



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 2, 1999

Thomas C. Delahaye, Treasurer
Mary Landrieu for Senate Committee, Inc.
3421 North Causeway Blvd., Suite 701
Metairie, LA 70002

RE: MUR 4898
Mary Landrieu for Senate Committee, Inc.,
and Thomas C. Delahaye, as Treasurer

Dear Mr. Delahaye:

On May 21, 1999, the Federal Election Commission found that there is reason to believe the Mary Landrieu for Senate Committee, Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a), and 2 U.S.C. § 434(a)(6)(A), provisions of the Federal Election Campaign Act of 1971, as amended. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Joel J. Roessner, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

cc: Candidate

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Mary Landrieu for Senate Committee, Inc., and Thomas C. Delahaye as Treasurer

MUR: 4898

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

A. Law

1. Contribution Limits

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-451 ("the Act") and Title 11 of the Code of Federal Regulations prohibit any person from making contributions to any candidate and his or her authorized political committees with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Multicandidate political committees are prohibited from making such contributions which, in the aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(2)(A); 11 C.F.R. § 110.2(b)(1).

The Act provides that "contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person,

including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single committee. . . ." 2 U.S.C. § 451a(a)(5).

No candidate or political committee may knowingly accept any contribution that violates the contribution limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

2. 48-Hour Notice

The Act requires the principal campaign committee of a candidate to notify the Clerk of the House, the Secretary of the Senate, or the Commission, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the twentieth day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A); 11 C.F.R. § 104.5. Notification must be made within 48 hours after the receipt of the contribution and must include the name of the candidate, the office sought by the candidate, the identity of the contributor, the date of receipt, and amount of the contribution. *Id.* This notification is in addition to all other reporting requirements under the Act. 2 U.S.C. § 434(a)(6)(B).

B. Analysis

1. Excessive Contributions

In the Interim Report of the Audit Division on the Mary Landrieu for Senate Committee, Inc., the Audit Division identified 67 contributions to the Committee which appeared to exceed the limits set forth at 2 U.S.C. § 441a(a) by a total amount of \$53,015. The apparently excessive contributions identified by the Audit staff were:

- Primary contributions from 37 persons other than multicandidate political committees which appear to exceed the \$1,000 limit set forth at 2 U.S.C. § 441a(a)(1)(A) by a total amount of \$26,375;

- General election contributions from 27 persons other than multicandidate political committees which appear to exceed the \$1,000 limit set forth at 2 U.S.C. § 441a(a)(1)(A) by a total amount of \$17,140;
- Primary contributions from the Columbia HCA Texas Good Government Fund, a multicandidate political committee, which appear to exceed the \$5,000 limit set forth at 2 U.S.C. § 441a(a)(2)(A) by a total amount of \$500; and
- General election contributions from multicandidate political committees, which appear to exceed the \$5,000 limit set forth at 2 U.S.C. § 441a(a)(2)(A) by a total amount of \$9,000.

In the Interim Audit Report, the Audit Division recommended that the Committee demonstrate that the apparent excessive contributions did not in fact exceed the contribution limits, refund any amounts which it could not show to be within the contribution limits, and report as debts any amounts which it could neither show to be within the contribution limits, nor refund due to unavailability of funds.

Thereafter, the Committee demonstrated, to the satisfaction of the Audit Division, that one \$250 contribution had been designated for the 2002 election, but accidentally had been deposited into the Committee's account for the 1996 general election.

Apart from the \$250 contribution which was designated for the 2002 election and a \$5,000 general election contribution, it appears that the Committee does not dispute that the contributions identified by the Audit Division exceeded the limits set forth at 2 U.S.C.

§ 441a(a).¹ In its response to the Interim Audit Report the Committee acknowledged that it accepted excessive contributions, stating:

In reviewing the instances where the [interim] audit report notes excessive contributions, we submit that the Committee in no way purposely attempted to evade campaign contribution limits. Rather, we maintain and the record supports that the excessive contributions resulted from a failure to designate contributions within 60 (sixty) days of receipt or were the simple result of bookkeeping errors.

Attachment 2 at 3.² The aggregate amount of the remaining undisputed excessive contributions is \$47,765. Accordingly, the Commission has found reason to believe that the Committee violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 110.9(a) by accepting \$47,765 in contributions in excess of the contribution limits imposed by 2 U.S.C. § 441a(a).

2. 48 Hour Notice Requirement

In the Interim Audit Report, the Audit Division identified 34 contributions with respect to which the Committee failed to file required 48-hour notices. *See* 2 U.S.C. § 434(a)(6)(A). The aggregate amount of these 34 contributions was \$43,500.³ The Audit Division also identified ten contributions for which the Committee filed incorrect 48-hour notices. *See id.* The Committee's

¹ The Audit staff concluded that a \$5,000 general election contribution from the National Rural Letter Carriers Association Political Action Committee ("NRLCAPAC") and a \$5,000 general election contribution from the Committee on Letter Carriers Political Education ("CLCPE") should be considered to have been made by a single political committee under 2 U.S.C. § 441a(a)(5). It therefore appeared that the aggregated general election contributions of these two committees exceeded the 2 U.S.C. § 441a(a)(2)(A) limit by \$5,000.

The Committee mailed a \$5,000 check to NRLCAPAC, representing a refund of the apparent excessive general election contribution. However, NRLCAPAC disputed that its contributions should be combined with those of CLCPE pursuant to 2 U.S.C. § 441a(a)(5), and it declined to negotiate the check. It appears to the Commission that there is no basis for treating the separate contributions of these two committees as the contributions of a single committee. Accordingly, the Commission has not included the general election contributions from NRLCAPAC and CLCPE in its finding that there is reason to believe that the Committee accepted excessive contributions.

² According to the Committee's January 31 Year End Report (Report of Receipts and Disbursements) filed January 29, 1999, the Committee refunded all of the excessive contributions identified in the Interim Audit Report.

³ Of these contributions, fifteen contributions, totaling \$20,000, were made within two and twenty days of the September 21, 1996 Louisiana primary. The remaining nineteen contributions, totaling \$23,500, were made within two and twenty days of the November 5, 1996 general election.

errors were that it either reported an incorrect contribution amount or incorrect contributor. The aggregate amount which was reported incorrectly was \$22,000.

The Committee acknowledges that it did not comply with the 48-hour notice requirement. However, the Committee urges that its errors were not material, arguing that "[t]he error noted by the audit disclosed that the Committee failed to include in the 48 hour reports 43 contributions totaling \$64,000 [sic]. In light of the total campaign contributions of \$2,541,114, we respectfully submit that the 48 hour reporting lapses while regrettable, are not material." Neither the Committee's expression of regret, nor its suggestion that the violations were "not material," refutes the violations of the 48-hour notice requirement. Accordingly, the Commission has found reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices, or filing incorrect 48-hour notices, for 44 contributions in an aggregate amount of \$65,500, received by the Committee after the twentieth day, but more than 48 hours before, the 1996 Senate election.