

FEB 19 2003

BEFORE THE FEDERAL ELECTION COMMISSION

SENSITIVE

In the Matter of)
) MUR 4910R
Rush Holt for Congress, Inc. and)
Pamela H. Mount, as Treasurer,)
Rush Holt and Margaret Lancefield)

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GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED:

Take no further action in regard to the reason-to-believe findings made with respect to the \$9,000 loan made to the Committee.

II. BACKGROUND

This matter was generated based on a complaint alleging that the Committee accepted several excessive contributions, including an excessive contribution from the candidate's wife with respect to a loan transaction, failed to timely file 48-Hour Notices of Contributions Received, and failed to provide complete names and identify occupations and/or employers for a large percentage of contributors.¹ On October 24, 2002, the Commission found reason to believe that Rush Holt for Congress, Inc. and Pamela H. Mount, as Treasurer, violated 2 U.S.C. §§ 434(a)(6)(A) and 441a(f) and 11 C.F.R. § 104.8(d) and Congressman Rush Holt and his wife, Margaret Lancefield, violated 2 U.S.C. §§ 441a(f) and 441a(a)(1), respectively, in regard to a \$9,000 loan to the Committee. On the same date, the Commission found no reason to believe

¹ This matter had been transferred to the Alternative Dispute Resolution Office ("ADR Office"). However, the Committee never responded to telephone messages and the letter that the ADR Office sent to the Committee and, therefore, the matter was transferred back to this Office.

1 Rush Holt and Rush Holt for Congress, Inc. and Pamela H. Mount, as Treasurer, violated
2 2 U.S.C. § 434(b)(3)(A) and Rush Holt violated 2 U.S.C. § 434(a)(6)(A). Additionally, the
3 Commission issued Subpoenas/Orders to Congressman Holt and Margaret Lancefield.

4 After receiving an extension of time until December 27, 2002, respondents submitted their
5 response to the Commission's reason to believe findings and the Subpoenas/Orders.
6 Respondents conclude their response with a request that the Commission take no further action
7 in the entire matter.

8
9 **III. RESPONSE TO REASON TO BELIEVE FINDINGS AND SUBPOENAS/ORDERS**

10 **A. Loan**

11 **1. Facts**

12 In response to the Commission's Subpoenas/Orders, Congressman Holt and
13 Margaret Lancefield provided the Commission with documentation from First Union Bank, the
14 successor to CoreStates Bank, regarding the checking and capital growth accounts involved in
15 the \$9,000 loan transaction. As previously asserted in the response to the complaint,
16 Congressman Holt reiterates that he made the \$9,000 loan to his Committee from his personal
17 funds. The bank statements and documents provided by Congressman Holt and Margaret

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1 Lancefield indicate that the account on which the \$9,000 loan check was written is a joint
2 checking account for which both Congressman Holt and his wife, Margaret Lancefield, had legal
3 title. The documentation also indicates that \$9,000 was transferred into the joint checking
4 account from a linked capital growth account around the time the loan check was written. In
5 addition, the documentation provided indicates that the capital growth account is also a joint
6 account for which both Congressman Holt and Margaret Lancefield had legal title.

7 According to the response, at the time the \$9,000 loan check was written, Congressman
8 Holt and Margaret Lancefield had joint accounts which had a total balance of on
9 or around September 30, 1998, the date on which the loan check was written. Respondents state
10 that Congressman Holt and Margaret Lancefield have been married for seventeen years and it is,
11 and always has been, their practice to share their assets in jointly held accounts without
12 documenting particular contributions to particular accounts. Respondents assert that
13 Congressman Holt was entitled to half of the joint accounts under New Jersey law.³
14 According to respondents, based on the balances in the joint bank accounts on
15 September 30, 1998, Congressman Holt had personal funds of at least from which he
16 was entitled to make loans to the campaign, an amount sufficient from which to draw the \$9,000
17 loan. Respondents provide bank statements for the joint bank accounts for September and
18 October 1998, but do not provide any account agreements or instruments of ownership or
19 conveyance.

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³ According to New Jersey law regarding multiple party deposit accounts, funds in a joint account belong to the account holders in proportion to their contributions unless a contrary intent is manifested by the terms of the contract, the deposit agreement, or there is other clear and convincing evidence of a different intent at the time the

2. Law and Analysis

A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. 11 C.F.R. § 110.10(b)(3). Generally, whether a contribution will result from the candidate's use of property held jointly with a spouse is determined by the instrument of conveyance or ownership or by the one-half interest rule. 11 C.F.R. § 110.10(b)(3). The portion of the jointly owned assets that is considered as personal funds of the candidate is the portion that is the candidate's share under the instrument of conveyance or ownership. *Id.* If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used is considered as personal funds of the candidate. *Id.*

The Commission regulations and Explanation and Justifications regarding jointly held property do not specifically address bank accounts. *See* 11 C.F.R. § 110.10(b)(3). However, enforcement matters addressing this issue have made a distinction between jointly held bank accounts and other jointly held property. *See* MURs 2292 (Stein for Congress et al.) and 3505, 3560, and 3569 (Citizens for Ron Klink et al.). The Commission treated joint bank accounts as an exception to the one-half interest rule under section 110.10(b)(3) because each account holder had access and control over the whole. *Id.* The discussion of this legal issue in these prior matters is very limited and appears to rely on a conclusion, made in the October 30, 1981, Memorandum proposing revision to section 110.10, that the total funds in a joint bank account would be considered the personal funds of the candidate.⁴ *See* Agenda Document# 81-181, page

account is created. N.J. STAT. ANN § 17:16I-4 (West 2000). In the absence of proof of net contributions, the account belongs in equal shares to all parties having present right of withdrawal. *Id.*

⁴ The Memorandum stated that if a couple owns a piece of land as joint tenants, each spouse has access to or control over half of the property and each spouse can alienate his or her interest without the consent of the other. However, if a couple owns a bank account as joint tenants, each spouse has drawing rights on the entirety of the funds in the bank account and can be considered to have access to or control over the whole. The Memorandum

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7, footnote 3. However, the regulations were never changed to address a distinction between joint bank accounts and other jointly held property. See 11 C.F.R. § 110.10(b)(3).

More recently, this issue arose in the Final Audit Report (FAR) of Bauer for President 2000, Inc. regarding a \$45,000 loan the candidate made to his committee. The loan check was drawn on a joint account belonging to the candidate and his spouse. The FAR concluded that in the absence of an instrument of conveyance or ownership showing that the candidate's share was more than one-half, Mrs. Bauer made an excessive contribution relative to the amount that exceeded Mr. Bauer's 50% share of the funds in the joint account minus the \$1,000 individual contribution limit. By memorandum dated May 6, 2002 in which this Office commented on the proposed FAR, we noted that the account at issue belonged to Gary and Carol Bauer and was a joint account with the right of survivorship. Also noted was the fact that only Mr. Bauer's signature was needed to withdraw funds from the account indicating that he had access and control over the whole account. This Office therefore recommended in the May 6, 2002 Memorandum that the Audit Division revise the proposed Audit Report in accordance with enforcement matters noted earlier. During the discussion of the FAR at the May 23, 2002, Commission meeting, a motion was made to "receive Section II.A.4. [Personal Loan] of the proposed Final Audit Report without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein." The motion failed by a 3-3 vote and the Audit Division was instructed that when circulating the final report for approval, it should indicate that the Commission was divided 3-3 on this issue.

therefore concludes that even though the ownership of the land and the ownership of the bank account are held in the same type of common law estate, section 110.10(b)(1) would require different treatment of the assets, the total funds in the joint bank account are the candidate's personal funds.

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1 If the Commission were to follow MURs 2292 and MURs 3505, 3560 and 3569 and this
2 Office's recommendation in the Bauer audit, it appears that all the funds in the joint checking
3 account and linked capital growth account belonging to Congressman Holt and Margaret
4 Lancefield would be considered the personal funds of the candidate; Congressman Holt had legal
5 title to the account and his signatory authority gave him access and control over all the funds in
6 the account. At the time of the loan, there was approximately in the joint checking and
7 capital growth accounts, an amount which would fully cover the \$9,000 loan.

8 However, if the Commission were to base its decision on the language in section
9 110.10(b)(3), without an instrument of ownership or conveyance indicating a specific share,
10 Congressman Holt would have had one-half interest in the in funds in the joint checking
11 and capital growth accounts or . The difference between the amount of the loan and
12 Congressman Holt's one-half interest is . Therefore, after allowing for the \$1,000
13 individual contribution limit, Margaret Lancefield would have made an excessive contribution
14

15 In light of the small amount of the possible excessive contribution and the unsettled state
16 of the law in this area, this Office recommends that that the Commission take no further action
17 with respect to Congressman Rush Holt and Margaret Lancefield in regard to the loan and close
18 the file with respect to them.
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V. **RECOMMENDATIONS**

1. Take no further action against Congressman Rush Holt and close the file in regard to him.

⁶ On November 14, 2000, the Commission directed this Office to implement this procedure when calculating civil penalties in matters involving late and non-filing.

2. Take no further action against Margaret Lancefield and close the file in regard to her.

3.

4.

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2/19/03
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