



FEDERAL ELECTION COMMISSION
 Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: September 13, 1999

SUBJECT: PRE-MUR 377-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____

Closed Session _____

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

PRE-MUR: 377

DATE ACTIVATED: June 24, 1999

STAFF MEMBER: Eugene H. Bull

SOURCE: INTERNALLY GENERATED

RESPONDENTS: MSBDFA Management Group, Inc.
Stanley W. Tucker
Timothy L. Smoot
Catherine D. Lockhart
R. Randy Croxton

RELEVANT STATUTES: 2 U.S.C. § 441b
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441f
11 C.F.R. § 110.4(b)(1)(iii)

INTERNAL REPORTS CHECKED: Contributor Indices

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF THE MATTER

This matter was initiated by a *sua sponte* submission received from counsel for MSBDFA Management Group, Inc. ("MMG") on April 7, 1999. The submission discloses facts which indicate that MMG reimbursed officers of the corporation for contributions that the officers made to federal candidates in apparent violation of provisions of the Federal Election Campaign Act of 1971, as amended ("the Act").

At the
June 9, 1999 Executive Session, the Commission considered the *sua sponte* submission and

rejected this Office's recommended dismissal of the matter. Instead, the Commission instructed the General Counsel's Office to activate the matter as soon as staff became available so that MMG's request—that the Commission find reason to believe the corporation violated the Act and enter into conciliation—could be considered.

Upon activation of the matter, staff contacted counsel for MMG by telephone on July 2, 1999. As a result of that call and additional information developed in this matter, this Office is now prepared to recommend that the Commission find that MMG, and the MMG officers identified in the *sua sponte*, knowingly and willfully violated the Act. First, MMG's counsel was asked during the July 2nd call if there was any difference in the way MMG handled the relevant contributions to federal committees and contributions it made to state committees during the same period. Counsel responded that MMG made contributions directly to state candidates because Maryland state law permits contributions from corporations. Thus, it appears by inference that MMG was aware of the federal prohibition against corporate contributions at the time it made them. Second, this Office has identified an additional \$2,750 in 1997-98 federal contributions that were reimbursed to MMG officers but not reported in the *sua sponte*.¹

¹ When told about the additional contributions, MMG's counsel stated that the corporation would check its records but added his belief that the additional contributions were made from the personal funds of MMG officers. In a subsequent phone call on August 30, 1999, counsel stated that MMG had checked its records and uncovered additional contributions by its officers that

II. FACTUAL AND LEGAL ANALYSIS

A. Available Information

The *sua sponte* submission states that “[o]n several different occasions in 1997 and 1998, [MMG] officers obtained funds from the corporation for the express purpose of using the funds to make contributions to candidates for federal office.” The submission contends that the four officers it identified as having received such corporate advances or reimbursements were not aware that the funds could not be contributed to federal candidates.² As support for the contention that the MMG officers were not aware that the corporate advances or reimbursements could not be lawfully contributed to federal candidates, the submission states that the check requests submitted to the corporation by the officers “clearly” indicate that the purpose of each advance of funds was to make political contributions. Of the \$4,200 in corporate funds that MMG reported it advanced or reimbursed to MMG officers to make contributions to federal candidates, the corporation has determined that \$3,700 was actually contributed. The corporation is still unable to account for the remaining \$500 that it reported was advanced or reimbursed for the purpose of making contributions to federal candidates.

In addition to the \$4,200 in corporate contributions reported in the *sua sponte* submission, this Office has identified another \$2,750 in 1998 federal contributions by two of the MMG officers named in the submission. According to MMG’s counsel, \$500 of the \$2,750 represents a contribution that was advanced or reimbursed by MMG, but returned by the recipient committee because the MMG officer contributing the funds had already given \$1,000 to

were reimbursed by the corporation. Counsel’s promised letter confirming this information has not been received.

² The four officers of MMG identified by the *sua sponte* are Stanley W. Tucker, President; Timothy L. Smoot, Senior Vice President for Finance; Catherine D. Lockhart, Executive Vice President; and R. Randy Croxton, Senior Vice President for Investments.

that committee. Counsel indicated that he would provide an affidavit demonstrating that the \$500 was returned. The affidavit has not been delivered by counsel at this time.

B. Applicable Law

The Act provides that no person shall make contributions to any candidate and the candidate's authorized political committees with respect to any election for federal office which, in the aggregate, exceeds \$1,000. 2 U.S.C. § 441a(a)(1)(A).

The Act also prohibits corporations from making contributions or expenditures in connection with a Federal election. 2 U.S.C. § 441b(a). This broad prohibition extends to "anything of value" given to any candidate or campaign in connection with any Federal election. 2 U.S.C. § 441b(b)(2). Section 441b(a) of the Act further prohibits any officer or any director of any corporation from consenting to any contribution or expenditure by the corporation. That provision also makes it unlawful for a political committee knowingly to accept or receive corporate contributions.

Section 441f of the Act prohibits any person from making a contribution in the name of another person or from permitting his or her name to be used to effect such a contribution. It also prohibits any person from knowingly accepting a contribution made by one person in the name of another person. 2 U.S.C. § 441f. The Commission regulations at 11 C.F.R. § 110.4(b)(1)(iii) also make it unlawful for any person to knowingly help or assist any person making a contribution in the name of another. The Commission regulations and rulings make it clear that the section 441f prohibition applies to any person who provides money to others, or any person who uses said money, to make contributions, 11 C.F.R. § 110.4(b)(2), and to incorporated or unincorporated entities who give money to another to effect a contribution in the second person's name. Advisory Opinion 1986-41. Pursuant to 2 U.S.C. § 431(11), political committees are

persons under the Act and, therefore, they are prohibited from knowingly accepting contributions in the name of another.

C. Analysis

There is no dispute that MMG made prohibited corporate contributions through at least three of its officers.³ MMG's *sua sponte* submission requests that "the Commission find reason to believe that MMG has violated 2 U.S.C. § 441a(a), 441b and 441f."⁴ Thus, the remaining issues are whether the prohibited contributions by MMG were knowing and willful, and whether the recipient committees or the corporate officers who were advanced or reimbursed funds by the corporation to make federal contributions should be held liable.

The explanation given by MMG's counsel for the different treatment of the corporation's contributions to state candidates vis-à-vis its contributions to federal candidates strongly suggests that the corporation knew of the Act's prohibition against corporate contributions to federal candidates. (See page 2, *supra*). Additionally, MMG appears to have been aware of other

³ Although the *sua sponte* submission reported four officers as receiving funds from MMG for the purpose of making federal contributions, only three actually used some or all of the corporate funds to make federal contributions. The fourth officer, R. Randy Croxton, transferred all the funds he received from the corporation to one of the other three officers who then made the contribution.

⁴ This Office notes that although MMG has requested that the Commission find it violated Section 441a(a), and the total amount of dollars the corporation contributed to federal committees through its officers exceeded the dollar amount of the federal contribution limit for a "person" (see Section 441a(a)), such a finding is not recommended in this matter. The Commission has found that the same funds violated both 2 U.S.C. § 441b and 441a(1)(a) in context where the funds were raised through sources that implicated both violations (e.g., a state committee making federal contributions with unsegregated funds raised in a state that both allows corporate contributions to political committees and has personal contribution limits greater than \$1,000 per election.) See MURs 4438 (Harris County Republicans), and 3637 (Kentucky Democrats). The funds at issue in this matter are solely corporate funds.

aspects of federal campaign finance law because, with one exception, the officers were apparently careful not to make contributions of more than \$1,000 to a single candidate with the funds they received from the corporation. In the one instance where more than \$1,000 was contributed to a single candidate by an officer, the excessive dollar amount was apparently returned.⁵ Thus, the available information suggests that MMG was aware of federal campaign finance laws and was apparently involved in a deliberate attempt to circumvent the Act by making corporate contributions through its officers. On this basis, and because of the additional reimbursed contributions by the corporation not reported in the *sua sponte*, this Office recommends that the Commission find reason to believe that MMG knowingly and willfully violated 2 U.S.C. §§ 441b and 441f. Further, given the senior positions in the corporation of the officers that were involved in the reimbursement scheme, it is likely that they were aware of the disparate treatment of MMG's state and federal contributions. By requesting funds from MMG to make the federal contributions, and by allowing their names to be used, Stanley W. Tucker, Timothy L. Smoot, and Catherine D. Lockhart knowingly and willfully consented to and participated in MMG's reimbursement scheme. In addition, although R. Randy Croxton apparently did not allow his name to be used by MMG to effect a federal contribution, Croxton apparently consented to and assisted MMG's scheme by requesting funds from the corporation and transferring the funds to one of the other three officers who used the funds to make a federal contribution. Therefore, this Office recommends that the Commission find reason to believe that Stanley W. Tucker, Timothy L. Smoot, Catherine D. Lockhart, and R. Randy Croxton knowingly and willfully violated 2 U.S.C. §§ 441b and 441f.

⁵ This is based on a statement by MMG's counsel who promised to provide supporting documentation.

This Office does not recommend that the Commission make findings with respect to the recipient federal committees as there is no evidence in the submission that the committees were aware the contributions were illegal. If the Commission approves this Office's recommendations with respect to MMG and the four officers who were apparently involved in the reimbursement scheme, upon conciliation with these respondents and absent any additional information, this Office intends to write a letter to the recipient committees seeking disgorgement.⁶

III. DISCUSSION OF CONCILIATION

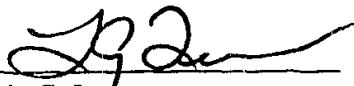
⁶ The recipient committees are Wynn for Congress, Cummings for Congress, Ben Cardin for Congress, Mikulski for Senate, Carol Mosley Braun for Senate, and Jefferson Committee.

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that MSBDFA Management Group, Inc. knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, and enter into conciliation prior to a finding of probable cause to believe.
3. Find reason to believe that Stanley W. Tucker, Timothy L. Smoot, Catherine D. Lockhart, and R. Randy Croxton knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, and enter into conciliation prior to a finding of probable cause to believe.
4. Approve the attached Factual and Legal Analyses (5) and Conciliation Agreements (5).
5. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

9/13/99
Date

BY: 
Lois G. Lerner
Associate General Counsel

Attachments:

1. Factual and Legal Analyses (5).
2. Conciliation Agreements (5).
3. 1997-98 federal contributions by named MMG officer.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: *mw* Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: September 16, 1999

SUBJECT: **Pre-MUR 377**

The above-captioned document was circulated to the Commission
on **Monday, September 13, 1999.**

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

- Commissioner Elliott —
- Commissioner Mason **X**
- Commissioner McDonald —
- Commissioner Sandstrom —
- Commissioner Thomas —
- Commissioner Wold **X** —

This matter will be placed on the meeting agenda for
Wednesday, September 22, 1999.

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

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