

**FEDERAL ELECTION COMMISSION**

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

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FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

Oct 22 4 41 PM '99

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

RAD Referral: 99L-09  
Date Activated: 8/25/99

Expiration of Statute of  
Limitations: October 15, 2003  
STAFF MEMBER: Jim Moye

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Friends for Harry Reid and Paul Eisenberg, as treasurer

INTERNAL REPORTS CHECKED: Referral Materials  
Disclosure Reports

RELEVANT STATUTES: 2 U.S.C. § 432(b)(1)  
2 U.S.C. § 432(c)(3)  
2 U.S.C. § 434(b)(2)(G)  
2 U.S.C. § 434(b)(3)(A)  
2 U.S.C. § 434(b)(3)(E)  
11 C.F.R. § 102.9(a)(2)  
11 C.F.R. § 104.3(a)(3)(vii)(B)  
11 C.F.R. § 104.8(a)

FEDERAL AGENCIES CHECKED: NONE

**I. GENERATION OF MATTER**

The Reports Analysis Division ("RAD") referred Friends for Harry Reid and Paul Eisenberg, as treasurer ("the Committee"), to the Office of General Counsel on July 2, 1999.

The basis of the RAD referral is the failure of the Committee to properly disclose a \$100,000 loan received from the candidate in the 1998 12 Day Pre-General Report. To date, the Committee has not filed an amendment to the 12 Day Pre-General Report to reflect the \$100,000 candidate loan.

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## II. FACTUAL AND LEGAL ANALYSIS

### A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (“the Act”) defines “contribution” as including “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(8)(A)(i). Further, a loan is considered a contribution at the time it is made. 11 C.F.R. § 100.7(a)(1)(i)(B).

Pursuant to 2 U.S.C. § 432(b)(1), “[e]very person who receives a contribution for an authorized political committee shall, no later than 10 days after receiving such contribution, forward to the treasurer such contribution, and if the amount of the contribution is in excess of \$50, the name and address of the person making the contribution and the date of receipt.”<sup>1</sup> The date of receipt of such a contribution, for purposes of reporting, is the date the person (on behalf of the authorized campaign committee) obtains possession of the contribution. 11 C.F.R. § 102.8(a). Moreover, the treasurer of a political committee is required to keep an account of the identification of anyone who makes a contribution or contributions aggregating more than \$200 during the year, together with the date and amount of any such contribution. 2 U.S.C. § 432(c)(3); 11 C.F.R. § 102.9(a)(2).

Additionally, a Senate candidate’s principal campaign committee, in an election year, must file a pre-election general report. 2 U.S.C. § 434(a)(2)(A)(i). The report must be filed no later than the 12<sup>th</sup> day before the election and must be complete as of the 20<sup>th</sup> day before the election. *Id.* Authorized campaign committees must disclose in such reports the total amount of

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<sup>1</sup> This requirement is also in 11 C.F.R. § 102.8(a), which also provides for more extensive identification if the contribution is in excess of \$200.

all receipts, including loans made by or guaranteed by the candidate. 2 U.S.C. § 434(b)(2)(G).

Committees receiving contributions during the reporting period in excess of \$200 are required to disclose the contributor's name, mailing address, occupation, employer, the date of receipt and amount of the contribution. 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.8(a). The authorized committee of a candidate is also required to disclose the identity of any person who makes a loan to the committee during the reporting period. 2 U.S.C. § 434(b)(3)(E), 11 C.F.R. § 104.3(a)(3)(vii)(B).

### **B. Factual Background**

According to the RAD referral, the Committee's 1998 30 Day Post-General Report disclosed a loan received on October 15, 1998, totaling \$100,000, from the incumbent candidate, Senator Harry Reid, for which it appeared that the Committee did not submit a 48 Hour Notice. On January 26, 1999, RAD sent a Request for Additional Information ("RFAI") to the Committee. Among other things, the RFAI noted that the Committee may have failed to file a 48 Hour Notice of the candidate loan.<sup>2</sup> The Committee responded to the RFAI on March 3, 1999, but did not specifically address the issue of the loan. The RAD referral materials further state that on June 30, 1999, a RAD analyst spoke by telephone to the Committee Vice Treasurer, Janice Miller, who stated that the Committee did not file a 48 Hour Notice for the candidate personal loan because the Committee's fundraiser representative had received the loan check before October 15, 1998. Ms. Miller explained that the October 15, 1998 receipt date on the Post-General Report represented the date she obtained and deposited the check. According to

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<sup>2</sup> 2 U.S.C. § 434(a)(6) states, "[t]he principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20<sup>th</sup> day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution."

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Ms. Miller, the fundraiser did not tell her the actual date that he, on behalf of the Committee, received the check. The RAD analyst requested that Ms. Miller put this explanation into writing. By letter dated July 1, 1999 and sent by facsimile to the RAD analyst, Ms. Miller stated she had received the check on October 15<sup>th</sup> and that even though the check had been received "a few days" before that date, she did not receive the actual receipt date from the fundraiser.

### **C. Analysis**

As noted above, Harry Reid made a \$100,000 personal loan to his authorized committee, which was a "contribution" as defined by the Act. Based on the statements of the Committee's Vice Treasurer that the Committee received the check a few days before October 15, 1998, it appears that the Committee should have disclosed the candidate's contribution in the 12 Day Pre-General Report. By not doing so, it appears that the Committee may have violated 2 U.S.C. § 434(b)(2)(G). Moreover, by not obtaining the accurate date of receipt of the contribution from the fundraiser and by failing to keep an accurate account of this information, it appears that the Committee may have violated 2 U.S.C. §§ 432(b)(1) and (c)(3), 434(b)(3)(E), as well as 11 C.F.R. §§ 102.8(a), 102.9(a)(2) and 104.3(a)(3)(vii)(B). Finally, it appears that the Committee may have violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 104.8(a) by misreporting the date of the contribution in the Post-General Report.

Based on the above, this Office recommends the Commission find reason to believe Friends for Harry Reid and Paul Eisenberg, as treasurer, violated 2 U.S.C. §§ 432(b)(1) and (c)(3), 434(b)(3)(A) and (E), (b)(2)(G), and 11 C.F.R. §§ 102.8(a), 104.3(a)(3)(vii)(B) and 104.8(a).

### **III. INVESTIGATION**

Since this Office does not know the date that the Committee's fundraiser received the candidate's loan check, a necessary fact to establish in which filing the loan should have been reported, this Office plans to engage in informal discovery to verify the information provided to

RAD by the Committee's Vice Treasurer and to pinpoint the date that the Committee's fundraiser received the candidate's loan check. This informal discovery will be limited, at least in the first instance, to a request that the Committee provide us with a copy of the loan check, the date and circumstances under which an identified fundraiser received the check, and an explanation for why the date the check was received was not timely forwarded to the treasurer. If the Commission finds reason to believe in this matter, we plan to request this information in the notification letter sent to the Committee. This Office assumes that, if the Committee cooperates, it will be possible to recommend that the Commission offer pre-probable cause conciliation in the near future.


#### IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe Friends for Harry Reid and Paul Eisenberg, as treasurer, violated 2 U.S.C §§ 432(b)(1) and (c)(3), 434(b)(3)(A) and (E), 434(b)(2)(G), and 11 C.F.R. §§ 102.8(a), 104.3(a)(3)(vii)(B) and 104.8(a)
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

10/22/99  
Date

BY:

  
Lois G. Lerner  
Associate General Counsel

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# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: October 22, 1999

SUBJECT: 99L-09 - First General Counsel's Report.

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

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATIONS

SENSITIVE ☒  
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

### DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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