



FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

AUG 16 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Curtis Herge, Esq.
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Suite 360
6862 Elm Street
McLean, VA 22101

RE. MUR 5333
Robert B. Lichfield, Lenae Lichfield, Loni
Lichfield, Lyndee Lichfield, Patricia
Lichfield, Reagan Lichfield, Robbie
Lichfield, Roger Lichfield, Stephanie
Lichfield and Tavia Lichfield

Dear Mr. Herge:

On November 21, 2002, the Federal Election Commission notified your above-listed clients of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by your clients, the Commission, on June 30, 2004, found that there is reason to believe Robert B. Lichfield knowingly and willfully violated 2 U.S.C. § 441a(a)(1)(A), 441a(a)(3) and 441f, provisions of the Act, and that Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield each violated 2 U.S.C. § 441f. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information. Also on June 30, 2004, the Commission determined to take no action at this time with respect to Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield regarding the allegation in the complaint that they violated 2 U.S.C. § 441a(a)(1)(A).

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 30 days of your receipt of this letter.

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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.

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.

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

Sincerely,

Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS Robert B Lichfield, Lenae Lichfield, Loni Lichfield, MUR 5333
Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield,
Robbie Lichfield, Roger Lichfield, Stephanie Lichfield
and Tavia Lichfield

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by
Scott Clayton. *See* 2 U.S.C. § 437g(a)(1)

II. FACTUAL AND LEGAL ANALYSIS

A. Complaint and responses and other available information

The complaint alleges that Robert B Lichfield, Lenae Lichfield, Loni Lichfield, Lyndee
Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie
Lichfield and Tavia Lichfield each made excessive contributions to John Swallow for Congress
("Committee"). The complaint listed each Lichfield as contributing \$3,000 to the Committee
The Committee disclosed the receipt of \$3,000 from each Lichfield on January 23, 2002. In each
case \$1,000 was designated for each of the convention, primary and general elections.

Therefore, these contributions on their face are within the limits of 2 U.S.C. § 441a(a)(1)(A)

The complaint also alleges that eight of the Lichfields were children in whose names
contributions were made, namely Lenae Lichfield, Loni Lichfield, Lyndee Lichfield, Reagan
Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield

The available information includes copies of ten \$3,000 "official check[s]" (resembling
money orders or cashier's checks) dated January 19, 2002. Each identifies "Robert Browning
Lichfield" as "purchaser." This is presumably Robert B Lichfield, who is named as a

1 respondent Each of the checks contains similar handwriting naming a Lichfield contributor,
2 e.g., "from: Lori Lichfield." On the "Purchaser Copy"¹ of each check is a notation designating
3 \$1,000 apiece for each of the three elections ²

4 The available information also includes a letter from the Committee's treasurer addressed
5 to Robert B Lichfield dated March 15, 2002 After thanking Mr Lichfield for the contribution,
6 the letter said:

7 The strict laws of the Federal Election Commission state that no one can make a
8 contribution on behalf of someone else. However, the check was drawn on only one
9 account. Please confirm to us in writing that the \$3,000 contribution was from your
10 personal funds.

11
12 The letter provides fields for each Lichfield's signature and date The completed fields contain
13 the signatures of all ten Lichfields dated March 20, 2002.

14 The ten Lichfield respondents submitted identical responses to the complaint, each one
15 stating a belief that they had followed "the regulations of the FEC" in contributing \$1,000 for
16 each of the three elections involving John Swallow.³ The responses also state that the Swallow
17 campaign assured them, before the contributions, "that this would be within the regulations of
18 the FEC." Attached to each Lichfield response was a "Receipt Transaction List," apparently
19 from a Committee database, that listed the contributor's contributions as \$1,000 for each of the
20 convention, primary and general elections

21
22

¹ The Purchaser Copy closely resembles the check itself and appears to serve as a receipt

² The Purchaser Copy of each check also contains a hand-written term that appears to be the occupation of the contributor "student" (four individuals), "housewife" (three), "self-employed" (two) and "consultant" (one) These occupations do not exactly match the occupations of these contributors as disclosed by the Committee See *infra*

³ The Lichfield responses are undated and were received on December 16, 2002 and December 23, 2002

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B. Analysis of contributions

It appears from the official checks that Robert B Lichfield paid for all \$30,000 of the Lichfield contributions. Each of the ten Lichfields made their \$3,000 in contributions to the Committee through a \$3,000 official check listing Robert Browning Lichfield as the purchaser. Aside from Mr. Lichfield's own contribution, there is no indication on the face of these instruments that the funds are in fact those of the named contributor. The only relation these official checks appear to have to the named contributors is the handwriting naming a Lichfield contributor, e.g., "from: Lori Lichfield." Finally, that handwriting on all ten checks appears to be that of the same person.

Paying for the contributions of others is prohibited by the Federal Election Campaign Act of 1971, as amended ("the Act"), as is knowingly permitting one's name to be used to effect such a contribution, and knowingly accepting such a contribution. See 2 U S C § 441f. Further, the Act not only limits an individual's contributions to candidate committees to \$1,000 per election, it also limits an individual's overall contributions to \$25,000 in any calendar year. See 2 U S C. § 441a(a)(1)(A) and 441a(a)(3).

Although the Committee obtained a statement apparently signed by all ten Lichfield contributors that the contributions were made from their personal funds, the available information does not explain or document how each Lichfield could have contributed \$3,000 of their own funds if the official checks were all purchased by Robert B Lichfield. Nor does the information describe the source of funds used by Mr. Lichfield to purchase the official checks. Thus, the available information indicates that Robert B Lichfield may have made contributions in the names of the other nine Lichfields, namely, Lenae Lichfield, Lori Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie

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Lichfield and Tavia Lichfield *See* 2 U.S.C. § 441f. In addition, these other nine Lichfields may have permitted their names to be used to effect such contributions *See id*

The possibility that Robert B. Lichfield paid for all \$30,000 of the Lichfield contributions is consistent with the complaint's allegation that contributions were made in the names of eight Lichfield "children." Despite this allegation in the complaint, neither the Committee's response nor those of the Lichfields identify the ages of the Lichfields, much less address whether any contributions by Lichfields under 18 were knowing and voluntary or whether they were "made from the proceeds of a gift, the purpose of which was to provide funds to be contributed " *See* 11 C.F.R. § 110.1(i)(2)(i) and (iii). The contributions here were made with "official checks", each Lichfield contributor had the same address; none of the alleged Lichfield children made any other contributions during the 2002 election cycle or any previous cycle, according to the Commission's contributor index; the contributions were all made on the same date as those by Robert B Lichfield, who contributed the maximum amount permissible to the Committee, and the Committee disclosed the occupation of five of the eight purported Lichfield children as "student."⁴ All of these circumstances are often associated with contributions made through minors. *See* MURs 4484 (Bainum), 4255 (Hitchcock), 4254 (Hershey), 4253 (Croopnick), 4252 (Baxter), 3268 (St. German).

In short, the facts indicate that Robert B Lichfield may have made contributions in the names of others in violation of 2 U.S.C. § 441f. They also indicate that he may have exceeded both the \$1,000 individual per-election contribution limit and the overall annual \$25,000

⁴ The Committee disclosed the three remaining purported Lichfield children as self-employed consultants (two) and housewife (one)

contribution limit⁵ See 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3). In addition, the nine other Lichfields may have knowingly permitted their names to be used to effect Robert Lichfield's contributions on their behalf See 2 U.S.C. § 441f. Further, to the extent some or all of the eight alleged Lichfield children were minors, even if their contributions were not made by Robert Lichfield, their contributions could still be attributable to him if the contributions were not made knowingly and voluntarily by the minors. See 11 C.F.R. § 110.1(i)(2); MUR 4255 (Hitchcock). Finally, there is a possibility that Robert Lichfield's actions constituted knowing and willful violations of the Act.⁶ The use of official checks is consistent with an intention to disguise minors' status. Generally, the inherently deceptive nature of conduit arrangements merits an investigation into whether conduct was knowing and willful.

Therefore, there is reason to believe that Robert B. Lichfield knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3) and 441f. There is also reason to believe that Lenae Lichfield, Lori Lichfield, Lyndee Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie Lichfield and Tavia Lichfield violated 2 U.S.C. § 441f.

⁵ The public record does not indicate any federal contributions made by Mr. Lichfield during the 2002 election cycle apart from his \$3,000 contribution to the Committee. The public record does show a Robert B. Lichfield – with an address within Utah different than that of the contributor to the Committee – donating a total of \$25,000 to the non-federal account of the RNC National State Election Committee during 2001 and again in 2002 and donating \$100,000 to the 2001 President's Dinner Non-Federal Account in 2001.

⁶ 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. H 3778 (daily ed. May 3, 1976), see also *Fed. Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing and willful violation could be drawn "from the defendants' elaborate scheme for disguising their political contributions." *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 defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [the 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)).