



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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Audit Referral 99-19

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MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

FROM: *for* ROBERT J. COSTA *J.S.*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: BENTON FOR CONGRESS - REFERRAL MATTERS

On November 2, 1999, the Commission approved the Final Audit Report on Benton for Congress (BFC). The report was released to the public on November 10, 1999. As a result, the following findings from the final audit report are being referred to your office:

II.A. Receipt of Contributions in Excess of the Limitation. BFC received 22 contributions from 19 individuals which exceeded the contribution limitations by \$13,488.

II.C. Failure to File 48 Hour Notices. BFC did not file required 48 hour notices for 32 contributions totaling \$56,500.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Bill Antosz or Alex Boniewicz at 694-1200.

Attachments:

Finding II.A., FAR Pgs. 5-8.

Finding II.C., FAR Pgs. 10-11

A. RECEIPT OF CONTRIBUTIONS IN EXCESS OF THE LIMITATION

Section 441a(a)(1)(A) of Title 2 of the United States Code states, that no person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 441a(a)(2)(A) of Title 2 of the United States Code states, that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Subsection (b) of 11 CFR §110.1 explains that *with respect to any election* means that if the contribution is not designated in writing by the contributor for a particular election then the contribution applies to the next election for that Federal office after the contribution is made. A contribution is considered made when the contributor relinquishes control over the contribution by delivering the contribution to the Candidate, the political committee, or an agent of the committee. A contribution mailed is considered made on the date of the postmark.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 110.1(b)(5)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if:

- the contribution was designated in writing for a particular election, and the contribution, either on its face or when aggregated with other contributions from the same contributor for the same election, exceeds the limitation at 11 CFR §110.1(b)(1);
- the contribution was designated in writing for a particular election and the contribution was made after that election and the contribution cannot be accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);

- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and, within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing and if a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution, and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(l)(5) Of Title 11 of the Code of Federal Regulations states that if a political committee does not retain the written records concerning redesignation or reattribution, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

Section 110.9(a) of Title 11 of the Code of Federal Regulations states that no candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee

shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in relevant part, that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

A review of BFC's receipt records identified 22 contributions from 19 individuals which exceeded the contribution limitations by \$13,488. Fourteen excessive contributions totaling \$9,710 related to the primary election, and eight contributions totaling \$3,778 related to the general election. Many of these contributions were attributed to other persons or elections on BFC's disclosure reports. No redesignation or reattribution letters were available for these contributors.

During the general election, BFC received two contributions from political committees totaling \$9,950 which were designated for primary debt reduction. These political committees also gave like amounts for the general election. However, at the time of the audit fieldwork the Audit staff's analysis of BFC's debt position as of the date of the primary election revealed that BFC had more cash on hand (\$26,823) than its outstanding debts and obligations (\$14,104), and therefore could not accept these contributions.

In addition, BFC did not deposit the excessive contributions into a separate account, nor maintain sufficient funds after November 18, 1998, to refund these contributions. BFC's cash balance as of December 31, 1998 was only \$474, and was not sufficient to refund all outstanding excessive contributions.

At the Exit Conference, the Audit staff provided the BFC representative a schedule of the identified excessive contributions. In a written response to the Exit Conference, the Candidate responded that he had discussed the contribution limit with every person listed on the excessive contributions from individuals list, and in every case, the intent was either to designate the additional contribution to the spouse or to allocate the additional contribution to the general election. The Candidate attached signed statements from the contributors to confirm their intent. However, these reattribution or redesignation statements were primarily dated June, 1999, and thus, not accomplished in a timely manner.

The interim audit report recommended that BFC provide evidence demonstrating that the contributions in question are not excessive, or, absent such evidence, BFC refund \$23,388 (\$13,488 from individuals and \$9,900 from political committees) and provide evidence of such refunds (copies of the front and back of the negotiated refund checks) for our review. If funds are not currently available to make the necessary refunds, those contributions requiring refunds should be disclosed as debts on

Schedule D (Debts and Obligations) until such time that funds become available to make the refunds.

In response to the interim audit report, the Candidate stated that the contributions from individuals should not be considered as excessive contributions, and argued that every contribution was subsequently reported exactly as discussed with the donor; the BFC staff was carefully instructed to obtain written redesignation and reattribution letters, although approximately 19 of these letters had been lost or misplaced; and the Candidate contacted each donor and obtained signed affidavits¹ which confirmed that the contributions were allocated and designated the way they had originally instructed.

The Candidate also believed that the contributions from political committees should not be considered as excessive contributions, and stated that the cash on hand as calculated by the Audit staff (\$26,823) contained \$25,480 of contributions that were designated to the general election, and, after removal of these contributions from the cash on hand figure, there was sufficient primary debt (\$14,104) to justify the two political party contributions which totaled \$9,950. A list of the contributions designated for the general election was provided.

After reviewing these contributions and recalculating BFC's debt position as of the date of the primary election, it was determined that BFC had sufficient primary debt and could accept the two contributions from political committees designated for primary debt retirement.

BFC has not demonstrated that its contributions from individuals were not in excess of the limitations, since it did not retain the written records concerning timely redesignations as required under 11 CFR §110.1(1)(5).

¹ No affidavits were submitted in BFC's response to the interim audit report. We believe the Candidate is referring to signed statements received from the contributors which were addressed on page 5 of this report.

C. FAILURE TO FILE 48 HOUR NOTICES

Section 104.5(f) of Title 11 of the Code of Federal Regulations states that if any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

The Audit staff reviewed all contributions greater than or equal to \$1,000 deposited from August 27, 1998 to September 12, 1998 for the primary election, and deposited from October 15, 1998 to October 31, 1998 for the general election.² The review identified 22 contributions totaling \$33,000 that appeared to have been received within two and twenty days of the primary election, held on September 15, 1998, and 99 contributions totaling \$179,750 that appeared to have been received within two and twenty days of the general election, held on November 3, 1998.

BFC did not file required 48 hour notices for 33 contributions totaling \$58,000. Two contributions in the amount of \$3,500 related to the primary election, while 31 contributions totaling \$54,500 related to the general election.

At the exit conference, the BFC representative was provided with a schedule of these items. In a written response to the Exit Conference, the Candidate contends that the majority of the contributions were received before the beginning of the reporting periods, and would be exempt from the reporting requirement.

The analysis presented above used the deposit date as the receipt date. No documentation detailing a different receipt date for the contributions has been provided. During the pre-general election period, BFC made deposits about every 3 work days. Also, deposits were made on October 14, 1998, the day prior to the start of the 48 hour reporting period suggesting that there were no undeposited contributions on the 15th. As such, it is unlikely that the contributions noted above were received prior to October 15, 1998.

In the interim audit report, the Audit staff recommended that BFC obtain and submit evidence that all required 48 hour notices were filed or submit evidence that these contributions were not received within two and twenty days of the primary and general elections.

² BFC did not provide records pertaining to the date contributions were received, therefore the Audit staff could only test for compliance concerning this matter using deposit ticket dates.

In response to the interim audit report, the Candidate stated that he believes that the majority of the contributions in question were received outside of the 48 hour reporting period, and that the BFC staff made a good faith effort to report every \$1,000 or greater contribution received during the 48 hour reporting period, but it is likely that the staff did not deposit every contribution in the order it was received. However, the Candidate could provide documentation to demonstrate that only one contribution in the amount of \$1,500 was received before the start of the 48 hour reporting period for the general election. Thus it is concluded that 48 hour notices were not filed for contributions in the amount of \$56,500.