



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 30 2004

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Judith L. Corley, Esq.
Perkins Coie LLP
607 14th Street, NW
Suite 800
Washington, DC 20005

RE: MUR 5262
Tim Ryan for Congress
and Michael Fraioli as treasurer

Dear Ms. Corley:

The Federal Election Commission previously notified your client, Tim Ryan for Congress ("Committee") and its treasurer, of complaints alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of each complaint was forwarded to your client at that time. MURs 5262 and 5266 were merged and will be referred to as MUR 5262 in all future correspondence.

Upon further review of the allegations contained in the complaints, and information supplied by you, the Commission, on March 23, 2004, found that there is reason to believe the Committee and Michael Fraioli, as treasurer, violated 2 U.S.C. § 441a(f), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information. Additionally, the Commission found no reason to believe that your client violated the Act as it pertains to the Mahoning County Democratic Party, and no reason to believe that your client violated 2 U.S.C. §§ 434(b) or 441a(f) as it pertains to rent payments.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

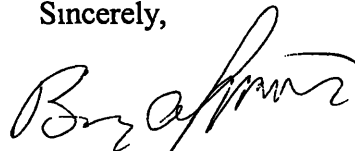
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Margaret Toalson, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosure
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Tim Ryan for Congress and MUR 5262
 Michael Fraioli, as Treasurer

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission ("Commission") by Donald L. Walter and Randy D. Walter. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

Tim Ryan for Congress ("the Committee") is registered with the Commission as the principal campaign committee of Tim Ryan in the 2002 primary and general elections for the 17th Congressional District in Ohio. The complaints allege that Tim Ryan for Congress received a \$50,000 loan from Tim Ryan and a cosigner, Dennis Rossi, in violation of the Federal Election Campaign Act of 1971, as amended ("the Act").¹

According to press accounts, Tim Ryan was one of several candidates running for his party's nomination, including an eight-term Congressional incumbent whose Congressional district had been redrawn during redistricting. Prior to the primary election, Mr. Ryan had little money or name recognition and was not favored to win. Forty days before the primary election, Mr. Ryan, who apparently had no property to use as collateral, obtained an unsecured bank loan for his Committee from the Second National Bank ("Bank"), cosigned by a friend and former

¹ This matter pertains to a 2002 Congressional election in the 17th Congressional District of Ohio. All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub L 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

high school athletic coach, Dennis Rossi, for about \$50,000. During the same forty days, Ryan made disbursements of over \$57,000 in media buys; printing, radio ads, cable purchases and other media services intended to achieve name recognition among the voters. The loan comprised over 75% of the Committee's total receipts in the 2002 April Quarterly Report. The Committee eventually reported the \$50,350 as an unsecured loan, without any future contributions or future receipts of interest income pledged as collateral for the loan.²

Prior to entering the loan transaction, Mr. Ryan determined that he needed money for his campaign. He decided to inquire about taking out a loan. Information in the Commission's possession indicates that on March 21, 2002, Mr. Ryan met with Shawn Pompelia, a lending officer at the Bank, to apply for a loan,³ and that the Bank agreed to approve a loan if it was cosigned.

Additional information in the Commission's possession indicates that Mr. Ryan approached Mr. Rossi about cosigning a loan. Mr. Rossi agreed to cosign the loan. Mr. Ryan and Mr. Rossi met with Mr. Pompelia at the Bank a few days after Mr. Ryan's first meeting with the Bank to complete the transaction. The information indicates that at this meeting, Mr. Rossi

² The first April Quarterly Report, filed on April 14, 2002, states that the Committee has no loans and that Tim Ryan made a personal contribution of \$50,000 to his Committee on March 28, 2002. The first amended April Quarterly Report, filed on April 22, 2002, states that Tim Ryan made a loan from personal funds to his committee on March 27, 2002. The second amended April Quarterly Report, filed on April 25, 2002, states that the \$50,000 was an unsecured bank loan and that Jeff Rossi was a cosigner on the loan, which is listed as outstanding in its entirety. The Committee failed to identify Dennis Rossi's contribution as a source of the loan until the third amended report, also filed on April 25, 2002, the day after newspaper accounts raised questions about the source and legality of the loan; however, the Committee incorrectly reported the loan amount as \$50,000 and the date of the loan as March 27, 2002. On July 17, 2002, the Committee filed the promissory note and a Schedule C-1 accurately identifying Dennis Rossi as the cosigner for \$50,350 on March 28, 2002. The fourth amended April Quarterly Report, filed on July 30, 2002 provides the same information as the July 17, 2002 amendment.

³ Mr. Ryan and Mr. Pompelia had evidently both played high school sports, albeit not at the same time, for Mr. Rossi, who would cosign the loan. Additionally, a photograph accompanying a news article shows Mr. Ryan and Mr. Pompelia in a group of assistant coaches on Rossi's basketball staff at Warren (OH) John F. Kennedy High School in 1997-1998.

and Mr. Pompelia asked Mr. Ryan if the loan was legal, and that Mr. Ryan assured them it was. If Mr. Ryan assured them the loan was legal, the basis for this statement is unclear.

The Committee asserts that “in early March [2002], the [Tim Ryan for Congress] treasurer spoke with a [Commission information specialist] to review the rules governing bank loans generally. The treasurer left that conversation without knowing that cosigning a loan was normally considered a contribution.” The statement is less definitive than a statement the treasurer supposedly made to the press in April, 2002, when she allegedly told the Youngstown Vindicator that she had contacted the Commission about the loan and the Commission told her “there would not be a problem with a co-signer.” David Skolnick, *Ryan’s Loan Raises Concern*, Youngstown Vindicator, Apr. 24, 2002. It also directly conflicts with another statement in the Commission’s possession. According to this other statement, Mr. Ryan told the Bank that Mr. Ryan called the Commission, and “received verbal assurances from the [Commission] that his actions were in compliance with appropriate laws and regulations regarding loans for political campaigns.” At closing, Mr. Ryan again apparently stated that the Commission “had given him approval for the process.” Even if Mr. Ryan ever represented to anyone that he personally contacted the Commission, the previous statement made by the Committee about the treasurer’s conversation with a Commission information specialist effectively disavows that representation.⁴

Tim Ryan was the principal person involved in this bank loan. Information in the Commission’s possession indicates that Mr. Ryan personally procured the loan, sought and obtained Mr. Rossi as a cosigner, and assured the bank and Mr. Rossi that the transaction was legal under the Act. The Committee and Mr. Ryan deposited the proceeds of the loan into the

⁴ Moreover, the nuanced phrasing of the Committee’s submission stops short of an assertion that the Information Division told the treasurer that guarantees were not contributions. The available information indicates that the reason that the treasurer “left the conversation without knowing” that a guarantee is a contribution is probably that she did not fully describe the facts when she asked the question.

Committee's account and originally reported it as a personal loan from Mr. Ryan. When a candidate receives a loan for use in his campaign, he receives the loan as an agent of his committee. 2 U.S.C. § 432(e)(2). *See* Advisory Opinion 1994-26. Thus, for purposes of the Act, such a loan is treated as if it were made directly from the bank to the committee, and the candidate is treated as a guarantor of the loan.

The Act prohibits an individual from making a contribution to a federal candidate greater than \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). With exceptions not relevant here, a loan is a contribution by each endorser or guarantor. Unless a written agreement states otherwise, when there are multiple guarantors of a loan, as in this matter, each guarantor of the loan is deemed to have made a contribution in the same proportion to the unpaid balance that each endorser bears to the total number of endorsers, or in this matter, \$25,175. 11 C.F.R. § 100.7(a)(1)(i)(C).

In this instance, Mr. Ryan's \$25,175 share of the guarantee is permissible, because a candidate may contribute unlimited amounts to his or her own campaign. *See* 11 C.F.R. § 110.10(a). Mr. Rossi's equivalent share is not permissible. Mr. Rossi's share exceeded the \$1,000 limit on contributions he could make to Mr. Ryan's campaign pursuant to 2 U.S.C. § 441a(a)(1)(A). Moreover, 2 U.S.C. § 441a(f) provides that no candidate or committee shall knowingly accept a contribution in excess of the limits of 2 U.S.C. § 441a. Mr. Ryan acted as an agent of his campaign and personally induced Mr. Rossi to guarantee the loan.

Tim Ryan knowingly accepted an excessive contribution of \$24,175 in violation of 2 U.S.C. § 441a(f). When a candidate receives a loan for use in his campaign, he receives the loan as an agent of his committee. 2 U.S.C. § 432(e)(2). Tim Ryan for Congress and its treasurer knowingly accepted an excessive contribution of \$24,175 in violation of 2 U.S.C. § 441a(f).

III. CONCLUSION

By accepting the unsecured \$50,350 loan cosigned by Mr. Rossi, Tim Ryan for Congress and its treasurer accepted an excessive contribution of \$24,175 in violation of 2 U.S.C. § 441a(f). There is reason to believe that Tim Ryan for Congress and Michael Fraioli, as treasurer, violated 2 U.S.C. § 441a(f).