

JUL 28 2000

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

Audit Referral: 99-19
Audit Referral Date: November 15, 1999
Date Activated: May 17, 2000

Statute of Limitations Expiration:
February 11, 2003 — October 28, 2003¹
Staff Member: Albert R. Veldhuyzen

SOURCE:

AUDIT REFERRAL

RESPONDENTS:

Benton for Congress and
Michael Sanders, as treasurer

RELEVANT STATUTES/REGULATIONS:

2 U.S.C. § 441a(f)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 434(a)(6)(A)
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 103.3(b)(4)
11 C.F.R. § 110.1(b)(5)(ii)
11 C.F.R. § 110.1(k)(3)
11 C.F.R. § 110.1(b)(2)
11 C.F.R. § 110.1(l)(6)
11 C.F.R. § 110.2(b)(2)
11 C.F.R. § 110.9(a)

INTERNAL REPORTS CHECKED:

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
2000 JUL 28 P 2 29

¹ The statute of limitations date for the earliest violation for the receipt of excessive contributions is February 11, 2003 for a contribution received on February 11, 1998. The statute of limitations date for the last violation for the receipt of excessive contributions is October 28, 2003 for a contribution received on October 28, 1998. The statute of limitations date for the earliest violation for failure to file a 48-hour notice is August 30, 2003 for a contribution received on August 28, 1998 for which the Committee should have filed a 48-hour notice no later than August 30, 1998. The statute of limitations date for the last violation for failure to file a 48-hour notice is October 28, 2003.

I. GENERATION OF MATTER

This matter was generated by an audit of Benton for Congress ("Committee") and Michael Sanders, as treasurer, undertaken in accordance with 2 U.S.C. § 438(b). *See* Attachment 1.

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contributions

The Committee received excessive contributions from 19 individuals totaling \$13,488. Attachments 1 and 2. Of this amount, the Committee untimely refunded portions of the excessive contributions totaling \$90 to two individuals. The Committee's treasurer either did not obtain or maintain written redesignations or reattributions of the excessive contributions that should have been acquired within 60 days from the date that the Committee received such contributions.³ 11 C.F.R. §§ 110.1(b)(5)(ii) and 110.1(k)(3).

Two checks in the amounts of \$30 and \$60 were issued on June 23, 1999 to contributors for the excessive portions of their contributions. Although the Audit staff, at the completion of fieldwork on June 18, 1999, recommended that the Committee either refund excessive contributions in the amount of \$13,488 or provide evidence that these contributions were not excessive, the Committee chose not to refund all the contributions. The Committee claims that contributions totaling \$13,398 were legitimate. The Committee provided statements from

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³ The referral materials indicate that the candidate had personally discussed with each contributor on the excessive contribution list how his or her contribution would be designated. Attachment 1 at 4. However, the Committee apparently lost or misplaced the original redesignation/retribution letters. Attachment 1 at 4; Attachment 3 at 1.

contributors evidencing their discussions with the candidate and verifying their prior intent to redesignate or reattribute the excessive amounts of their contributions. *See* Attachment 1 at 4.

In order to support its claim that the excessive contributions do not have to be refunded, the Committee was required to retain documentation demonstrating when the written redesignations or written reattributions were received. 11 C.F.R. § 110.1(l)(6). The failure to obtain and maintain these written records invalidates any verbal redesignations or reattributions, and "the original designation or attribution shall control." Explanation and Justification of 11 C.F.R. § 110.1(l), 52 Fed. Reg. 766-67 (Jan. 9, 1987). Therefore, the Committee's treasurer was required to refund the excessive contribution amounts within 60 days of receipt of such contributions. 11 C.F.R. § 103.3(b)(3). Additionally, the Committee did not deposit the excessive contributions into a separate account, nor maintain sufficient funds after November 18, 1998 to refund these contributions. 11 C.F.R. § 103.3(b)(4). The Committee appears to have unresolved excessive contributions totaling \$13,398 (\$13,488 - \$90).

Thus, based on the audit referral and schedule of contributions, the Office of General Counsel recommends that the Commission find reason to believe that Benton for Congress, and Michael Sanders, as treasurer, violated 2 U.S.C. § 441a(f).

B. Failure to File 48 Hour Notices

The Audit staff found that the Committee failed to file 48-hour notices on two contributions totaling \$3,500 during the primary election and on 30 contributions totaling \$53,000 during the general election as required by 2 U.S.C. § 434(a)(6)(A).⁴ Attachments 1 and 4.

⁴ The primary election was held on September 14, 1998 and both checks were deposited on August 28, 1998 during the required reporting period of August 27, 1998 — September 12, 1998. The general election was held on

In its response to the Interim Audit Report recommendations, the Committee states that it was not required to file 48 hour notices for the 32 contributions in question because the "overwhelming majority" were allegedly received prior to the 48 hour period. Attachment 3 at 3. The Committee also faults the Audit staff for considering the deposit date as equivalent to the receipt date. Attachment 3 at 2. However, the Committee only provided one stamped envelope which demonstrated that a particular contribution was received outside the 48 hour notice period. Attachment 1 at 7. It is the responsibility of the political committee to file 48 Hour Reports and also to maintain the relevant underlying records upon which the reports are based. 11 C.F.R. § 104.14(b)(1). In the absence of proof of the date of receipt, use of the deposit date is a reasonable alternative.

Furthermore, an examination of the contribution check dates reveals 13 checks dated within the 48 hour reporting period and eight more dated within three days of the period which suggests that they were received within the 48 hour period. Attachment 4. The remaining 11 checks may have been received prior to the beginning of the reporting period, but not deposited until after the 20th day before the election. However, the Committee failed to keep the appropriate records showing the date of receipt.

Thus, based on the audit referral and schedule of contributions, Attachments 1 and 4, this Office recommends that the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A).

III. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

IV. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that Benton for Congress and Michael Sanders, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions.
3. Find reason to believe that Benton for Congress and Michael Sanders, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices.
4. Approve the attached Factual and Legal Analysis.

5. Approve the attached proposed Conciliation Agreement.
6. Approve the appropriate letter.

Lawrence M. Noble
General Counsel

7/27/00
Date

BY: Kim Leslie Bright
Kim Leslie Bright
Associate General Counsel

Attachments

1. Audit Referral Materials
2. Audit Schedule of Contributions related to Excessive Contributions
3. Committee Response to the Audit Exit Conference recommendations dated September 30, 1999
4. Audit Schedule of Contributions related to 48 Hour Notices
5. Proposed Factual and Legal Analysis
6. Proposed Conciliation Agreement

Bright



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

DATE & TIME OF TRANSMITTAL: Monday, July 31, 2000 11:00

BALLOT DEADLINE: Thursday, August 03, 2000 4:00

COMMISSIONER: MASON, McDONALD, SANDSTROM, SMITH, THOMAS, WOLD

SUBJECT: **Audit Referral #99-19 - First General Counsel's Report
dated July 27, 2000.**

() I approve the recommendation(s)

() I object to the recommendation(s)

COMMENTS: _____

DATE: _____

SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Lawrence M. Noble
General Counsel

FROM: Mary W. Dove/Lisa R. Davis
Acting Commission Secretary

DATE: August 3, 2000

SUBJECT: Audit Referral #99-19 - First General Counsel's Report
dated July 27, 2000

The above-captioned document was circulated to the Commission
on Monday, July 31, 2000.

Objection(s) have been received from the Commissioner(s) as
indicated by the name(s) checked below:

Commissioner Mason	—
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	<u>XXX</u>
Commissioner Wold	<u>XXX</u>

This matter will be placed on the meeting agenda for

Tuesday, August 8, 2000.

Please notify us who will represent your Division before the Commission on this matter.