



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

February 16, 2001

**SENSITIVE**

Mr. Don Benton  
Treasurer  
Benton for Congress  
P.O. Box 5076  
Vancouver, WA 98668

RE: MUR 5066

Dear Mr. Benton:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission found reason to believe that Benton for Congress ("Committee") and you, as treasurer, violated 2 U.S.C. § 441a(f), 11 C.F.R. § 103.3 (b)(3), (4), and (5), and 2 U.S.C. § 434(a)(6)(A).

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

21.04.405.3280

Letter to Don Benton

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Should you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lois G. Lerner  
Acting General Counsel

Enclosure  
Brief

21-04-405-3281

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Benton for Congress and  
Don Benton, acting as treasurer

)  
) MUR 5066  
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)

**GENERAL COUNSEL'S BRIEF**

**I. STATEMENT OF THE CASE**

On August 8, 2000, the Commission found reason to believe that Benton for Congress ("Committee") violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 103.3(b)(3), (4), and (5) by knowingly accepting and retaining excessive contributions. On the same date, the Commission also found that the Committee violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices. On September 15, 2000, Mr. Don Benton, the candidate, submitted a response to the Commission's reason to believe findings.

**II. ANALYSIS**

**A. Excessive Contributions**

The Federal Election Campaign Act of 1971 ("Act"), as amended, provides that no person shall make contributions to any candidate or authorized committee with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A). Candidates and their committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f); *see also* 11 C.F.R. § 110.9(a).

Contributions which exceed the contribution limitations of the Act on their face, and contributions which do not exceed the Act's limitations on their face but which do exceed those limitations when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If

any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution in accordance with 11 C.F.R. §§ 110.1(b), 110.1(k), or 110.2(b). If a written redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3).

The Committee received excessive contributions from 19 individuals totaling \$13,488. The Committee untimely refunded two excessive contributions in the amounts of \$30 and \$60.<sup>1</sup> However, the Committee did not refund the remaining excessive contributions in the amount of \$13,398. In its September 30, 1999 reply to the Interim Audit Report, the Committee asserted that the remainder of the contributions were not excessive and did not have to be refunded. The Committee 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. 11 C.F.R. §§ 110.1(b)(5)(ii) and 110.1(k)(3). The Committee's failure to obtain and maintain these written records invalidated 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 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 to refund these contributions. 11 C.F.R. § 103.3(b)(4).

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<sup>1</sup> The refund checks were issued on June 23, 1999. A timely refund of these contributions would have required their return to the contributors within 60 days of receipt of the excessive contributions. These excessive contribution checks were dated October 15, 1998 and June 18, 1998 respectively. Therefore, they should have been refunded sometime in December, 1998 and August, 1998.

Therefore, the Office of General Counsel intends to recommend that the Commission find probable cause to believe that Benton for Congress and Don Benton, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 103.3 (b)(3), (4), and (5) by knowingly accepting and retaining excessive contributions.

**B. Failure to File 48 Hour Notices**

The principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. 2 U.S.C. § 434(a)(6)(A). This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. 2 U.S.C. § 434(a)(6)(A).

Using the date that the Committee deposited contributions, the Commission determined 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). The primary election was held on September 15, 1998 and both primary 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 November 3, 1998 and the remainder of the checks were deposited on five different dates during the required reporting period of October 15, 1998 — October 31, 1998.

In its September 30, 1999 reply to the Interim Audit Report, the Committee contends that it was not required to file 48 hour notices for the 32 contributions in question because the “overwhelming majority” were received prior to the 48 hour period. The Committee also states the Commission should not consider the deposit date as equivalent to the receipt date. Apart

from one stamped envelope of a contribution received outside the 48 hour notice period, the Committee did not maintain records showing when contributions were received. 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 documentation that the Committee was required to keep showing 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. The remaining 11 checks may have been received prior to the beginning of the reporting period, but not deposited until after the 20<sup>th</sup> day before the election. However, the Committee did not keep the appropriate records showing the date of receipt.

Therefore, the Office of General Counsel intends to recommend that the Commission find probable cause to believe that Benton for Congress and Don Benton, as treasurer, violated 2 U.S.C. § 434(a)(6)(A) by failing to file 48-hour notices.

Date

2/15/01

Lois G. Lerner

Acting General Counsel



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: February 16, 2001

SUBJECT: MUR 5066-General Counsel's Brief

The attached is submitted as an Agenda document for the  
Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

### CIRCULATION

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE

☐

24 Hour TALLY VOTE

☐

24 Hour NO OBJECTION

☐

INFORMATION

☒

### DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters

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PFESP

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RATING SHEETS

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AUDIT MATTERS

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LITIGATION

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ADVISORY OPINIONS

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REGULATIONS

☐

OTHER

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