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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR: 376
DATE RECEIVED: 6 April 1999
DATE ACTIVATED: 10 May 1999
DATE TRANSFERRED: 6 August 1999

EXPIRATION OF STATUE OF
LIMITATIONS: 1 January 2003

RAD REFERRAL: 99NF-09
DATE ACTIVATED: 28 May 1999
DATE TRANSFERRED: 6 August 1999

EXPIRATION OF STATUE OF
LIMITATIONS: 1 January 2003

STAFF MEMBER: Seth H. Row

SOURCE: Sua sponte submission (PM 376)
Internally Generated (RAD Referral 99NF-09)

RESPONDENT(S): State Democratic Executive Committee of Alabama
and Anthony J. Fant, as Treasurer

RELEVANT STATUTES: 2 U.S.C. §§ 434(a)(4)(A)(i) – (iv)
11 C.F.R. §§ 104.5(c)(1)(i) – (iii)
11 C.F.R. § 104.5(c)(2)(i)(B)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

Pre-MUR 376 arose from a sua sponte submission by the State Democratic Executive Committee of Alabama ("SDECA"), the federal committee of the Democratic Party of Alabama. The sua sponte submission, dated April 5, 1999, concerned SDECA's failure to timely file certain reports during the 1997-98 election cycle. Specifically, SDECA failed to file its 1997 Year-End Report until March, 1998. SDECA also failed to file all of its 1998 Quarterly Reports, its 1998 Post-General Election Report, and its 1998 Year-End Report until late April or early May, 1999, following the sua sponte submission. Reports Analysis Division ("RAD") Referral 99NF-09, dated April 26, 1999, resulted from SDECA's failure to timely file the same reports. An examination by this Office of SDECA's reports for 1998 revealed that SDECA also should have filed a 1998 Pre-Primary Report for the June 2, 1998 primary election in Alabama.¹

II. FACTUAL AND LEGAL ANALYSIS

A. Law

The Federal Election Campaign Act of 1971, as amended, ("the Act") requires political committees to file periodic reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). In a non-election year, political committees other than authorized committees of a candidate must file "a report covering the period beginning January 1 and ending June 30, which shall be filed no later than July 31 and a report covering the period beginning July 1 and ending December 31, which shall be filed no later than January 31 of the following year." 2 U.S.C. § 434(a)(4)(A)(iv). In

¹ The failure of a committee to file a Pre-Primary Report is ordinarily not the subject of a referral from RAD to this Office because RAD does not track unauthorized committees for failure to file these reports.

any calendar year in which a regularly scheduled election is held, political committees other than authorized candidate committees must file quarterly reports no later than the 15th day after the last day of each calendar quarter, except for the quarter ending on December 31, in which case the report must be filed on or by January 31 of the following year. 2 U.S.C.

§ 434(a)(4)(A)(i). Additionally, the Act requires a political committee to file a pre-election report no later than the 12th day before any primary or general election if a political committee makes a contribution to or an expenditure on behalf of a candidate for federal office twenty days or more prior to a primary or general election. 2 U.S.C. § 434(a)(4)(A)(ii). The Act further requires political committees to file, in any calendar year in which a regularly scheduled election is held, a post-general election report no later than the 30th day after the general election in question. 2 U.S.C. § 434(a)(4)(iii).

B. Facts

Respondent State Democratic Executive Committee of Alabama ("SDECA") is a political committee within the meaning of 2 U.S.C. § 431(4); specifically, SDECA is an qualified unauthorized party committee. Respondent Anthony J. Fant is the treasurer of SDECA.²

SDECA was required to file its 1997 Year-End Report on or by January 31, 1998. See 2 U.S.C. § 434(a)(4)(A)(iv). By written notice dated December 29, 1997 the Commission notified SDECA that its 1997 Year-End Report was due on or by January 31, 1998. On February 23, 1998, the Commission sent SDECA a non-filer notice instructing the SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. SDECA filed its 1997 Year-End Report on March 24, 1998, 52

² John D. Saxon was the treasurer of SDECA during the events in question.

days after the compulsory filing date. SDECA's Executive Director, in a cover letter to this submission, asserted that SDECA's records showed that the 1997 Year-End Report had been filed with the Commission on time, and that SDECA would send the Commission a return receipt showing this. The Commission never received this return receipt.

SDECA was required to file its 1998 April Quarterly Report on or by April 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated March 20, 1998, the Commission notified SDECA that its 1998 April Quarterly Report was due on April 15, 1998. On May 7, 1998, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On June 1, 1998, a Reports Analysis Division ("RAD") analyst left a message for SDECA's Executive Director, Giles Perkins, asking SDECA to file the April Quarterly Report, and advising him that failure to do so may result in legal action by the Commission. SDECA did not respond to the analyst's message.

SDECA was required to file its 1998 July Quarterly Report no later than July 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated June 19, 1998, the Commission notified SDECA that its 1998 July Quarterly Report was due on July 15, 1998. On August 7, 1998, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On August 28, 1998, a RAD analyst called SDECA and left a message for Mr. Perkins with Jessica Miller, who represented herself as the Assistant Treasurer, asking SDECA to file its April and July Quarterly Reports, and advising him that failure to do so may result in legal action by the Commission. SDECA did not respond to the analyst's message.

SDECA was required to file its 1998 October Quarterly Report by October 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated September 18, 1998, the Commission informed SDECA that its 1998 October Quarterly Report was due on October 15, 1998. On November 4, 1998, the Commission sent SDECA a non-filer notice instructing the SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On December 1, 1998, a RAD analyst called John Saxon, who was then the treasurer of SDECA. Mr. Saxon returned the analyst's call on December 2, 1998, and told the analyst that SDECA staff had informed him that the reports had been filed with the Commission. Mr. Saxon also asserted that the 1997 Year-End Report had encountered the same problem, and claimed that SDECA had been able to prove that the report had been filed on time. The analyst advised Mr. Saxon that no reports had been filed for 1998, that non-filer notices were on the public record for SDECA's missing reports, and that SDECA should file the missing reports and copies of the certified mail receipts. Mr. Saxon stated that he would make sure the reports were re-sent, but that he trusted his staff. No reports were submitted by SDECA in response to the analyst's call, and SDECA did not respond further.

SDECA was required to file its 1998 30-Day Post-General Election Report by December 3, 1998. See 2 U.S.C. § 434(a)(4)(A)(iii). By written notices dated September 30, 1998, and November 5, 1998, respectively, the Commission informed SDECA that its 1998 Post-General Election Report was due on December 3, 1998. On January 6, 1999, the Commission sent SDECA a non-filer notice instructing SDECA to file the report at issue immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. On January 29, 1999, a RAD analyst called Mr. Saxon and left a message with his secretary about the missing reports. Mr. Saxon's secretary said that she would contact the

preparer of reports. The analyst told her that Mr. Saxon had previously stated that this person had filed the reports, and suggested to Mr. Saxon's secretary that SDECA verify the mailing address of the Commission and re-mail the missing reports. The analyst left a message for Mr. Saxon to call the analyst back. SDECA did not respond to the analyst's message.

SDECA was required to file its 1998 Year-End Report by January 31, 1999. See 2 U.S.C. § 434(a)(4)(A)(i). By written notice dated December 30, 1998, the Commission informed SDECA that its 1998 Year-End Report was due on January 31, 1999. On February 16, 1999, a RAD analyst called Mr. Saxon again about all of the missing reports. Mr. Saxon stated that he was told that the missing reports had been mailed with return receipts the previous week. The analyst told Mr. Saxon that no reports had been received. Mr. Saxon also stated that he was no longer the treasurer, and that there was a new treasurer for the committee. The analyst advised him that no treasurer change had been reported to the Commission. On March 2, 1999, the Commission sent SDECA a non-filer notice instructing SDECA to file the Year-End Report immediately and informing it that the Commission may initiate audit or legal enforcement action regarding the late report. SDECA did not respond to this notice.

On March 29, 1999, a RAD analyst called SDECA's office and left a message for Ms. Miller. On March 30, 1999, Sara Jane Tackett of SDECA called the analyst and stated that she had been assured that the missing reports and return receipts had been mailed to the Commission. On April 5, 1999, Ms. Tackett called the analyst and stated that contrary to her previous assertion, she had concluded that SDECA had not filed any of the required reports for 1998. She stated that she had prepared the reports for SDECA during the 1996 election cycle, and had returned to SDECA to work on the 2000 election cycle, and would be filing the reports for 1998. She stated that the person whose task it was to prepare the reports for 1998 had been fired, and

that SDECA had contacted counsel.

On April 5, 1999 counsel for SDECA submitted a sua sponte admission that SDECA had failed to file any reports covering calendar year 1998. Counsel asked to enter into conciliation in connection with SDECA's apparent violations of the Act. Counsel stated that Sara Jane Tackett, who had prepared SDECA's reports for the 1996 cycle, had retired at the end of 1996. Counsel stated that during the first part of 1997 SDECA's reporting duties were handled by a Mr. Rhodes, who left SDECA in the middle of 1997, whereupon those duties were transferred to another employee, Jessica Miller, who began working at SDECA in June, 1997. Counsel stated that on several occasions during 1998 Ms. Miller told SDECA's then-treasurer, Mr. Saxon, and executive director, Giles Perkins, that SDECA's 1998 disclosure reports had been filed with the Commission on time.

The sua sponte submission stated that in early 1999, after staff from the Reports Analysis Division ("RAD") contacted the executive director and treasurer, Mr. Perkins and the treasurer asked Ms. Miller about the reports. Counsel stated that Ms. Miller asserted at that time that reports for 1998 had been filed on time, stated that she had duplicate copies of the reports at her home, and promised that she would send those copies to the Commission. After being pressed by staff from RAD, Mr. Perkins apparently demanded to see copies of the reports, at which time Ms. Miller admitted that no reports for 1998 had been submitted to the Commission. Counsel enclosed a statement signed by Ms. Miller which states that her duties at SDECA included preparing FEC reports, and that she failed to prepare the reports. Counsel stated that Ms. Tackett had returned to compile reports for 1998, and that Ms. Miller had resigned her position.

On April 16, 1998 SDECA filed its 1998 April and July Quarterly Reports, and an amended 1997 Year-End Report. SDECA filed its 1998 October Quarterly Report on April 26,

1999, its 1998 Post-General Election Report on April 30, 1999, and its 1998 Year-End Report on May 3, 1999.

C. Analysis

Pursuant to the Act, SDECA was required to file its 1997 Year-End Report on or by January 31, 1998. See 2 U.S.C. § 434(a)(4)(A)(iv). SDECA filed its 1997 Year-End Report on March 24, 1998, 52 days after the compulsory filing date. SDECA's 1997 Year-End Report disclosed receipts totaling \$217,107.32 and disbursements totaling \$235,106.68.

SDECA was required to file its 1998 April Quarterly Report on or by April 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 April Quarterly Report on April 16, 1999, 366 days after the compulsory filing date. SDECA's 1998 April Quarterly Report disclosed receipts totaling \$231,317.95 and disbursements totaling \$215,057.65.

SDECA was required to file its 1998 July Quarterly Report no later than July 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 July Quarterly Report on April 16, 1999, 275 days after the compulsory filing date. SDECA's 1998 July Quarterly Report disclosed receipts totaling \$132,352.25 and disbursements totaling \$147,680.94.

Because SDECA made two contributions to a candidate for federal office during the second quarter of 1998, and these contributions were reportedly made more than twenty days prior to the June 2, 1998 primary, SDECA was required to file a Pre-Primary Report for the June 2, 1998 primary on or by May 21, 1998. See 2 U.S.C. § 434(a)(4)(A)(ii). Although the contributions are listed in Schedule B of SDECA's itemized disbursements for the second quarter of 1998, SDECA did not file a Pre-Primary Report. Given the failure to file, this Office has segregated, in conformity with 2 U.S.C. § 434(a)(4)(A)(ii), total receipts and disbursements for the 1998 second quarter (totaling \$132,352.25 and \$147,680.94, respectively) according to the

date assigned to the transactions reported. Thus, receipts and disbursements for the second quarter reporting period between April 1, 1998 to May 13, 1998 (the "Pre-Primary" reporting period) were calculated separately from those dated between May 14, 1998 to June 30, 1998 (the "Post-Primary" reporting period). The segregated analyses yielded receipts for the 1998 Pre-Primary period totaling \$102,889.05 and disbursements totaling \$111,955.64 and receipts for the 1998 Post-Primary period totaling \$29,463.20 and disbursements totaling \$35,725.30.

SDECA was required to file its 1998 October Quarterly Report by October 15, 1998. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 October Quarterly Report on April 26, 1999, 193 days after the compulsory filing date. SDECA's 1998 October Quarterly Report disclosed receipts totaling \$217,058.85 and disbursements totaling \$213,157.83.

SDECA was required to file its 1998 30-Day Post-General Election Report by December 3, 1998. See 2 U.S.C. § 434(a)(4)(A)(iii). SDECA filed its 30-Day Post General Election Report on April 30, 1999, 148 days after the compulsory filing date. SDECA's 1998 30-Day Post-General Election Report disclosed receipts totaling \$564,463.20 and disbursements totaling \$562,035.45.

SDECA was required to file its 1998 Year-End Report by January 31, 1999. See 2 U.S.C. § 434(a)(4)(A)(i). SDECA filed its 1998 Year-End Report on May 5, 1999, 92 days after the compulsory filing date. SDECA's 1998 Year-End Report disclosed receipts totaling \$132,665.67 and disbursements in the amount of \$125,689.47 for the applicable period.

SDECA was given ample warning of the due dates for the above-mentioned reports, and was given ample and repeated warnings that failure to file the reports might lead to enforcement action by the Commission. Based on the above, this Office recommends the Commission find reason to believe that the State Democratic Executive Committee of Alabama and Anthony J. Fant, as treasurer, violated 2 U.S.C. §§ 434(a)(4)(A)(i)-(iv).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

In addition to recommending that the Commission find reason to believe that Respondents violated 2 U.S.C. § 434(a)(4)(A)(i) – (iv), this Office recommends that the Commission offer to enter into conciliation with SDECA prior to a finding of probable cause to believe. Attached for the Commission's review and approval is a proposed conciliation agreement. Attachment 2.

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IV. RECOMMENDATIONS


1. Open a MUR in Pre-MUR 376.
2. Find reason to believe that the State Democratic Executive Committee of Alabama and Anthony J. Fant, as treasurer, violated 2 U.S.C. §§ 434(a)(4)(A)(i) – (iv) in connection with Pre-MUR 376.
3. Open a MUR in RAD Referral 99NF-09.
4. Find reason to believe that the State Democratic Executive Committee of Alabama and Anthony J. Fant, as treasurer, violated 2 U.S.C. §§ 434(a)(4)(A)(i) – (iv) in connection with RAD Referral 99NF-09.
5. Merge the MURs opened as recommended above into the higher numbered of the two MURs.
6. Enter into pre-probable cause conciliation with the State Democratic Executive Committee of Alabama and Anthony J. Fant, as treasurer.
7. Approve the attached Conciliation Agreement.
8. Approve the attached Factual and Legal Analysis.
9. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date

10/27/99

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Factual and Legal Analysis
2. Proposed Conciliation Agreement

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