

OCT 23 2000

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

**SENSITIVE**

FIRST GENERAL COUNSEL'S REPORT

PRE-MUR 394  
SUA SPONTE SUBMISSION  
DATE FILED: June 6, 2000  
DATE ACTIVATED: September 25, 2000

EXPIRATION OF STATUTE OF  
LIMITATIONS: May 17, 2005  
STAFF MEMBERS: Thomas Andersen  
Clinett Short

SOURCE: SUA SPONTE SUBMISSION

RESPONDENTS: Larry E. Johnson for Congress Congressional Committee  
and Marcia J. Johnson, as treasurer

RELEVANT STATUTE: 2 U.S.C. § 441d(a)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT  
2000 OCT 23 A 11:44

I. GENERATION OF MATTER

This matter was initiated by a *sua sponte* submission filed by Larry E. Johnson on June 6, 2000, on behalf of the Larry E. Johnson for Congress Congressional Committee ("Committee"). Mr. Johnson states in his submission that some of the literature distributed by the Committee may have lacked a proper disclaimer.

II. FACTUAL AND LEGAL ANALYSIS

A. The Law

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that any person, including an authorized political committee, making an expenditure for the purpose of

financing communications expressly advocating the election or defeat of a clearly identified candidate through any direct mailing or any other type of general public political advertising, shall clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C. § 441d(a). Such a disclaimer must appear in a clear and conspicuous manner to give the reader adequate notice of the identity of the political committee that paid for and authorized the communication. 11 C.F.R. § 110.11(a)(5). Each communication, if mailed separately, or included in a package of materials, must contain the required disclaimer.

11 C.F.R. § 110.11(a)(5)(ii).

#### B. The Facts

Larry E. Johnson was a House candidate in the August 8, 2000 primary election in Colorado's 2d Congressional District.<sup>1</sup> During the campaign, the Committee appears to have authorized and paid for the printing and distribution of campaign literature which expressly advocated the election of Mr. Johnson for Congress. Mr. Johnson admits in his *sua sponte* submission that he inadvertently left off the disclaimer on some of the literature. As an example of one of the disclaimer omissions, Mr. Johnson cites a letter "sent out on May 17, 2000 to Republican Delegates to the May 25, 2000 2d Congressional District Assembly." He states that he had written a personal note at the end of the letter, and in the process of making room for the note, the disclaimer was inadvertently removed. Mr. Johnson also states that he is uncertain whether the proper disclaimer appeared on all of his e-mail correspondence sent out under the title "Larry E. Johnson for Congress Reports." Mr. Johnson added that he was "working diligently to make sure that this inadvertent oversight will not occur again." No information was provided regarding the costs of the campaign literature referenced in the *sua sponte* submission.

<sup>1</sup> Mr. Johnson lost the election with 46 percent of the vote.

The Committee disclosed total operating expenditures of \$10,017 through June 30, 2000. However, since the Committee did not itemize any of its disbursements, this Office could not determine what amounts were expended in connection with the campaign literature in question. On October 10, 2000, staff of this Office telephoned Mr. Johnson in an attempt to gather more information concerning the Committee's disbursements. Mr. Johnson stated that the campaign literature referenced in the *sua sponte* submission consisted of several mailings, each expressly advocating his election, sent to Republican primary voters, and later to delegates identified through the caucus process. He stated that most of the separate mailings, which were created and produced by his campaign, cost less than \$200. He estimated the total amount spent on the mailings at less than \$3,000.

Although this Office cannot point to any Committee disbursements over \$200, the complete absence of any itemized disbursements raises some concerns. During the telephone conversation with Mr. Johnson, staff informed him that the Act requires disclosure reports to identify the name and address of each person "to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made," together with the date, amount and purpose of the expenditure. 2 U.S.C. § 434(b)(5)(A).

Concerning the e-mails sent by the Committee, Mr. Johnson stated that they expressly advocated his election and were sent to delegates and certain other persons, but that the costs were negligible. Mr. Johnson explained that the e-mails constituted a small portion of an Internet access account that cost approximately \$30 per month.

On September 27, 2000, the Reports Analysis Division sent a Request for Further Information ("RFI") to Mr. Johnson informing him that he had not yet filed a Statement of Candidacy, though the Committee appeared to have received contributions and/or made

expenditures in support of his candidacy in excess of \$5,000. *See* 11 C.F.R. § 100.3(a). In October 2000, the Reports Analysis Division sent RFAs to the Committee notifying it that a personal loan may have been improperly reported, and that its Statement of Organization should be amended to reflect treasurer changes and other information. The RFAs also pointed out gaps in the coverage dates of the Committee's reports and clarified itemization procedures for individual contributions. The RFAs advised the Committee to correct the apparent reporting problems.

### C. Discussion

As noted, Mr. Johnson stated that the campaign literature referenced in the *sua sponte* submission consisted of several mailings, each expressly advocating his election, sent to Republican primary voters, and later to delegates identified through the caucus process. Therefore, at least some of the campaign items referred to in the *sua sponte* submission appear to constitute public communications containing express advocacy, and also appear to have been paid for and authorized by the Committee.<sup>2</sup> Accordingly, pursuant to 2 U.S.C. § 441d(a)(1), these items required a disclaimer stating that they had been paid for by the Committee. Mr. Johnson acknowledges that the Committee failed to include disclaimers on these items. Therefore, this Office recommends that the Commission find reason to believe that the Larry E. Johnson for Congress Congressional Committee and Marcia J. Johnson, as treasurer, violated 2 U.S.C. § 441d(a).

Based on the relatively small amounts spent on the items in question, the Committee's efforts to rectify the problem before the August 2000 primary election, and Mr. Johnson's

<sup>2</sup> 11 C.F.R. § 110.11(3) states that a direct mailing "includes any number of substantially similar pieces of mail but does not include a mailing of one hundred pieces or less by any person." It is possible that the delegate mailing may have constituted less than 100 pieces, and therefore, not have required a disclaimer.


initiative in bringing this matter to the Commission's attention, this Office recommends that the Commission take no further action against the Committee, send an admonishment letter, and close the file in this matter.

III. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the Larry E. Johnson for Congress Congressional Committee and Marcia J. Johnson, as treasurer, violated 2 U.S.C. § 441d(a), but take no further action, send an admonishment and close the file.
3. Approve the appropriate letter.

Lawrence M. Noble  
General Counsel

10/20/00  
\_\_\_\_\_  
Date

BY:   
\_\_\_\_\_  
Lois G. Lerner  
Associate General Counsel



# FEDERAL ELECTION COMMISSION

Washington, DC 20463

## MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel <sup>KCS</sup>

DATE: October 23, 2000

SUBJECT: Pre-MUR 394-First General Counsel's Report

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

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

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

### CIRCULATIONS

SENSITIVE

☒

NON-SENSITIVE

☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

### DISTRIBUTION

COMPLIANCE

☒

Open/Closed Letters ☐  
MUR ☐  
DSP ☐

STATUS SHEETS ☐  
Enforcement ☐  
Litigation ☐  
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐