



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

August 23, 2000

Mr. George Swarts, Treasurer
Friends of John Porter Inc.
631 Stephanie Street #143
Henderson, NV 89014

RE: MUR 5007

Dear Mr. Swarts:

On August 1, 2000, the Federal Election Commission found reason to believe that Friends of John Porter Inc. ("Committee") and you, as treasurer, violated 2 U.S.C. § 441d(a)(1), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act."). However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission reminds you that financing a communication which expressly advocates the election or defeat of a clearly identified candidate, without a disclaimer which clearly states the name of the political committee which paid for and authorized it, is a violation of 2 U.S.C. § 441d(a) of the Act. You should take steps to ensure that this activity does not occur in the future.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Lawrence Calvert, acting assistant general counsel, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Darryl R. Wold". The signature is written in a cursive, flowing style.

Darryl R. Wold
Chairman

Enclosure
Factual and Legal Analysis

cc: Jon Porter

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

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

MUR: 5007

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 the 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. The Committee is the principal campaign committee of Jon Porter, who is a candidate in the 2000 election for U.S. Representative in Nevada's 1st Congressional District.

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.

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 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 Convention." Attachment 2.

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.

Accordingly, there is reason to believe that the Friends of Jon Porter Inc., and George C. Swarts, as Treasurer, violated 2 U.S.C. § 441d(a)(1).