

SENSITIVE

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

FIRST GENERAL COUNSEL'S REPORT

MUR: 5122

DATE COMPLAINT FILED: Oct. 23, 2000

DATE OF NOTIFICATION: Oct. 31, 2000

DATE ACTIVATED: July 25, 2001

EXPIRATION OF STATUTE OF

LIMITATIONS: July 17, 2005

STAFF MEMBER: Christine C. Gallagher

COMPLAINANT: Democratic Congressional Campaign Committee

RESPONDENTS: Jay W. Dickey, Jr.
Dickey for Congress Campaign Committee, and
James W. Searcy, as treasurer
Alan Mauk
Hot Springs Village

RELEVANT STATUTES: 2 U.S.C. § 432(c)(2)
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)
2 U.S.C. § 441b(a)
11 C.F.R. § 104.7
11 C.F.R. § 104.8(d)(4)
11 C.F.R. § 110.4(c)(1), (3)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTER

This matter was initiated by a complaint filed on October 23, 2000 by David Plouffe, then...
Executive Director of the Democratic Congressional Campaign Committee. Complainant alleges
that during the 2000 election campaign for Congress, Jay W. Dickey, Jr. ("the Candidate"), and
his authorized Committee, Dickey for Congress Campaign Committee and its treasurer, James

W. Searcy ("the Committee"), accepted illegal anonymous contributions, a prohibited corporate contribution from "Hot Springs Village" and an excessive contribution from Alan Mauk, and committed numerous reporting violations.

Respondents were notified of the complaint by letter dated October 31, 2000. By letter dated November 10, 2000, the Committee's Finance Director submitted a response on behalf of the Dickey for Congress Campaign, disputing the allegations contained in the complaint. The Candidate did not submit a separate response to the complaint. Although notified of the complaint, neither Alan Mauk nor "Hot Springs Village" submitted a response.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits any person from making contributions "to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceeds \$1,000."

2 U.S.C. § 441a(a). A contribution is 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. 2 U.S.C. § 431(8)(A)(i).

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for corporations to make a contribution in connection with any election for Federal office, "or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section."

The Act requires the treasurer of a political committee to keep an account of the name and address of any person who makes a contribution in excess of \$50. 2 U.S.C. § 432(c)(2). With respect to any campaign for nomination or election to Federal office, Commission

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1 regulations prohibit cash contributions to candidates or political committees in excess of \$100,
2 and prohibit candidates or committees from retaining anonymous contributions in excess of \$50.
3 11 C.F.R. § 110.4(c)(1), (3). Candidates or committees are required to promptly dispose of the
4 amount of an anonymous cash contribution received in excess of \$50. 11 C.F.R. § 110.4(c)(3).
5 The amount received in excess of \$50 may be used for any lawful purpose unrelated to any
6 Federal election, campaign, or candidate. *Id.*

7 When the treasurer of a political committee shows that "best efforts" have been used to
8 obtain, maintain, and submit the information required by the Act, any reports, or records of such
9 committee are considered in compliance with the Act. 2 U.S.C. §§ 432(i), 434(b), and 11 C.F.R.
10 § 104.7(a). For each contribution received that exceeds \$200 and lacks required contributor
11 information, a treasurer may establish "best efforts" by making at least one request for the
12 information after the contribution is received. 11 C.F.R. § 104.7(b)(2). Such effort shall consist
13 of a written request for the contributor's full name, mailing address, occupation and name of
14 employer, and include an accurate statement of the federal law regarding collection and
15 identification of contributor data, and be made no later than 30 days after receipt of the
16 contribution. *Id.*

17 Under the Act, the treasurer of a political committee is responsible for examining all
18 contributions received for ascertaining whether contributions received, when aggregated with
19 other contributions from the same contributor, exceed the contribution limitations prescribed by
20 the Act. *See* 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 103.3. Contributions that exceed the
21 limits prescribed by the Act can be either returned to the contributor or deposited. *See* 11 C.F.R.
22 § 103.3(b)(3). In the event the excessive contribution is deposited, the treasurer may request a
23 reattribution or redesignation of the contribution by the contributor. *See id.* If a reattribution or

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1 redesignation of the contribution is not obtained from the contributor, then the treasurer shall
2 refund the contribution to the contributor within 60 days. *See id.*

3 The Act requires treasurers of political committees to file quarterly reports which shall be
4 filed no later than the 15th day after the last day of each calendar quarter, and which shall be
5 completed as of the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii). Refunds of
6 contributions must be reported on Schedule B of the quarterly report covering the period in
7 which the refund was made. 2 U.S.C. § 434(b) and 11 C.F.R. § 104.8(d)(4). Amendments to
8 reports must be filed for all reports that cover the two-year election cycle in which the
9 contribution was received. 11 C.F.R. § 104.7(b)(4).

10 **B. The Complaint**

11 The complaint alleges several violations of the Act, including receipt of illegal
12 anonymous contributions, receipt of an excessive and a corporate contribution, and failure to use
13 "best efforts" to collect and report employment data for individuals who gave more than \$200 to
14 the campaign in a calendar year.

15 First, the complaint alleges a violation of 2 U.S.C. § 432(c)(2) and 11 C.F.R.
16 § 110.4(c)(3) in that the Committee's October Quarterly Report filed on October 15, 2000, and
17 attached to the complaint, shows twenty-four (24) anonymous contributions, fourteen (14) of
18 which were above the \$50 limit.¹ Table A below shows the contributions listed as Anonymous
19 on Respondents' October Quarterly Report:

¹ The complaint alleges that the receipt of eleven excessive anonymous contributions on a single day, July 17, 2000, suggests that there was a coordinated effort to violate the Act.

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TABLE A

7/6/00	\$2.00
7/7/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$100.00
7/17/00	\$60.00
8/4/00	\$20.00
8/4/00	\$2.00
8/28/00	\$100.00
8/28/00	\$100.00
8/30/00	\$50.00
8/30/00	\$1.00
8/30/00	\$5.00
8/30/00	\$5.00

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9/3/00	\$1.00
9/5/00	\$5.00
9/22/00	\$20.00
TOTAL	\$1,471.00

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1 Second, the complaint alleges violations of 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R.
2 § 103.3(b)(1) in that the 2000 October Quarterly Report shows that the Committee received a
3 \$2,000 general election contribution from Alan Mauk on July 27, 2000 (\$1,000 in excess of the
4 contribution limits). The complaint alleges that the Committee failed to disclose that it had
5 either reattributed or redesignated the excessive funds within the 30-day period for doing so.

6 Third, the complaint alleges that on September 30, 2000 the Committee received a
7 \$1,000 contribution that appeared to be from a corporation called "Hot Springs Village," and
8 failed to verify the legality of the contribution or refund it within 30 days in violation of 2 U.S.C.
9 § 441b and 11 C.F.R. § 103.3(b)(1).

10 Finally, the complaint alleges, the Committee failed to use "best efforts" to collect
11 employment data. According to the complaint, the Committee's 2000 October Quarterly lists
12 sixty-one (61) contributors who contributed a total of \$38,790, with no accompanying
13 employment data.

14 C. The Response

15 By letter dated November 10, 2000, Ruth Ann Whitefield, Finance Director for the
16 Committee, responded to the allegations of the complaint on behalf of the Dickey for Congress
17 Campaign.

1 The response states contributions were reported as "anonymous" in error. The response
2 contends that these donations should have been listed as unitemized contributions in that "[t]hey
3 were received at various fundraisers or rallies where people simply dropped money into a box or
4 some other collection container. This is often referred to as 'passing-the-hat.' " According to the
5 response, the errors were corrected and would not be repeated in the future.²

6 With respect to the receipt of a \$2,000 contribution on July 27, 2000 from Alan Mauk,
7 the response states that \$1,000 of the \$2,000 contribution was refunded to him on the same day
8 by check. A copy of the canceled check is attached to the response. While the original 2000
9 October Quarterly Report did not reflect this refund, the Amended October Quarterly Report
10 filed on July 16, 2001 discloses as a disbursement a \$1,000 refund of Alan Mauk's \$2,000
11 contribution.

12 The response denies that the Respondents accepted any corporate donations. It states
13 that "Hot Springs Village" is actually "Hot Springs Village Republican Women," a political
14 party committee.³ According to the response, as a result of a computer printing error, the
15 computer simply cut off part of the name when reporting in the allotted space. A copy of the
16 check from "Hot Springs Village Republican Women" is attached to the response.

17 Finally, the response contends that the Committee made "best efforts" to comply with the
18 contributor identity data requirements set forth in 2 U.S.C. § 432(b), 11 C.F.R. §§ 102.9(d) and
19 104.7(a). According to the response, every attempt is made to secure this information, but it is

² Respondents' October Quarterly Report filed October 15, 2000 reports \$117,455 in unitemized contributions. The Amended October Quarterly Report filed on July 16, 2001 reports \$119,176 in unitemized contributions.

³ An Internet search of the Arkansas Secretary of State Incorporations web site showed that there is no corporation doing business as "Hot Springs Village" in Arkansas. Hot Springs Village Republican Women is not listed as a political party committee on either the FEC's web site or the Arkansas Secretary of State Elections Division's web site. However, Hot Springs Village Republican Women does fall under the definition of "person" as defined in 11 C.F.R. § 100.10 which includes individuals, associations, and "any other organization, or group of persons. . . ."

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1 sometimes difficult to obtain it. Attached to the response are copies of one-hundred-twenty-six
2 (126) letters requesting employer and occupation information from contributors who made
3 donations in the amount of \$200 or more, which the response contends are "some samples" of its
4 attempts to obtain occupation and employer data from contributors.⁴ The body of each letter
5 contained the following statement:

6 Thank you for your generous contribution to the Dickey for
7 Congress Campaign. In order to be in compliance with the Federal
8 Election Commission, I am required to report the occupation and
9 employer of all our contributors who exceed \$200.00. To report
10 this information, you may call the phone number listed above, fax
11 it, or simply write it on the bottom of this page and return it in the
12 postage paid envelope that is enclosed. Your cooperation and swift
13 response in this matter would be greatly appreciated. Thanks again
14 for supporting Congressman Dickey.

15
16 **D. Analysis**

17 The complaint does not specify that the anonymous contributions were cash
18 contributions. The response also does not specifically state that these contributions were cash.
19 However, the response stated that the anonymous contributions consisted of "money" raised at
20 fundraisers and rallies via "passing-the-hat." Further, the small amounts of many of the
21 contributions, *e.g.*, \$1, \$2, \$5, etc. (See Table A), suggest that the anonymous contributions were
22 likely cash contributions. Moreover, if the anonymous contributions were made in a form other
23 than cash, such as check or money order, the check or money order would have at least a
24 signature, and therefore by definition could not have been made anonymously.

25 It appears from the Committee's 2000 October Quarterly Report that the Committee
26 retained, in their entirety, 14 anonymous contributions greater than \$50. Of these contributions,

⁴ Fifty-six (56) of these letters are to contributors for whom occupation or employer data was missing on the original 2000 October Quarterly Report.

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1 13 were in the amount of \$100, and one was in the amount of \$60. The Committee was required
2 to dispose of the portion of each cash contribution exceeding \$50, or a total of \$660, to a charity
3 or some other appropriate, non-Federal election-related recipient. *See* 2 U.S.C. § 432(c)(2) and
4 11 C.F.R. § 110.4(c)(3). According to the response, the errors were corrected, but there is no
5 explanation of how they were corrected, or whether the Committee appropriately disposed of the
6 \$660.⁵

7 Accordingly, this Office recommends that the Commission find reason to believe that
8 Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated 2 U.S.C.
9 § 432(c)(2). However, given the relatively low amount of money involved, it does not appear to
10 be a good use of resources to investigate and pursue the disposition of the \$660. Therefore, this
11 Office recommends that the Commission take no further action with regard to this violation, and
12 send an admonishment letter. If the Commission approves this recommendation, this Office will
13 include in the admonishment letter a reminder that the Committee should immediately dispose of
14 the \$660 in an appropriate fashion, if it has not already done so.

15 The Committee also appears to have accepted an excessive contribution from Alan Mauk,
16 but demonstrated that it returned the excessive amount the same day. *See* 11 C.F.R.
17 § 103.3(b)(3). Therefore, this Office recommends that the Commission find no reason to believe
18 that Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated

⁵ Respondents' October Quarterly Report filed October 15, 2000 reports \$117,455 in unitemized contributions. The Amended October Quarterly Report filed on July 16, 2001 reports \$119,176 in unitemized contributions, or an additional \$1,721 of unitemized contributions. It is possible that the \$1,721 difference includes all \$1,471 of the anonymous cash contributions reported in the original October Quarterly Report and that the Committee did not dispose of the \$660 in anonymous cash contributions in excess of \$50. It would not appear to be a good use of the Commission's limited resources to investigate the source of such a small amount of money.

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2 U.S.C. § 441a(a). However, the Committee did not report the refund, as required, on its 2000 October Quarterly Report. *See* 11 C.F.R. § 104.8(d)(4). The refund was not disclosed until the Committee filed its amended October Quarterly Report on July 16, 2001, many months after making the refund, and well after notification of the complaint in this matter. Therefore, this Office recommends that the Commission find reason to believe that Dickey for Congress Campaign Committee and James W. Searcy, as treasurer violated 2 U.S.C. § 434(b). However, because only one contribution is involved in this apparent reporting violation, this Office recommends that the Commission take no further action with regard to this violation, and send an admonishment letter.

While further reporting violations are alleged in connection with the absence of employer data for 61 contributors in the 2000 October Quarterly Report, the Committee has sufficiently demonstrated by its submission of 126 letters soliciting the missing information, and the responses to those letters, that it used "best efforts" to contact such contributors in writing to elicit that information. *See* 11 C.F.R. § 104.7(b). Therefore, this Office recommends that the Commission find no reason to believe that the Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated 2 U.S.C. § 434(b) with respect to the absence of contributor employer data.

This Office also recommends that the Commission find no reason to believe that the Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated 2 U.S.C. § 441b(a) with respect to the contribution from Hot Springs Village Republican Women. The Committee has demonstrated that the contribution was not from a corporation, and that any misimpression emanated from a computer error in printing, which cut off part of the contributor's name.

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1 With respect to the other respondents in this matter, this Office recommends that the
2 Commission find no reason to believe that former Congressman Jay W. Dickey, Jr. violated
3 2 U.S.C. §§ 432(c)(2), 434(b), 441a(a) or 441b(a). There is no evidence that the Candidate had
4 any personal involvement in his Committee's reporting violations. This Office also recommends
5 that the Commission find no reason to believe that "Hot Springs Village" (the named respondent
6 in this matter) violated 2 U.S.C. § 441b as that entity was not a corporation.⁶

7 It is possible that Alan Mauk, who contributed \$2000 to the Committee, may have made
8 an excessive contribution. See 2 U.S.C. § 441a(a). Since he did not respond to the notification
9 of the complaint, this Office does not know any of the circumstances surrounding his
10 contribution. Given that he did not contribute more than twice the permissible amount, and the
11 Committee apparently refunded the excessive portion on the same day it was received, this
12 Office recommends that the Commission take no action against Alan Mauk in this matter and
13 close the file.

14 Consistent with the Commission's treatment of materials to release to the public in MUR
15 5119 pending the resolution of the appeal in *American Federation of Labor and Congress of*
16 *Industrial Organizations v. FEC*, 177 F.Supp.2d 48 (D.D.C. 2001), this Office intends to provide
17 the complainant, the respondents, and the public with copies of only the certification of the
18 Commission's vote and this General Counsel's Report.

19 **III. RECOMMENDATIONS**

- 20 1. Find reason to believe that Dickey for Congress Campaign Committee and James
21 W. Searcy, as treasurer, violated 2 U.S.C. § 432(c)(2), but take no further action
22 and send an admonishment letter.
23

⁶ It appears that, based on the information at hand, "Hot Springs Village" was notified at the address that was supplied by the true contributor, Hot Springs Village Republican Women. While this Office received no response, it will notify the Hot Springs Village Republican Women of the Commission's action, and explain the circumstances.

2. Find reason to believe that Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated 2 U.S.C. § 434(b) by failing to timely report a refunded contribution, but take no further action and send an admonishment letter.
3. Find no reason to believe that Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated 2 U.S.C. § 441a(a) or 2 U.S.C. § 441b(a).
4. Find no reason to believe that Dickey for Congress Campaign Committee and James W. Searcy, as treasurer, violated 2 U.S.C. § 434(b) with respect to reporting required contributor data.
5. Find no reason to believe that Jay W. Dickey, Jr. violated 2 U.S.C. §§ 432(c)(2), 434(b), 441a(a), or 441b(a).
6. Find no reason to believe that "Hot Springs Village" violated 2 U.S.C. § 441b(a).
7. Take no action against Alan Mauk in this matter.
8. Approve the appropriate letters.
9. Close the file.

Lawrence H. Norton
General Counsel

Date

3/5/02

BY:

Rhonda J. Vostingh
Rhonda J. Vostingh
Associate General Counsel