

JUL 29 2000

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5007

DATE COMPLAINT FILED: May 8, 2000

DATE ACTIVATED: July 10, 2000

EXPIRATION OF STATUTE OF
LIMITATIONS: April 5, 2005

STAFF MEMBER: William Messenger

COMPLAINANT: Rory Reid, Chair of the Nevada State Democratic Party

RESPONDENTS: Jon Porter

Friends of Jon Porter Inc., and George C. Swarts, as Treasurer

RELEVANT STATUTES: 2 U.S.C. § 441d

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was generated by a complaint submitted to the Federal Election Commission by Rory Reid, Chair of the Nevada State Democratic Party ("Complainant"), on May 2, 2000. The complaint alleges that Jon Porter and his principal campaign committee, Friends of Jon Porter Inc. and George C. Swarts, as Treasurer ("Committee"), violated the Federal Election Campaign Act by distributing campaign literature which did not include a proper disclaimer during the 2000 election for U.S. Representative in Nevada's 1st Congressional District.

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II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that any person making an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, or soliciting any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general political advertising, shall clearly state that the communication has been paid for by such authorized political committee, if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents. 2 U.S.C. § 441d(a). Direct mailings or any other form of general public political advertising advocating the election of a clearly identified candidate must clearly and conspicuously include a disclaimer meeting the requirements of 11 C.F.R. § 110.11(a)(1)(i), (iii), (iv) or (a)(2). 11 C.F.R. § 110.11(a)(1).

B. Complaint and Response

According to the complaint, Friends of Jon Porter Inc. distributed fliers expressly advocating the election of Jon Porter which did not include language indicating who had paid for or authorized them. The complainant provided a copy of the flyer, which contains such phrases as "Jon Porter for Congress," "I ask for your support," and "send a message to special interests in Washington by joining our efforts to elect Jon Porter for Congress," along with the campaign's web site address and phone number. Attachment 1. The flyer does not state who paid for or authorized it.

In response to the complaint, the Committee acknowledges that it printed 2,500 of the fliers at issue (4" by 9" "walk cards"). The printing cost appears to have been \$1,060.70.¹ The Committee estimates that 1,000 fliers were manually distributed by campaign staff or volunteers before the Committee became aware of the complaint. They assert that a stamp containing the required disclaimer was subsequently affixed to the remainder of the fliers.

C. Analysis

The Committee admits that it produced and distributed a flyer which did not include language indicating who had paid for or authorized it. This literature expressly advocated the election of Jon Porter. Thus, the flyer does not comply with 2 U.S.C. § 441d(a)(1)'s requirement that a communication expressly advocating the election or defeat of a clearly identified candidate include a disclaimer which clearly states the name of the political committee which paid for and authorized it. Based upon these facts, this Office recommends that the Commission find reason to believe that the Friends of Jon Porter Inc., and George C. Swarts, as Treasurer, violated 2 U.S.C. § 441d(a)(1).

Additionally, this Office recommends that the Commission admonish the Friends of Jon Porter Inc. and George C. Swarts, as Treasurer, and take no further action with respect to the Committee's 2 U.S.C. § 441d(a)(1) violation. The expenditure for printing the fliers was not large (\$1,060.70), and only about 1,000 of the 2,500 fliers printed were actually distributed in violation of the statute. Further, these defective fliers were distributed several months before the

¹ The Committee did not indicate the cost of the fliers in their response, only that they were "printed about 6 weeks ago." Their response letter was dated May 18, 2000. The Committee's 2000 July Quarterly Report discloses a disbursement of \$1,060.70 to Las Vegas Color for "Printing" on April 5, 2000. This amount is consistent with a newspaper article appearing in the Las Vegas Sun on April 18, 2000, which stated that "Porter spokesman Josh (Footnote continued on following page.)

primary election, which will be held on September 5, 2000, and the general election, which will be held on November 7, 2000. Thus, it is unlikely that this violation will have a significant effect on the outcome of the election. In light of these factors, the recommended disposition would be an efficient use of the Commission's limited resources.

There is no evidence that Jon Porter was personally involved in the production or distribution of the campaign literature at issue. Accordingly, this Office recommends that the Commission find no reason to believe that Jon Porter violated 2 U.S.C. § 441d(a)(1) and close the file as to this respondent.

IV. RECOMMENDATIONS

1. Find reason to believe that the Friends of Jon Porter Inc. and George Swarts, as treasurer, violated 2 U.S.C. § 441d(a)(1), but take no further action.
2. Find no reason to believe that Jon Porter violated 2 U.S.C. § 441d(a)(1).
3. Approve the attached Factual and Legal Analysis.
4. Approve the appropriate letters, including an admonishment to Friends of Jon Porter Inc. and George Swarts, as treasurer.
5. Close the file.

MUR 5007

First General Counsel's Report


Page 5

Lawrence M. Noble
General Counsel

Date

7/26/00

BY:


Lois G. Lerner
Associate General Counsel

Attachments:

1. Flyer
2. Newspaper Article
3. Factual and Legal Analysis



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April 28, 2000

Democratic leader claims Porter broke election law

By Benjamin Grove

[<grove@lasvegassun.com>](mailto:grove@lasvegassun.com)

LAS VEGAS SUN

WASHINGTON -- Congressional candidate Jon Porter violated a federal election law by not specifically stating on a campaign flier who paid for the advertisement, the Nevada State Democratic Party charged Thursday.

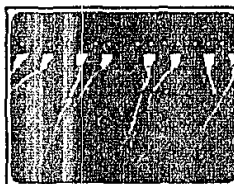
"It's kind of campaign finance 101 -- if you're a federal candidate, you have to tell what the source of the flier is and who paid for it," Nevada State Democratic Party Chairman Rory Reid said in an interview. "If someone is a candidate for federal office, they probably better -- first of all -- understand the law. And second, they better comply with it."

Reid asked the Federal Election Commission in Washington to "take swift action" in a letter dated Thursday.

The flier gives brief points of Porter's accomplishments in the state Senate and his goals for Congress. Porter is running for the House against incumbent Shelley Berkley.

Porter spokesman Josh Griffin said the Porter campaign paid roughly \$1,100 for 2,500 of the 3-by-8 inch fliers, about half of which have been passed out by hand at events such as the Clark County Republican Party convention. The fliers have not been mailed, Griffin said.

Griffin said it was an honest mistake that the words .



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 Attachment 2

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"Paid for by" did not appear on the flier. Griffin said the campaign will stamp the remaining fliers with "paid for by" language so that the fliers comply with the law.

Griffin dismissed Reid's letter to the FEC as political "nastiness."

Griffin stressed that the flier on front and back clearly stated in large type, "Jon Porter for Congress." The flier also features a short message to voters signed by Porter and also directs people to call a working phone number -- Porter's campaign office -- or visit his website.

The FEC had not received the letter as of Thursday, a spokeswoman said.

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Nevada's largest website

Attachment 2
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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: July 27, 2000

SUBJECT: MUR 5007-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 ☐