

OCT 12 2006

BEFORE THE FEDERAL ELECTION COMMISSION

SECRETARIAT

In the Matter of)

2006 OCT 12 P 3:00

Robert Browning Lichfield Family Limited Partnership)

MUR 5333

Robert B. Lichfield)

John Swallow)

John Swallow for Congress and Stanley R. de Waal,)

SENSITIVE

in his official capacity as treasurer)

GENERAL COUNSEL'S REPORT #5

I. ACTIONS RECOMMENDED

1.

2. Take no further action and close the file as to John Swallow; and

3.

II. BACKGROUND

This matter concerns an excessive contribution by the Robert Browning Lichfield Family Limited Partnership ("Partnership") to John Swallow for Congress ("Committee"). The Partnership's contribution was effected by its general partner, Robert B. Lichfield, who used \$30,000 in Partnership funds to make ten \$3,000 contributions to the Committee, in his name and in the names of nine other family members, seven of whom are partners in the Partnership.¹ Although Mr. Lichfield claimed the transaction was structured as a distribution to the partners followed by ten individual contributions, the money never passed through the hands of any

¹ The instruments of the contributions were ten \$3,000 "official check[s]" (resembling money orders or cashier's checks), each identifying "Robert Browning Lichfield" as "purchaser" and containing similar handwriting naming a Lichfield contributor, e.g., "from: Lori Lichfield." John Swallow was a candidate in three elections during 2002, and so the contributions on their face appeared to be within the limits of 2 U.S.C. § 441a(a)(1)(A). The Committee reported the receipt of \$3,000 contributions from each of the ten Lichfields.

1 partner other than Mr. Lichfield. Consequently, the \$30,000 transaction resulted in a \$27,000
2 excessive contribution by the Partnership. *See* 2 U.S.C. § 441a(a)(1)(A). In addition, the
3 Partnership made contributions in the names of the two non-partners. *See* 2 U.S.C. § 441f. Mr.
4 Lichfield assisted in those contributions in the name of another. *See* 2 U.S.C. § 441f and
5 11 C.F.R. § 110.4(b)(1)(iii). These facts and conclusions are discussed in detail in MUR 5333
6 General Counsel's Report #3 ("GCR #3").

7
8
9 original account of the
10 Partnership contribution, including assertions that the arrangement had been suggested by the
11 recipient candidate, John Swallow; that Mr. Swallow accompanied Mr. Lichfield to the bank
12 where Mr. Swallow personally took possession of the checks; and that Mr. Swallow told Mr.
13 Lichfield that his counsel had favorably reviewed the arrangement.

14 2

15 In addition, the
16 Commission found reason to believe that John Swallow and the Committee knowingly received
17 the Partnership's excessive contribution in violation of 2 U.S.C. § 441a(f), and directed us to
18 obtain from Mr. Swallow his account of the contribution.
19

1 **III. DISCUSSION**

2 **A. Additional Investigation**

3 Following the Commission's determinations, we contacted John Swallow informally, and
4 he provided a written account of the contribution that differed in certain material respects from
5 the account provided by Robert B. Lichfield. For example, according to Mr. Swallow, he did not
6 suggest that Mr. Lichfield use funds from the Partnership for the contributions and he did not
7 accompany Mr. Lichfield to the bank. In view of these differences, this Office then deposed
8 both Messrs. Swallow and Lichfield in order to obtain their sworn accounts of the events and
9 reconcile the differences to the extent possible. Both of them provided testimony generally
10 consistent with their unsworn statements, although Mr. Lichfield varied in some key respects.
11 For instance, after first testifying that John Swallow accompanied him to the bank where he
12 obtained the contribution checks—a circumstance that would have indicated that Mr. Swallow
13 might have known the contributions were from the partnership—Mr. Lichfield later testified that
14 it was possible that Mr. Swallow did not in fact accompany him to his bank.

15 By contrast, John Swallow consistently testified that he did not
16 accompany Mr. Lichfield to the bank.

17 Mr. Lichfield also testified, contrary to his assertions earlier in the case, that he did not
18 recall who suggested the use of partnership funds. Rather, according to Mr.
19 Lichfield, his discussion with Mr. Swallow was more about whether his children had access to
20 their own funds separate from those of Mr. Lichfield.³ This is consistent with John
21 Swallow's repeated testimony that he told Mr. Lichfield that the contributions had to come from

³ Six of the identified Lichfield contributors are the children of Robert B. Lichfield. At the time of the contributions, two were minors, an issue addressed in GCR #3 at 13-15.

1 the contributors' own funds, ⁴ and that Mr. Lichfield
2 told Mr. Swallow that his family members had accounts in some kind of family entity with
3 which they could contribute personal funds. Mr. Swallow testified that Mr.
4 Lichfield did not describe the details of the "family entity," , but Mr. Lichfield stated that
5 he described it to Mr. Swallow as a partnership primarily owned by his children and that it "did
6 real estate investments and had leases and received money from that."

7 Both Messrs. Lichfield and Swallow testified that when Mr. Lichfield gave the
8 contribution checks to Mr. Swallow, they agreed that each would check certain aspects of the
9 contributions before Mr. Swallow deposited the checks. Mr. Lichfield was to contact the
10 Lichfield contributors not present at the time of John Swallow's solicitation at Mr. Lichfield's
11 home to make sure they approved of the contributions.

12 Mr. Swallow testified that for his part, he had to check 1) state law on
13 whether he could accept the contributions in light of his status as a state legislator, given that the
14 legislative session began in a few days, and 2) with Committee treasurer Stanley de Waal about
15 the \$3,000 contribution limit for the 2002 election cycle. He
16 does not recall how specifically he described the state law issue to Robert B. Lichfield, but he
17 testified that he did not check on the issue of the use of Partnership funds and did not tell Mr.
18 Lichfield that he would do so.⁵ Mr. Swallow specifically denied seeking a
19 legal opinion on the issue of the individual Lichfields owning the funds being contributed.
20

⁴ Mr. Swallow further testified that he told Mr. Lichfield that the funds had to be in the control of the donors and they had to understand and approve their contributions, which led to excluding the youngest member of the Lichfield family from the contributions.

⁵ Mr. Swallow assumes that he and Mr. Lichfield miscommunicated about what Mr. Swallow was checking about the transaction.

27044165185

1 Messrs. Lichfield and Swallow both testified that they did their respective checking.

2 Mr. Swallow asked the state law
3 question to the Utah State Attorney General, whom Mr. Swallow described as a friend that he
4 "ran into" on the first day of the state legislative session, two days after Mr. Swallow received
5 the contribution checks from Robert B. Lichfield. Mr. Swallow "mentioned the issue" to the
6 Attorney General, who referred the issue to a lawyer in the Attorney General's office. The
7 Attorney General supplied an affirmative response to Mr. Swallow "a couple of days" later,
8 consistent with research that Mr. Swallow himself conducted.

9
10 Mr. Swallow asked the contribution limit question to Committee treasurer Stanley
11 de Waal within a "couple of days" after Mr. Swallow obtained the checks from Mr. Lichfield.

12 Mr. de Waal responded that \$3,000 was the permissible limit for
13 the election cycle in Utah with its three elections.

14 Robert B. Lichfield, for his part, testified that he contacted his children over the next
15 "couple of days" after he gave the checks to Mr. Swallow. Mr.
16 Lichfield described to his children the recipient candidate, John Swallow, and they agreed to the
17 contributions.

18 A few days after Mr. Swallow received the contribution checks from Mr. Lichfield,
19 Messrs. Lichfield and Swallow communicated to each other that they had checked their
20 respective aspects of the arrangement and that the checks could be deposited.

21 Mr. Swallow described his statement to
22 Mr. Lichfield as "I let him know that I checked with my lawyers and felt comfortable on my

270441655186

1 issue." Neither individual could describe the discussion in detail.

2
3
4
5
6
7 While this additional investigation did not definitively prove the account of either Robert
8 B. Lichfield or John Swallow, it lends greater credence to some aspects of Mr. Swallow's
9 account.⁶ On the subject of whether Mr. Swallow accompanied Mr. Lichfield to the bank, a bank
10 employee told us that she recalled Mr. Lichfield at the bank purchasing the ten \$3,000 checks
11 with Partnership funds, but does not recall seeing anyone there with Mr. Lichfield. Further, Mr.
12 Swallow's testimony regarding the issue of the contribution limit he was to check prior to
13 depositing the contribution checks is supported by the testimony of Committee treasurer Stanley
14 de Waal, whom Mr. Swallow described as the expert to whom Mr. Swallow would ask campaign
15 finance law questions.

16 Mr. de Waal testified that around the time
17 of the Lichfield contributions, Mr. Swallow called him to ask about the \$3,000 limit for 2002
18 cycle contributions, but Mr. de Waal does not recall that Mr. Swallow mentioned the Lichfield
19 contributions.

In fact, Mr. de Waal testified that he never
discussed the Lichfield contributions with Mr. Swallow and he was unaware that the funds for

⁶ This additional investigation also confirmed many aspects of the Partnership contributions, such as the Partnership's internal accounting indicating debits, dated a few days after Mr. Lichfield's purchase of the contribution checks, to six Lichfield partners in the amount of \$3,000 each for "Swallow Campaign." The Partnership's accounting also shows debits to two Lichfield partners – the spouses of the two non-partner contributors – in the amount of \$6,000 each, consistent with the section 441f violations described above. *See also* GCR #3 at 12-13.

1 the Lichfield contributions came from the Partnership or that the Partnership even existed.

2
3 Moreover, the Committee wrote to Robert B. Lichfield several weeks after depositing the
4 contribution checks, asking all ten of the Lichfield contributors to confirm that their \$3,000
5 contributions were from their own personal funds. According to treasurer de Waal as well as
6 two assistants he worked with, the Committee took this action in the ordinary course of
7 reviewing contributions. Mr. de Waal testified that the Committee sent the letter because the
8 contributions were made by "cashier's checks," and the Committee had to know "if [the
9 contributions] came from their personal funds." The
10 Lichfields all signed and dated the Committee's form and it was returned to the Committee.⁷

11 In sum, although Messrs. Lichfield and Swallow have painted the same broad outlines of
12 the events – Mr. Swallow solicited contributions at Mr. Lichfield's home and advised
13 Mr. Lichfield that the contributions had to be made with personal funds, Mr. Lichfield obtained
14 the ten \$3,000 contribution checks and gave them to Mr. Swallow, and both men looked into
15 issues related to the contributions prior to the checks being deposited – there are significant
16 distinctions. The evidence uncovered during the investigation makes Mr. Swallow the more
17 credible party. As noted, Mr. Swallow's account that he did not accompany Mr. Lichfield to the
18 bank is supported by the fact that Mr. Lichfield backed off from his own testimony that Mr.
19 Swallow accompanied him; that a disinterested party – a bank employee – recalled Mr.
20 Lichfield's transaction but not that anyone accompanied him at the bank; and that Mr. Swallow
21 consistently testified that he did not go to the bank. Also credible is Mr. Swallow's account that

⁷ The Committee's letter is dated March 15, 2002, several weeks after the contributions but within the 60 days provided for in the Commission's regulations for curing or refunding excessive contributions. See 11 C.F.R. § 103.3(b)(3). See also de Waal depo. at 39-42.

1 he did not obtain a legal opinion – or any advice – regarding the basic arrangement of the
2 contributions being made with funds from the Partnership. From these conclusions flow our
3 recommendations set forth below regarding the Partnership, Robert B. Lichfield, John Swallow
4 and the Committee.

5 B.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

C. John Swallow

The evidence at the completion of the investigation in this matter does not support further pursuing John Swallow for knowingly accepting an excessive contribution from the Partnership.

See 2 U.S.C. § 441a(f). Although disputed in places, the evidence does not show that Mr.

Swallow was aware that the \$30,000 constituted a Partnership contribution instead of ten individuals' \$3,000 contributions. Rather, the evidence supports Mr. Swallow's belief that he was accepting individual contributions: Mr. Swallow did not accompany Robert B. Lichfield to the bank to obtain the contribution checks; Mr. Swallow advised Mr. Lichfield that contributions had to be made with contributors' own funds, a point not contested by Mr. Lichfield; Mr. Swallow did not advise Mr. Lichfield on the particular form of the use of Partnership funds and did not seek a legal opinion on the use of Partnership funds; Mr. Swallow consulted an attorney only on the state law issue regarding the state legislative session, and consulted only his Committee treasurer on a campaign finance issue and that consultation only related to the contribution limit. Further, as noted, the Committee followed the procedures of 11 C.F.R. § 103.3(b)(3) by writing to Robert B. Lichfield questioning the ten Lichfield contributors and timely obtaining from all ten Lichfields written confirmation that their \$3,000 contributions were

1 from their own personal funds. Accordingly, we recommend that the Commission take no
2 further action and close the file as to John Swallow.

3 **D. John Swallow for Congress**

4 For the same reasons, we do not recommend further pursuit of the Committee for receipt
5 of the excessive contribution from the partnership.

27044165191

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

1
2
3
4

5

6

7

8

9

10

11

12

13

14

15

16

IV. RECOMMENDATIONS

17

1.

18

19

20

2. Take no further action and close the file as to John Swallow.

21

22

3.

23

24

25

11

12

13

4. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

10/12/06
Date

BY:

Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement

Cynthia E. Tompkins
Cynthia E. Tompkins
Assistant General Counsel

Mark Allen
Mark Allen
Attorney by CET