



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

SEP 14 2004

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Robert B. Lichfield

Toquerville, UT 84774

RE: MUR 5333

Dear Mr. Lichfield:

On November 21, 2002, the Federal Election Commission notified you 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 you at that time.

Upon further review of the allegations contained in the complaint, the Commission, on June 30, 2004, found that there is reason to believe you knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3) and 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission initially notified you of these actions through your counsel of record, J. Curtis Herge, who has since withdrawn as your counsel in this matter. Accordingly, the Commission is notifying you directly. If you intend to be represented by new 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.

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 it. 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

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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 Mark Allen, the attorney assigned to this matter, at (202) 694-1650. During the period September 10 through October 8, 2004, please contact Cynthia Tompkins, Assistant General Counsel, at the same number.

Sincerely,



Bradley A. Smith  
Chairman

Enclosures

Factual and Legal Analysis

Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**  
3

4 RESPONDENT: Robert B. Lichfield

MUR 5333

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6  
7 **I. GENERATION OF MATTER**

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

10 **II. FACTUAL AND LEGAL ANALYSIS**

11 **A. Complaint and responses and other available information**

12 The complaint alleges that Robert B. Lichfield, Lenae Lichfield, Loni Lichfield, Lyndee  
13 Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie  
14 Lichfield and Tavia Lichfield each made excessive contributions to John Swallow for Congress  
15 ("Committee"). The complaint listed each Lichfield as contributing \$3,000 to the Committee.

16 The Committee disclosed the receipt of \$3,000 from each Lichfield on January 23, 2002. In each  
17 case \$1,000 was designated for each of the convention, primary and general elections.

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

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

22 The available information includes copies of ten \$3,000 "official check[s]" (resembling  
23 money orders or cashier's checks) dated January 19, 2002. Each identifies "Robert Browning  
24 Lichfield" as "purchaser." This is presumably Robert B. Lichfield. Each of the checks contains  
25 similar handwriting naming a Lichfield contributor, e.g., "from: Robert B. Lichfield." On the

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1 "Purchaser Copy"<sup>1</sup> of each check is a notation designating \$1,000 apiece for each of the three  
2 elections.<sup>2</sup>

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

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

10  
11 The letter provides fields for each Lichfield's signature and date. The completed fields contain  
12 the signatures of all ten Lichfields dated March 20, 2002.

13 Robert B. Lichfield submitted a response to the complaint, stating a belief that he had  
14 followed "the regulations of the FEC" in contributing \$1,000 for each of the three elections  
15 involving John Swallow.<sup>3</sup> His response also states that the Swallow campaign assured him,  
16 before the contributions, "that this would be within the regulations of the FEC." Attached to  
17 Robert B. Lichfield's response was a "Receipt Transaction List," apparently from a Committee  
18 database, that listed his contributions as \$1,000 for each of the convention, primary and general  
19 elections.

20 **B. Analysis of contributions**

21  
22 It appears from the official checks that Robert B. Lichfield paid for all \$30,000 of the  
23 Lichfield contributions. Each of the ten Lichfields made their \$3,000 in contributions to the

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<sup>1</sup> The Purchaser Copy closely resembles the check itself and appears to serve as a receipt.

<sup>2</sup> 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*.

<sup>3</sup> Robert B. Lichfield's response is undated and was received on December 16, 2002.

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1 Committee through a \$3,000 official check listing Robert Browning Lichfield as the purchaser.

2 Aside from Mr. Lichfield's own contribution, there is no indication on the face of these

3 instruments that the funds are in fact those of the named contributor. The only relation these

4 official checks appear to have to the named contributors is the handwriting naming a Lichfield

5 contributor, e.g., "from: Tavia Lichfield." Finally, that handwriting on all ten checks appears to

6 be that of the same person.

7 Paying for the contributions of others is prohibited by the Federal Election Campaign Act

8 of 1971, as amended ("the Act"), as is knowingly permitting one's name to be used to effect such

9 a contribution, and knowingly accepting such a contribution. *See* 2 U.S.C. § 441f. Further, the

10 Act not only limits an individual's contributions to candidate committees to \$1,000 per election,

11 it also limits an individual's overall contributions to \$25,000 in any calendar year. *See* 2 U.S.C.

12 § 441a(a)(1)(A) and 441a(a)(3).

13 Although the Committee obtained a statement apparently signed by all ten Lichfield

14 contributors that the contributions were made from their personal funds, the available

15 information does not explain or document how each Lichfield could have contributed \$3,000 of

16 their own funds if the official checks were all purchased by Robert B. Lichfield. Nor does the

17 information describe the source of funds used by Mr. Lichfield to purchase the official checks.

18 Thus, the available information indicates that Robert B. Lichfield may have made contributions

19 in the names of the other nine Lichfields, namely, Lenae Lichfield, Loni Lichfield, Lyndee

20 Lichfield, Patricia Lichfield, Reagan Lichfield, Robbie Lichfield, Roger Lichfield, Stephanie

21 Lichfield and Tavia Lichfield. *See* 2 U.S.C. § 441f.

22 The possibility that Robert B. Lichfield paid for all \$30,000 of the Lichfield contributions

23 is consistent with the complaint's allegation that contributions were made in the names of eight

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1 Lichfield “children.” Despite this allegation in the complaint, neither the Committee’s response  
2 nor those of the Lichfields identify the ages of the Lichfields, much less address whether any  
3 contributions by Lichfields under 18 were knowing and voluntary or whether they were “made  
4 from the proceeds of a gift, the purpose of which was to provide funds to be contributed.” *See*  
5 11 C.F.R. § 110.1(i)(2)(i) and (iii). The contributions here were made with “official checks”;  
6 each Lichfield contributor had the same address; none of the alleged Lichfield children made any  
7 other contributions during the 2002 election cycle or any previous cycle, according to the  
8 Commission’s contributor index; the contributions were all made on the same date as those by  
9 Robert B. Lichfield, who contributed the maximum amount permissible to the Committee; and  
10 the Committee disclosed the occupation of five of the eight purported Lichfield children as  
11 “student.”<sup>4</sup> All of these circumstances are often associated with contributions made through  
12 minors. *See* MURs 4484 (Bainum), 4255 (Hitchcock), 4254 (Hershey), 4253 (Croopnick), 4252  
13 (Baxter), 3268 (St. Germain).

14 In short, the facts indicate that Robert B. Lichfield may have made contributions in the  
15 names of others in violation of 2 U.S.C. § 441f. They also indicate that he may have exceeded  
16 both the \$1,000 individual per-election contribution limit and the overall annual \$25,000  
17 contribution limit.<sup>5</sup> *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(a)(3). Further, to the extent some  
18 or all of the eight alleged Lichfield children were minors, even if their contributions were not  
19 made by Robert Lichfield, their contributions could still be attributable to him if the

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

<sup>5</sup> 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.

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1 contributions were not made knowingly and voluntarily by the minors. *See* 11 C.F.R.  
2 § 110.1(i)(2); MUR 4255 (Hitchcock). Finally, there is a possibility that Robert Lichfield's  
3 actions constituted knowing and willful violations of the Act.<sup>6</sup> The use of official checks is  
4 consistent with an intention to disguise minors' status. Generally, the inherently deceptive  
5 nature of conduit arrangements merits an investigation into whether conduct was knowing and  
6 willful.

7 Therefore, there is reason to believe that Robert B. Lichfield knowingly and willfully  
8 violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(3) and 441f.

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<sup>6</sup> 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. Drame* 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)).

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