



FEDERAL ELECTION COMMISSION

Washington, DC 20463

MEMORANDUM

TO: Commissioners
General Counsel Norton
Staff Director Pehrkon

FROM: Office of the Commission Secretary *VAV*

DATE: October 22, 2001

SUBJECT: Statement of Reasons for MUR 5159

Attached is a copy of the Statement of Reasons for MUR 5159 signed by Chairman Danny McDonald, Vice Chairman David M. Mason, Commissioner Karl J. Sandstrom, Commissioner Bradley Smith and Commissioner Thomas. This was received in the Commission Secretary's Office on October 19, 2001 at 3:23 p.m.

cc: Vincent J. Convery, Jr.
Press Office
Public Information
Public Records

Attachments



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 5159
Committee to Elect Conrad Lee and)
David L. Yarno, as treasurer,)
Conrad Lee)
Bush-Cheney 2000 Inc. and)
David Hemdon, as treasurer)

STATEMENT OF REASONS

On August 7, 2001, the Commission approved the recommendations of the General Counsel to find reason to believe that the Committee to Elect Conrad Lee and David L. Yarno, as treasurer, violated 2 U.S.C. §§ 433, 434, 441a(a)(1)(A), and 441b. The Office of the General Counsel also sought to investigate the facts of the matter through informal discovery. However, the Commission decided to take no further action and close the file in MUR 5159 on August 7, 2001.

The complaint in this matter alleged that the Lee Committee had distributed, in September, 2000, a bumper sticker stating "George W. Bush for White House, Conrad Lee for State House." The Lee Committee was the campaign committee for Mr. Conrad Lee, a candidate for election to the Washington House of Representatives for the 41st district. It appears from a review of the Lee Committee reports filed with the State of Washington that the Lee Committee accepted corporate contributions, and that these funds were commingled with funds used to pay for the production and distribution of the bumper stickers.

Because the bumper sticker contained "express advocacy," it appears the Lee Committee may have made an "independent expenditure," 2 U.S.C. § 431(17), and, if so, should have reported these expenditures to the Commission under 2 U.S.C. § 434(c).¹

¹ On the other hand, if the Lee Committee coordinated the creation or distribution of the bumper stickers with the Bush campaign, the Lee Committee may have made an in-kind contribution to the Bush campaign. 2 U.S.C. § 441a(a)(7)(B)(i). Further, it should be noted that the activity in question might not qualify as an independent expenditure or an in-kind contribution if the so-called "coattail exemption" applied. In order to come within the exemption, the bumper stickers must have been used in connection with volunteer activity and must not have been mailed by commercial vendors. In addition, the funds used to pay for the federal share of the bumper stickers must have come from contributions subject to the limitations and prohibitions of the Act. See 2 U.S.C. § 431(8)(3)(xi) and 11 C.F.R. §§ 100.7(b)(16) and 100.8(b)(17).

The Lee Committee likely used corporate funds to pay for the production and distribution of the bumper stickers, which would have been in violation of 2 U.S.C. § 441b, assuming the bumper stickers were either independent or coordinated expenditures. Finally, the Lee Committee's activity may have qualified it as a "political committee" under the Act. See 2 U.S.C. § 431(4)(A). As a political committee, the Lee Committee would have been required to register and file reports with the Commission under 2 U.S.C. §§ 433 and 434.

The Commission concluded that available information did not warrant further investigation by the Office of the General Counsel. The small amount of money involved in the alleged violations, the fact that the bumper stickers may have been exempt pursuant to 2 U.S.C. § 431(8)(B)(xi), and the fact that the violations centered on a candidate who lost a primary election for state legislative office, were significant factors that mitigated against any further action. Accordingly, in the proper ordering of its priorities and resources, *see Heckler v. Chaney*, 470 U.S. 821 (1985), the Commission determined to exercise its prosecutorial discretion and take no further action with respect to the violations and closed the file.

10/19/01
Date

Danny L. McDonald
Danny L. McDonald
Chairman

10/18/01
Date

David M. Mason
David M. Mason
Vice-Chairman

10/18/01
Date

Karl J. Sandstrom
Karl J. Sandstrom
Commissioner

10/19/01
Date

Bradley A. Smith
Bradley A. Smith
Commissioner

10/17/01
Date

Scott E. Thomas
Scott E. Thomas
Commissioner

Determining whether this activity was coordinated with the Bush campaign and whether all conditions of the coattail exemption were met would have required an investigation.