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

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 5082  
DATE COMPLAINT FILED: August 31, 2000  
DATE OF NOTIFICATION: September 7, 2000  
DATE ACTIVATED: December 21, 2000

EXPIRATION OF STATUTE OF LIMITATIONS: July 30, 2003  
STAFF MEMBER: Brant Levine

**COMPLAINANT:**

Ronald Williams

**RESPONDENTS:**

Friends of Don Sherwood and John A. Brady, as  
treasurer  
Don Sherwood for Congress and John A. Brady, as  
treasurer  
Donald L. Sherwood  
Roger Madigan  
Connie Van Horn  
Commonwealth of Pennsylvania

**RELEVANT STATUTES AND  
REGULATIONS:**

2 U.S.C. § 431(8)(A) and (B)  
2 U.S.C. § 431(11)  
2 U.S.C. § 441a(a)(1)(A)  
2 U.S.C. § 441a(f)  
11 C.F.R. § 100.7(a)(1) and (3)  
11 C.F.R. § 110.1(b)  
11 C.F.R. § 110.9(a)

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

22-04-405-4172

**I. GENERATION OF MATTER**

Ronald Williams, a county commissioner in Pennsylvania, filed a complaint with the Commission that indicates that U.S. Representative Don Sherwood and his campaign committees may have violated the Federal Election Campaign Act of 1971, as amended ("the Act") by accepting excessive in-kind contributions. Additionally, the complaint indicates that the Commonwealth of Pennsylvania, Pennsylvania state senator Roger Madigan, and Madigan's former employee, Connie Van Horn, may also have violated the Act by making excessive in-kind contributions.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Background**

Connie Van Horn, who worked for Pennsylvania State Senator Roger Madigan, claims that her official job duties included organizing campaign activities for U.S. Representative Don Sherwood. Van Horn worked for Madigan as a secretary in a district office from December 1991 through February 2000, when she was fired. Van Horn claims she was fired because she refused to continue organizing campaign activities for Sherwood. Madigan claims Van Horn was fired

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because she erased files on office computers. These allegations were first reported in a local newspaper in Pennsylvania. Ronald Williams, a county commissioner, read about Van Horn's allegations and subsequently filed a complaint with the Commission.

Van Horn's response to the complaint details specific activities that she claims were undertaken by Madigan and his office on behalf of Don Sherwood in 1998. In 1998, Madigan was apparently the chair of Sherwood's campaign committee. Madigan's wife, Peggy, chaired campaign meetings in Bradford County, according to Van Horn. Van Horn volunteered to attend these campaign meetings, which occurred in the evening, and she acted as secretary by taking minutes. Van Horn claims, though, that Peggy Madigan, with the knowledge and consent of her husband, requested that she type the minutes, copy them, and mail them to other committee members during office hours.

Van Horn states that during office hours she also reviewed local newspapers to identify community events Sherwood should attend, which she would then communicate to Sherwood's campaign manager, Jerry Morgan. Van Horn also claims that she typed and mailed newsletters to supporters of Sherwood from Madigan's office. Additionally, Van Horn states that she made numerous phone calls during office hours in which she asked individuals to attend fundraisers, attend committee meetings, or work the polls. Van Horn asserts that these activities were expected as part of her job. Although Van Horn admits to undertaking these activities in 1998, she claims that she did no campaign work on behalf of Sherwood during the 2000 election cycle despite being asked to do so. Finally, as to the complaint, Van Horn claims she was unaware that the Act existed, and that even if her actions constituted in-kind contributions, she was not required to report them.

Madigan, in his response to the complaint, claims that he has never done any fundraising for Sherwood, although he has allowed his name to be used on fundraising invitations. Madigan also states that he has never authorized fundraising from his district offices. It should be noted, however, that a newspaper article quotes Sherwood's chief fundraiser, Nathan Wurtzel, as saying that that Madigan did indeed have a fundraising role in the campaign, albeit a limited one. Moreover, Madigan's state campaign committee, People for Madigan, has contributed to Sherwood's federal committee. As to Van Horn's termination, Madigan states that it had nothing to do with fundraising for Sherwood. Rather, Madigan claims that Van Horn was terminated for cause, and that she made the current allegations in retaliation for being fired.

## **B. The Law**

### ***1. Contributions***

The Act defines "contribution" to include either (1) "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office" or (2) the payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any

purpose." 2 U.S.C. § 431(8)(A). The term "anything of value" includes all in-kind contributions. 11 C.F.R. § 100.7(a)(1)(iii)(A). Examples of in-kind contributions include use of facilities, supplies, and personnel. *Id.* Contributions to political committees must be reported in accordance with the Act. 2 U.S.C. § 434(b).

The Act and the regulations contain exceptions to the definition of contribution. First, with regard to paying for the personal services of another who performs services for a committee, the regulations state that no contribution results if an hourly or salaried employee makes up the time spent working on political activity within a reasonable amount of time. 11 C.F.R. § 100.7(a)(3)(i). Similarly, no contribution results if the employee is paid on a commission or piecework basis, or if the employee uses vacation time to render services to a committee. 11 C.F.R. § 100.7(a)(3)(ii) and (iii). Finally, individual volunteer activity does not qualify as a contribution. 2 U.S.C. § 431(8)(B)(i).

The Act provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office which, in the aggregate, exceed \$1,000. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b). "Person" is defined as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government." 2 U.S.C. § 431(11). Candidates and political committees are prohibited from knowingly accepting any contributions in excess of the Act's limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

## *2. Applicability of the Act to States*

As to whether the Act applies to states, a recent advisory opinion stated, "the Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions." AO 2000-5 (applying the Act to an Indian tribe).

Although the definition of "person" in the Act exempts the federal government, "the Commission has not extended this exclusion to State governments or their instrumentalities." AO 1999-7.

There is also a long history of the Commission applying the Act to states in enforcement matters. For example, MUR 1686 (Jim Hunt Committee) involved Senate candidate Jim Hunt's use of state-owned helicopters for campaign travel. Hunt was the Governor of North Carolina at the time of his Senate campaign. The Commission found reason to believe that the State of North Carolina violated 2 U.S.C. § 441a(a)(1)(A) with respect to making an in-kind contribution to the Hunt Committee. Similarly, in MUR 3986 (Wilder for President Committee), the Commission found reason to believe that the Commonwealth of Virginia violated the Act with respect to making excessive in-kind contributions to then Governor Wilder.<sup>1</sup> Therefore, states can be held liable as "persons" under the Act for violating contribution limits.

### **C. Analysis**

The Act's broad definition of "contribution," which includes giving anything of value, encompasses activities that Connie Van Horn claims she performed on behalf of Sherwood's 1998 election. These activities, such as copying campaign materials, making phone calls, and planning fundraising events, are some of the very items mentioned in the regulations as examples

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<sup>1</sup> But see MUR 2074 (Charles Schumer), in which the Commission failed to find reason to believe the State of New York violated the Act with respect to possible in-kind contributions provided by Schumer's state Assembly staff. Because this MUR was decided before the Commission began issuing statements of reasons, there is no indication of why the Commission voted to find no reason to believe the Act was violated in this matter.

of in-kind contributions. *See* 11 C.F.R. § 100.7(a)(1)(ii)(A). Although there is a dispute as to whether Van Horn actually performed these activities, this Office believes that if the activities did take place, they would constitute a contribution under the Act and regulations.

The exceptions in the Act and regulations as to what constitutes a contribution do not appear to apply in this matter. For example, the regulations state that no contribution results if an employee who is paid on a commission or piecework basis conducts campaign activities. *See* 11 C.F.R. § 100.7(a)(3)(ii). However, Van Horn appears to have been either an hourly or salaried employee due to her long tenure and her reported concern for keeping her pension. As an hourly or salaried employee, the regulations state that no contribution would result if Van Horn made up the time spent working on political activities. *See* 11 C.F.R. § 100.7(a)(3)(i). Similarly, the Act exempts volunteer activities. *See* 2 U.S.C. § 431(8)(B)(i). Yet because Van Horn states that she performed the campaign activities as part of her regular job duties, she does not appear to have volunteered her services, much less made up the time. Thus, the exceptions to the definition of contribution do not appear to apply in this matter.<sup>2</sup>

Provided that Van Horn's activities relating to Sherwood's election constitute a contribution under the Act, the next issue is who actually made the contribution. The Act defines "contribution" to include not only providing something of value, but also paying compensation for the personal services of someone who works for a political committee without charge. *See* 2 U.S.C. § 431(8)(A). In the present matter, Van Horn does not appear to have made a contribution because she was not personally providing anything of value to Sherwood's

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<sup>2</sup> The regulations also contain numerous provisions to allow for limited use of both corporate facilities and of an individual's time during working hours at a corporation. *See* 11 C.F.R. § 114.9. Because Van Horn did not work for a corporation, these provisions do not apply.

committees; the value comes from the payment of her salary.<sup>3</sup> Therefore, this Office recommends the Commission find no reason to believe that Connie Van Horn violated 2 U.S.C. § 441a(a)(1)(A) and close the file as it pertains to her.

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<sup>3</sup> In past enforcement matters involving possible in-kind contributions by states, state employees were not named as respondents. Rather, this Office pursued only the state and the recipient political committee. See MUR 1686 (Jim Hunt Committee), MUR 2074 (Charles Schumer), and MUR 3986 (Wilder for President Committee).

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As to Roger Madigan, even if he did direct Van Horn or other members of his staff to perform campaign activities for Sherwood, he does not appear to have paid their salaries. Consequently, Madigan does not appear to have made a contribution to Sherwood under the Act. Therefore, this Office recommends the Commission find no reason to believe Roger Madigan violated 2 U.S.C. § 441a(a)(1)(A) and close the file as it pertains to him.

III. DISCOVERY

IV. RECOMMENDATIONS

Find no reason to believe that Connie Van Horn violated 2 U.S.C. § 441a(a)(1)(A) and close the file as it pertains to her;

Find no reason to believe that Roger Madigan violated 2 U.S.C. § 441a(a)(1)(A) and close the file as it pertains to him;

Approve the appropriate letters.

Lois G. Lerner  
Acting General Counsel

3/26/01  
Date

BY: Abigail A. Shaine  
Abigail A. Shaine  
Acting Associate General Counsel

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