



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 10 2002

Don Mitchell
c/o Kentucky State District
Council of Carpenters
632 Comanche Trails
Frankfort, KY 40601-1780

RE: MUR 5268

Dear Mr. Mitchell:

On May 7, 2002, the Federal Election Commission found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order and Subpoena to Produce Documents must be submitted within 30 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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.

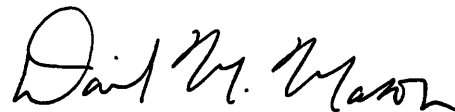
Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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 investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tracey Robinson, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,


David M. Mason
Chairman

Enclosures
Factual and Legal Analysis
Order and Subpoena
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Don Mitchell

MUR: 5268

I. GENERATION OF THE MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437(g)(a)(1).

II. THE LAW

The Federal Election Campaign Act of 1971, as amended, (the "Act") makes it unlawful for any person to make a contribution in the name of another person or knowingly accept a contribution made by one person in the name of another person. Further, no person shall knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b)(1)(iii). The term "contribution" includes 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), labor organizations are prohibited from making contributions or expenditures from their general treasury funds in connection with any federal election, while candidates and their authorized campaign committees are prohibited from knowingly accepting or receiving such contributions. Section 441b(a) further prohibits any officer or director of any labor organization from consenting to such contributions or

expenditures.¹ Section 441b(b)(3)(A) makes it unlawful for a separate segregated fund established by a labor organization to make contributions or expenditures by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of other moneys required as a condition of membership in a labor organization or as a condition of employment. For the purposes of Section 441b, a contribution includes “any direct or indirect payment, distribution, loan, advance, deposit, gift of money, or any services, or anything of value” made to a candidate, including all in-kind contributions. 2 U.S.C. § 441b(b)(2) and 11 C.F.R. § 100.7(a)(1)(iii)(B).

The Act addresses violations of the law that are knowing and willful. *See* 2 U.S.C. §§ 437g(a)(5)(C) and 437g(d). The phrase “knowing and willful” indicates that “actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (Daily Ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F.Supp. 985 (D. N.J. 1986).

In *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990), the court found that an inference of a knowing and willful violation could be drawn “from the defendants’ elaborate scheme for disguising their corporate political contributions” as individual contributions, and that they “deliberately conveyed information they knew to be false to the Federal Election Commission.” *Id.* at 214-15. The court also found that the evidence did not have to show that a defendant “had specific knowledge of the regulations” or “conclusively demonstrate” a

¹ The term “labor organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment or conditions of work. 2 U.S.C. § 441b(b)(1).

defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [a defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

III. ANALYSIS

Don Mitchell is the statewide political director of the Kentucky State District Council of Carpenters ("KSDCC") and a representative of Local Union 357. KSDCC is the Kentucky body of the United Brotherhood of Carpenters and Joiners of America ("UBC"), representing carpenters and other craftsperson within the state of Kentucky. KSDCC has 8 local union offices throughout the state.

According to information in the Commission's possession ("the Information"), KSDCC routinely required its members to make campaign contributions for the benefit of certain federal campaigns. According to the Information, members who resisted the suggestion were told that they were expected to make the contributions since they received monthly expense checks from KSDCC. Members reportedly were required to make contribution checks payable to the campaign and mail them to KSDCC. Eleanor Jordan, a 2000 congressional candidate in Kentucky's 3rd District, was allegedly one of the candidates who reportedly received reported contributions.

The Information states that KSDCC members were also allegedly required to work in the campaign offices of various candidates that were being supported by KSDCC. Instead of reporting the work as campaign contributions, the members were allegedly required to complete time sheets indicating "membership education." It is unclear exactly how many candidates were

involved, or what portion were candidates for federal office, rather than for non-federal office.

The Information states that at least one person was fired for not contributing.

FEC disclosure reports reveal that some KSDCC members received small contribution refunds from Carpenters Legislative Improvement Committee United Brotherhood of Carpenters and Joiners ("Carpenters Legislative"). Carpenters Legislative is a political committee registered with the FEC (C00001016) as a Qualified Non-Party Committee and is an SSF to the United Brotherhood of Carpenters and Joiners of America whose Kentucky based local unions comprise KSDCC. Carpenters Legislative's current treasurer is Monte Byers and has its headquarters in Washington, D.C. Generally, the refunds received by the KSDCC members were under \$100, below the threshold amount required for itemization. 2 U.S.C. § 434(b)(3)(A).

Based on the Information, there appears to be evidence that Carpenters Legislative was involved in a scheme to use union funds to make federal contributions in the name of KSDCC members. The Information includes evidence that Carpenters Legislative refunded previously unitemized contributions from a number of KSDCC members at or shortly after the alleged scheme was reported.

The Information includes evidence that Don Mitchell was involved in a scheme to use union funds to make federal contributions in the name of KSDCC members.

Accordingly, there is reason to believe that Don Mitchell knowingly and willfully violated 2 U.S.C. §§ 441f and 441b.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
Don Mitchell

) MUR
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SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Don Mitchell
c/o Kentucky State District Council of Carpenters
632 Comanche Trails
Frankfort, Kentucky 40601-1780

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

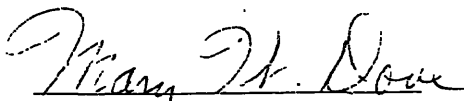
WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this *10th* day of *May*, 2002.

For the Commission,



David M. Mason
Chairman

ATTEST:



Mary W. Dove
Secretary of the Commission

Attachments
Questions and Document Request (5 pages)

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1994 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"KSDCC" shall mean the Kentucky State District Council of Carpenters.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"Federal office" shall mean the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

QUESTIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce the Charter, By-laws and Articles of Incorporation for KSDCC.
2. Produce Notes or Minutes from KSDCC meetings and any KSDCC newsletters, reports or memoranda.
3. Describe KSDCC's process or procedure for endorsing political candidates.
4. Identify all directors, officers, employees, representatives or agents of KSDCC.
5. To your knowledge, has KSDCC solicited contributions for candidates for federal office or for federal political committees from its members?
6. If the answer to the preceding question is affirmative,
 - a) State the complete name of the candidate(s) for federal office or political committees for which solicitations were made, and describe the circumstances surrounding each solicitation.
 - b) Identify KSDCC representatives who participated in the solicitation of federal campaign contributions and all members who were solicited.
7. Produce all documents relating to or referring to KSDCC's involvement in the solicitation of federal campaign contributions to any candidate for federal office, and all documents relating to KSDCC's endorsement of any candidate for federal office.
8. To your knowledge, has KSDCC ever reimbursed or caused another person to reimburse any person for a political contribution to a candidate for federal office? This would include, but not limited, reimbursements made through expense checks or strike fund. If so, for each of such political contribution, state:
 - (a) The name of the federal candidate or committee, the amount of the contribution, and the date the contribution was made;
 - (b) The person from whom or which you received reimbursement, the amount of the reimbursement, and the date on which you received the reimbursement;
 - (c) If the reimbursement came from a corporation or other non-natural legal person, identify.
9. To your knowledge, has a KSDCC member been reimbursed by KSDCC, any of its constituent unions, or any company employing KSDCC members, for a political contribution to a candidate for federal office or federal political committee? If so, for each such political contribution, state:
 - (a) The name of the federal candidate or committee, the amount of the contribution, and the date the contribution was made;
 - (b) The person from whom or which received reimbursement, the amount of the reimbursement, and the date on which received the reimbursement;

- (c) If the reimbursement came from a corporation or other non-natural legal person, identify the natural person who authorized or approved the reimbursement.
10. Produce all documents relating to or referring to Carpenter's Legislative United Brotherhood of Carpenters and Joiners.
 11. Produce all documents relating to or referring to KSDCC communications that related to, or referred to, or were made on behalf of, any candidate for federal office, including, but not limited to, Eleanor Jordan and Eleanor Jordan for Congress.
 12. To your knowledge, has KSDCC ever required or requested its members to work in the campaign office(s) of a federal candidate(s)? If so, for each such federal candidate, state:
 - a. The name of the federal candidate or committee, the complete name of the member and the date the member worked in the campaign office;
 - b. The type of compensation for the member's work in the campaign office;
 - c. The method that the work in federal campaign offices was recorded.
 13. Produce all timesheets for KSDCC members who were solicited to work in federal campaign offices and who were solicited to make federal campaign contributions.
 14. To your knowledge, has a KSDCC member ever been terminated for failure to make federal campaign contributions or for failure to work in a federal campaign office? If so, state the complete name of each member terminated in this regard.
 15. Produce all documents that in any way refer to, are about, or contain information regarding strike fund payments to KSDCC members.
 16. Produce all documents that in any way refer to, are about, or contain information regarding monthly expense checks paid to union members.