

APR 23 2001

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

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

RAD REFERRAL: 00NF-10

DATE ACTIVATED: 12/13/2000

EXPIRATION OF STATUTE OF  
LIMITATIONS: 7/31/2004

STAFF MEMBER: John Vergelli

SOURCE: INTERNALLY GENERATED

RESPONDENT(S): Oakland Democratic Campaign Committee  
(Oakland County, MI)  
David Woodward, as Treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(a)(4)(A)(i) and (iv)  
2 U.S.C. § 432(a)  
2 U.S.C. § 433(c)

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COMMISSION  
SECRETARIAT  
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INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. GENERATION OF MATTER**

The Reports Analysis Division (RAD) referred the Oakland Democratic Campaign Committee ("committee"), David Woodward, treasurer<sup>1</sup> (collectively, "respondents"), to the Office of General Counsel (OGC) on August 8, 2000. RAD referred the respondents because the committee failed to file the 1999 Mid-Year Report of Receipts and Disbursements and the 1999 Year-End Report of Receipts and Disbursements, and because the committee filed late its 2000

<sup>1</sup> Mr. Woodward became treasurer of the committee after the events at issue here. The actual referral from RAD names Gary L. Kohut, who was treasurer at the time of the referral, and Jerry L. Bixby, who was treasurer before Mr. Kohut.

April Quarterly Report of Receipts and Disbursements. The committee eventually filed the 1999 reports, and thus, these issues are handled as a referral for late filing.

Two other apparent disclosure violations arise directly from the face of the referral and are also discussed below.

## II. FACTUAL AND LEGAL ANALYSIS

### A. Law.

The Federal Election Campaign Act of 1971, as amended ("Act" or FECA) requires periodic reporting of receipts and disbursements by political committees. 2 U.S.C. § 434(a)(1). A political committee which is not the authorized committee of a candidate must file quarterly reports, a pre-election report, and a post-general election report in an election year, and must file semi-annual reports in non-election years. 2 U.S.C. § 434(a)(4)(A)(i)-(iv). Alternatively, such a committee may elect to report on a monthly basis. 2 U.S.C. § 434(b). Sections 434(a) and (b), respectively, prescribe dates certain for the filing of these reports.

"Every political committee must have a treasurer." 2 U.S.C. § 432(a). "No contribution or expenditure shall be accepted or made by or on behalf of a political committee during any period in which the office of treasurer is vacant." *Ibid*.

Every political committee must report its address in its statement of organization. 2 U.S.C. § 433(b)(1). Every committee must report changes in its address to the Commission within ten days of the change. 2 U.S.C. § 433(c).

### B. Facts and analysis.

The committee has registered with the Commission as a political committee. It is not an authorized committee of a candidate. Gary L. Kohut and Jerry L. Bixby each was the treasurer of the committee for certain periods of time relevant to the matter. The committee has subsequently

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amended its statement of organization to name David Woodward as treasurer. The committee has elected to file reports of receipts and disbursements on a quarterly basis.

**1) Late Filed Reports**

**a) 1999 Mid-year report.**

The committee's 1999 Mid-year report (covering January 1, 1999 to June 30, 1999) was due on July 31, 1999. The committee filed this report, which disclosed \$15,387.00 in receipts and no disbursements, on October 16, 2000.<sup>2</sup> The report was thus filed 443 days late.

The Commission twice notified the committee of its upcoming obligation to file the 1999 Mid-year report, and the impending due date. The first "Reporting Notice" was mailed to the committee on December 30, 1998, and the second was mailed on June 25, 1999. Both notices informed the committee that the 1999 Mid-year report was due on July 31, 1999.

A "Non-Filer Notice" was sent to the committee via mailgram on August 25, 1999. The Reports Analysis Division followed-up on this non-filer notice with numerous phone calls to the committee about the status of the report.

**b) 1999 Year-end report.**

The committee's 1999 Year-end report (covering July 1, 1999 to December 31, 1999) was due on January 31, 2000. The committee filed this report, which disclosed \$27,011 in receipts and no disbursements on October 20, 2000. The report was thus 263 days late.

The Commission twice notified the committee of its upcoming obligation to file the 1999 Year-end report, and the impending due date. The first of these "Reporting Notices" was mailed

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<sup>2</sup> As filed, the committee's 1999 Mid-year report covered the period January 1, 1999 to July 31, 1999; that is, the report covered the month of July 1999, which should have been covered by the 1999 Year-end report. However, the committee apparently had no financial activity for July 1999, as none is reported on *either* report (i.e., the 1999 Mid-year or the 1999 Year-end). Thus, despite the error, both the 1999 reports (i.e., the Mid-year and Year-end) apparently correctly report the amount of financial activity within the respective reporting periods.

to the committee on December 30, 1998, and the second was mailed on December 29, 1999.

Both notices informed the committee that the 1999 Year-end report was due on January 31, 2000.

A Non-Filer Notice was sent to the committee via mailgram on March 21, 2000. The Reports Analysis Division followed-up with numerous telephone calls about the failure to file this report.

**c) The April 2000 Quarterly report.**

The committee's April 2000 Quarterly report (covering the period from January 1, 2000 to March 31, 2000) was due on April 15, 2000. The committee filed this report, which disclosed \$221,027 in receipts and \$212,484 in disbursements, on June 26, 2000. The report was thus 72 days late.

The Commission twice notified the committee of its upcoming obligation to file the April 2000 Quarterly report, and the impending due date. The first of these "Reporting Notices" was mailed to the committee on December 30, 1998; the second was mailed on March 22, 2000. Both notices informed the committee that the April 2000 Quarterly report was due on April 15, 2000.

The Commission sent a Non-Filer Notice to the committee via mailgram on May 10, 2000, informing the committee that it had failed to file the report and advising it to do so immediately.

**d) Conclusion.**

Based upon the facts explained above, this Office recommends that the Commission find reason to believe that the Oakland Democratic Campaign Committee, and David Woodward, as Treasurer, violated 2 U.S.C. § 434(a)(4)(A)(i) by failing to file timely the committee's April

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2000 Quarterly report, and that they violated 2 U.S.C. § 434(a)(4)(A)(iv) by failing to file timely the committee's 1999 Mid-year and Year-end reports.

**2) Contributions and/or expenditures without a treasurer (§ 432(a)); Failure to amend statement of organization: address (§ 433(c)).**

**a) Section 432(a).**

On April 24, 2000, a Reports Analysis Division (RAD) analyst spoke by telephone with Ms. Wanda Reager, the committee's office manager. Ms. Reager confirmed that Mr. Bixby had resigned as treasurer of the committee. Ms. Reager also informed the RAD analyst that an acting treasurer would be appointed, and that she would advise the Commission of this in writing.

On May 30, 2000, the Commission received an amended statement of organization from the committee. The amendment, dated May 11, 2000, identified Gary L. Kohut as "Acting Treasurer."

The latest date on which Mr. Bixby could be said to have resigned is April 24, 2000, the day of the phone call between Ms. Reager and the RAD analyst. The first date on which the Commission received any communication from the committee indicating the identity of its new, albeit "acting," treasurer was May 30, 2000, an interval of 36 days. In that period of time, the committee made disbursements of \$19,999.51, and had receipts of \$45,742.00.

The Act provides that every committee shall have a treasurer, and shall not make expenditures or receive contributions while the treasurer's position is vacant. 2 U.S.C. § 432(a). Therefore, this Office recommends that the Commission find reason to believe that the respondents violated 2 U.S.C. § 432(a).

**b) Section 433(c).**

On November 15, 1999, Mr. Bixby, who was then the treasurer of the committee, returned a phone call placed by a RAD analyst. The RAD analyst called about the 1999 Mid-year report, which had not been filed at the time of the call. In that telephone conversation, Mr. Bixby reported that the committee's mailing address had changed from the address on file (i.e., 3260 Coolidge Hwy, Suite 1, Berkley, MI 48072-1634) with the Commission; he was, however, unable to provide the new address. He promised to fax and mail the address within a few days.

The Commission's first indication of the committee's new address apparently came on February 1, 2000, when it received correspondence from the committee bearing a new letterhead address (P.O. Box 423, Troy MI, 48099-0423). The committee's statement of organization was not formally amended to reflect the new address (i.e., P.O. Box 423, Troy MI, 48099-0423) until May 11, 2000.

2 U.S.C. § 433(c) requires that "[a]ny change in information previously submitted in a statement of organization shall be reported ... no later than 10 days after the date of the change." The interval between November 15, 1999, the latest date at which the address change could reasonably be said to have occurred, and February 1, 2000, the earliest date at which notification of the address change could be said to have been made, exceeds 10 days. Therefore, this office recommends that the Commission find reason to believe that the respondents violated 2 U.S.C. § 433(c).

### **III. CONCILIATION AND PROPOSED CIVIL PENALTY**

OGC recommends the Commission offer to enter into pre-probable cause conciliation with the respondents. Attached for the Commission's approval is a proposed conciliation agreement. Attachment 2.

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**IV. RECOMMENDATIONS**

1. Open a MUR.
2. Find reason to believe that the Oakland Democratic Campaign Committee and David Woodward, as treasurer violated 2 U.S.C. §§ 434(a)(4)(A)(i) and (iv), 433(c), and 432(a).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with the Oakland Democratic Campaign Committee and David Woodward, as treasurer, prior to a finding of probable cause to believe.
5. Approve the attached proposed conciliation agreement.

6. Approve the appropriate letters

Lois G. Lerner  
Acting General Counsel

4/23/01  
Date

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

Attachments:

1. Factual and Legal Analysis
2. Proposed Conciliation Agreement

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**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MEMORANDUM**

**TO:** Office of the Commission Secretary

**FROM:** Office of General Counsel

**DATE:** April 24, 2001

**SUBJECT:** 00NF-10-First General Counsel's Report

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

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

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

**CIRCULATIONS**

**DISTRIBUTION**

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72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

**COMPLIANCE**

☒

Open/Closed Letters ☐

MUR ☐

DSP ☐

STATUS SHEETS ☐

Enforcement ☐

Litigation ☐

PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐