in accordance with 11 C.F.R. § 106.1(a). If the funds were used on communications that contained only generic get-out-the-vote or party building messages, then allocation would have been required only if the 6th District maintained both a federal and nonfederal account. See 11 C.F.R. § 106.5(a). From a review of its disclosure reports, it appears that the 6th District only has a federal account from which it would have been required to pay all of its expenses with 100% permissible funds. In any event, even if the \$32,425 was used by the 6th District entirely for

More importantly, within days of receiving the transfers from the Randolph County Committee, both the 6th District and the Buncombe County Committee reported making expenditures in the same or nearly the same amounts, with most of the funds reportedly paid to the same vendor, Advantage Mailing. The dates, the amounts of the payments and the vendors are detailed below:

<u>CONTRIBUTOR</u>	<u>RECIPIENT</u>	<u>VENDOR</u>	<u>REPORTED PURPOSE</u>
Randolph Cnty \$10,000 to 6th District on 10-16-96	6th District \$10,000 rec'd from Randolph Cnty on 10-16-96 ⁹	\$10,000 to Blackwater Comm on 10-17-96	radio ad
Randolph Cnty \$22,425 to 6th District on 10-22-96	6th District \$22,425 rec'd from Randolph County on 10-22-96	\$22,376 to Advantage Mailing on 10-23-96	voter mailings
Randolph Cnty \$13,925 to Buncombe Cnty on 10-23-96	Buncombe Cnty \$13,925 rec'd from Randolph County on 10-23-96 (?)	\$13,915 to Advantage Mailing on 10-24-96	ad -reportedly for local elections

Thus, after receiving \$10,000 from Randolph County on October 16th, the 6th District spent that precise amount for a radio ad on October 17th, after receiving two transfers totaling \$22,425 from Randolph County on October 22, the 6th District paid Advantage Mailing \$22,376

state electoral activity, there would still be a violation, as such funds could not be accepted by the 6th District's federal account.

⁹ The 6th District actually reported receiving the \$10,000 on October 15, 1996. However, the Randolph County Committee reported that it did not give the \$10,000 until October 16, 1996. The 6th District reported receiving another transfer, totaling \$22,425, the same day that the Randolph County Committee reported making it--October 22, 1996. Thus, at this point, this Office assumes that the \$10,000, which was reportedly given on October 16, 1996, was received that same day. Through investigation, this Office will seek information about these and other facts.

for "voter mailings" on October 23rd, and after reportedly receiving \$13,925 from Randolph County on October 23rd, on the next day the Buncombe County Committee paid Advantage Mailing \$13,915 for an advertisement.

Our initial review of disclosure reports indicates that the recipient committees could not make these expenditures without having received the transfers from Randolph County. In short, each of the recipient committees-- the 6th District and the Buncombe County Committee--made payments to the same vendor within days of each other with funds that appear to have been derived from the same apparent impermissible source--the Randolph County Committee--just days beforehand. Although it is unclear, the facts at hand suggest that there may have been some prearrangement between the Randolph County Committee and the recipient committees regarding the making of these expenditures. The reasons for any such prearrangement are currently unknown. In light of the above, this Office will seek information about any understanding between these committees about these transfers. We will also seek information about the communications that appear to have been distributed shortly before election day 1996 that were apparently paid for with impermissible funds.

This Office will seek the necessary information through informal investigation. After completing the investigation, this Office will make the appropriate recommendations to the Commission.

V. RECOMMENDATIONS

1. Open a MUR with respect to RAD Referral 97L -22A.
2. Find reason to believe that the Sixth Congressional District and Collette Hoover, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a).
3. Open a MUR with respect to RAD Referral 97L- 22B.

4. Find reason to believe that the Randolph County Republican Executive Committee and Laverne A. Williams, as treasurer, violated 2 U.S.C. §§ 433, 434, 441a and 11 C.F.R. § 102.5(a).

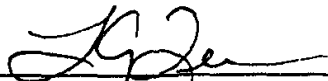
5. Find reason to believe that the Buncombe County Republican Party and Martin Reidinger, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. §§ 102.5(a) and 106.5(a).

6. Approve the attached Factual and Legal Analyses (3).

7. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

7/9/98
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachment

1. Factual and Legal Analyses (3)
2. 1997 disclosure reports and RAD notices




FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

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

DATE: JULY 17, 1998

SUBJECT: RAD Referral #97L-22 A & B - First General Counsel's Report
dated July 9, 1998

The above-captioned document was circulated to the Commission
on Monday, July 13, 1998

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

Commissioner Aikens	—
Commissioner Elliott	—
Commissioner McDonald	—
Commissioner McGarry	—
Commissioner Thomas	<u>XXX</u>

This matter will be placed on the meeting agenda for

Tuesday, July 28, 1998

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