



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUG 16 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alan W. Weinblatt, Esq.
Weinblatt & Gaylord PLC
Suite 300 East Kellogg Boulevard
St. Paul, Minnesota 55101

RE: MUR 5349

Dear Mr. Weinblatt:

On February 27, 2003, the Federal Election Commission notified your clients, the Minnesota Democratic-Farmer-Labor House Caucus and Paul Rogosheske, as treasurer (the "Committee") 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 the Committee at that time.

Upon further review of the allegations contained in the complaint and information provided by your client, the Commission, on August 4, 2004, found that there is reason to believe the Committee violated 2 U.S.C. §§ 434(a), 441a(f) and 441b and 11 C.F.R. §102.5(a). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

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.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved. If the Committee is interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, and if the Committee agrees with the provisions of the enclosed agreement, please contact this Office to discuss

missing factual information needed on page 4 of the Conciliation Agreement. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, the Committee should respond to this notification as soon as possible.

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 the Committee wishes the matter to be made public.

If you or your client has any questions, please contact Camilla Jackson Jones, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis
Conciliation Agreement

cc: Paul Rogosheske, Treasurer
Minnesota Democratic-Farmer-Labor House Caucus

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Minnesota Democratic-Farmer-Labor House Caucus and Paul Rogosheske, as Treasurer **MUR: 5349**

I. INTRODUCTION

This matter was generated by complaint with the Federal Election Commission filed by the Republican Party of Minnesota. *See* 2 U.S.C. § 437g(a)(1). The complaint alleges that the Minnesota Democratic-Farmer-Labor House Caucus and Paul Rogosheske, as treasurer, (the “Caucus”) failed to timely file disclosure reports with the Commission for the 2002 calendar year. The complaint further alleges that the Caucus and the Minnesota Democratic-Farmer-Labor State Party and Paul Schulte, as treasurer, (the “Party”), made \$231,638 in transfers between the Caucus and the Party in the 2002 calendar year, which may constitute excessive contributions if the two committees are not affiliated.¹ Alternatively, the complaint asserts, if the two committees are affiliated, they may have received excessive contributions from individuals or candidate committees through aggregated contributions. Finally, the Caucus’s late filed disclosure reports for 2002 suggest an additional violation concerning funds transferred between the Caucus’s nonfederal and federal accounts.

The Caucus does not dispute its failure to file disclosure reports during 2002, but claims that it was victimized by a former employee’s failure to file the reports and her subsequent concealment of her actions. The allegation of improper transfers between the Caucus and State

¹ The transfers from the Caucus’s federal account to the Party that are the subject of this Complaint occurred on the following dates: 2/11/02 for \$20,000; 4/5/02 for \$38,000; 5/13/02 for \$12,500; 6/19/02 for \$15,000; 8/21/02 for \$20,000; 9/20/02 for \$26,138.32; 10/7/02 for \$10,000; 10/22/02 for \$30,000; 10/24/02 for \$15,000; 11/3/02 for \$11,000; and 11/19/02 for \$9,000. The Caucus’s Amended 2002 July Quarterly report shows that in addition to these sums, the Caucus also transferred to the Party in the amount of \$10,000 on 5/18/02; thus the total amount transferred to the Party during 2002 was \$241,638.32.

Party has been resolved by evidence that the Caucus and State Party are affiliated, and can make unlimited transfers. As affiliates, however, the Caucus and the State Party share a single contribution limit, which appears to have been violated by the aggregate total of contributions that the two committees received from two individuals. Finally, the Caucus appears to have improperly transferred \$69,200 from its non-federal to its federal account.

II. FACTUAL AND LEGAL ANALYSIS

A. Background

The Minnesota Democratic-Farmer-Labor Party is registered with the Commission as a qualified State Committee of the Democratic Party. The Democratic-Farmer-Labor House Caucus registered with the Commission on August 24, 2000 and is comprised of all members of the Democratic-Farmer-Labor Party that are elected to the State legislature's House of Representatives.

B. Analysis

1. Untimely Disclosure Reporting

From the time it registered with the Commission until February 5, 2002, the Caucus timely filed the appropriate disclosures and reports with the Commission. However, after February 2002 all reporting to the Commission abruptly ceased, notwithstanding numerous non-filer mailgrams inquiring about the missing reports. The lapse in filing resulted in the failure to timely file the April Quarterly, July Quarterly, October Quarterly, Pre-General, Post-General and Year-End Reports for 2002.

The Complaint was filed with the Commission on February 21, 2003. The Caucus filed five of the missing reports on March 3, 2003 and the other two on May 6, 2003.² In its March

² On March 3, 2003 the Caucus filed New Quarterly Receipts and Disbursements reports for April, July and October 2002 and a Year-End Report. The Caucus filed Amended Quarterly Reports for April and July 2002 on June 24, 2003. On May 6, 2003 the Caucus filed its 12-Day General Pre-Election, 30-Day Post-Election and Amended Year-

13, 2003 response to the Complaint, the Caucus admitted, “the appropriate filings have not been made for 2002 activity in our federal account.” *Caucus Response* at 1. The Caucus claimed it discovered that the staff member charged with making such filings “had been telling our staff that she was electronically filing our reports, but in reality she was not making reports and [was] hiding inquiries from the FEC.” *Id.* The Caucus also argued that the effect of the failure to make the appropriate filings with the Commission was mitigated by the fact that it had made the appropriate disclosures in its filings with the State of Minnesota.

Once the late reports were filed with the Commission, the Caucus received numerous Requests for Further Information (“RFAs”) concerning their contents and inquiring about transfers from the Caucus’s non-federal account to its federal account and whether the monies transferred were used for federal activities.³ The Caucus responded to the RFAs by confirming that transfers from its non-federal to its federal account totaling \$69,200 were made in error and had been refunded.⁴

The Caucus was required to submit quarterly, pre- and post-general election and year-end reports in the 2002 calendar year.⁵ In total, the Caucus was required to submit six separate

End reports. On July 10, 2003 the Caucus filed a Second Amended Year-End report. On August 29, 2003 the Caucus filed Second Amended reports for April and July 2002 and filed its First Amended report for October 2002, in addition to its Amended 12-Day General Pre-Election, Amended 30-Day Post-Election and Third Amended Year-End reports.

³ The RFAs requested additional information about transfers from the Caucus’s nonfederal to its federal account totaling \$29,800 and \$21,100, and disclosed in the 2002 April and July Quarterly reports, respectively.

⁴ The RFAs sought information about \$50,900 in transfers, but the Caucus admitted to impermissible transfers totaling \$69,200 in subsequent communications with the Commission.

⁵ In calendar years during which there is a regularly scheduled election, the Act requires the treasurers of all political committees that are not the authorized committees of a particular candidate to file timely quarterly disclosure reports, pre-election and post-general election and year-end disclosure reports for any election in which the committee makes an expenditure on behalf of a candidate. *See* 2 U.S.C. § 434(a)(4)(A). The treasurer must file the quarterly reports no later than the 15th day after the last day of each calendar quarter, the pre-general election report no later than 12 days before the election and the post-general election report within 30 days of the election. *Id.* The quarterly reports must include all receipts and disbursements through the last day of the calendar quarter, the pre-general election reports must include all receipts and disbursements through the 20th day before the election, and the

reports from April 15, 2002 through January 31, 2003. Specifically, the first report the Caucus was required to file was an April Quarterly report on April 15, 2002, followed by a July Quarterly report on July 15, 2002, an October Quarterly report on October 15, 2002, a Pre-General Election report on October 24, 2002, a Post-General Election report on December 5, 2002 and a Year-End report on January 31, 2003. Collectively, these reports should have disclosed all receipts and disbursements of the Caucus, including contributions received by individuals and political committees as well as contributions made by the Caucus to the Party and campaign committees. *See* 2 U.S.C. § 434(a) & (b); 11 C.F.R. § 104.3.

The Caucus did not submit any reports until after the Complaint was filed. In fact, the Caucus filed its reports for the calendar year 2002 on March 3, 2003. The Caucus does not contest the reporting violations alleged in the Complaint and in the Commission's RFAs. The Caucus readily admits that during the relevant time period the Caucus had been receiving inquiries from the FEC but "the appropriate filings [had] not been made for 2002 activity." Caucus Letter to Commission dated March 13, 2003. While the Caucus blames its failure to file proper disclosures and to respond to RFAs on the actions of an allegedly unscrupulous employee, the Caucus and its treasurer failed to exercise proper oversight.⁶ The Caucus's contention that its failure to file the proper disclosures was the fault of a rogue employee does not obviate the fact that the Caucus's treasurer is strictly responsible for certifying and filing the appropriate reports. *See* 11 C.F.R. §§ 102, 104.

post-general election report must include all receipts and disbursements through the 20th day after the election. 2 U.S.C. §§ 434(b)(2) & (4). In addition these reports must disclose the identity of all persons who make contributions to the committee in excess of \$200, as well as the identity of all political or affiliated committees from whom it receives contributions, including the date and amount of such contributions. 2 U.S.C. §§ 434(b)(3)(A)-(B) & (D).

⁶ The Caucus asserts that it immediately terminated the staff member responsible for failing to file the reports once it discovered the omissions and replaced her with new staff, including a contract CPA. *See* Caucus Email to the Commission dated August 29, 2003. However, these actions only took place after the Complaint was filed.

Therefore, there is reason to believe that the Caucus and Paul Rogosheske, as treasurer, violated 2 U.S.C. § 434(a) by failing to file its April, July and October Quarterly, Pre-General Election and Year-End reports for 2002 within the required time periods.⁷

2. Transfers Between Affiliated Committees

The Complaint alleges that the Caucus does not qualify as either a state political party or a subordinate or affiliate of the DFL State Party “because as an FEC-registered committee, [it] can only qualify as a nonconnected political committee under 11 C.F.R. §100.5.” *Complaint* at 5. The Complainant bases this allegation “on information and belief that the Caucus is not under the control for direction of the DFL State Party” and “on information and belief that the DFL State Caucus is not created by the Constitution or Bylaws of the DFL State Party, and the DFL State Party does not otherwise exercise direct or indirect control over the DFL House Caucus in any manner.” *Id.* at 4.⁸

In its Statement of Organization, filed by the Caucus on August 23, 2000, and again on July 8, 2003, the Caucus registered itself as a subordinate committee of the DFL Party and expressly listed its connection or relationship to the Party as that of “affiliate.” Moreover, there is a regulatory presumption of affiliation between a State party committee and subordinate party committees. *See* 11 C.F.R. § 110.3(b)(3). Each committee has the opportunity to rebut this presumption by demonstrating that it has not “received funds from any other political committee

⁷ In 2003, the Commission resolved the late filing of the Post-General Election report through the Administrative Fines program. The Commission found reason to believe that the Caucus had violated the Act and issued a civil money penalty of \$4500, which the Caucus paid on June 11, 2003.

⁸ The Act defines a “party committee” as “a political committee which represents a political party and is part of the official party structure at the national, State or local level.” 11 C.F.R. § 100.5(e)(4). The “state committee” is the organization that by virtue of the by-laws of the political party or by operation of state law is responsible for the day-to-day operations of the political party at the State level, and the “subordinate committee” is the entity that is directly or indirectly established, financed, maintained or controlled by the State, district or local committee and is responsible for the operations of the political party “at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State.” 11 C.F.R. §§ 100.14(a) & (c). “Affiliated committees” are those that are “established, financed, maintained or controlled” by the same person or group of persons. 11 C.F.R. § 100.5(g)(2).

established, financed maintained, or controlled by any party unit” and “does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.” 11 C.F.R. §110.3(b)(3)(i)-(ii).⁹

The Commission determined that there is substantial evidence that the Caucus and the Party are affiliated. First, the Caucus registered as a subordinate committee of the Party and has consistently identified itself as a Party “affiliate.”¹⁰ Membership in the Caucus appears to be based on an individual’s membership in the Party, as the House Caucus is comprised of all members of the Party that are elected to the State legislature’s House of Representatives. Further, the Party’s website includes a direct link for accessing web pages for the DFL House Caucus and the Caucus’s Campaign. See <http://www.dfl.org>. Moreover, both committees have made regular and consistent transfers to one another. For example, during the 2002 calendar year the Caucus made eleven transfers to the Party for a total of \$231,638.32 (in fact it is these transfers that are partially at issue in this Complaint) and the Party made three transfers to the

⁹ In ascertaining whether committees are affiliated, the Commission considers a number of circumstantial factors in the context of the overall relationship of the committees to determine if the presence of any factor or factors is evidence of affiliation. See 11 C.F.R. § 100.5(g)(4)(ii). Such factors include, but are not limited to, whether the allegedly affiliated committees have “common overlapping officers or employees” or “common overlapping membership...which indicates a formal or ongoing relationship;” whether a committee “provides funds or goods in a significant amount or on an ongoing basis” to another committee, such as through direct or indirect payments for administrative, fundraising or other costs; whether a committee “arranges for funds in a significant amount or on an ongoing basis to be provided to” the allegedly affiliated committee; whether the “committee or its agent had an active or significant role in the formation” of the allegedly affiliated committee; and whether the allegedly affiliated “committees have similar patterns of contributions or contributors which indicate a formal or ongoing relationship.” See 11 C.F.R. §§ 100.5(g)(4)(ii)(D-E, G-J). The Commission may also consider other factors relevant to its inquiry. See 11 C.F.R. § 100.5(g)(4)(ii) (stating “[s]uch factors include, *but are not limited to* ...” the enumerated factors) (emphasis added); see also AO 2000-28 (“The list of ten circumstantial factors set forth in 11 C.F.R. §100.3(a)(3)(ii) is not an exclusive list, and other factors may be considered.”) (citing AOs 1999-39 and 1995-36).

¹⁰ The Party and the Caucus are located at the same address, even though the committees maintain separate treasurers and telephone numbers. *Complaint* at 4. When the Caucus first registered with the Commission on August 23, 2000, both the Caucus and the Party listed their address as 352 Wacouta Street, St. Paul, MN 55101. Currently both committees use the address of 255 E. Plato Blvd., St. Paul, MN 55107.

Caucus for a total of \$39,000.¹¹ The Caucus and the Party also have similar patterns of making contributions to third parties and receive contributions from several of the same donors.

Accordingly, the Caucus and the Party are affiliated committees, as set forth in 11 C.F.R. § 100.5. Therefore, there is reason to believe that the Caucus violated 2 U.S.C. § 441a in connection with transfers from the Caucus to the Party.

3. Excessive Contributions

The Complaint also raises the question of whether the Caucus and Party, as affiliated committees, accepted contributions in the 2002 calendar year, which when aggregated, exceeded their combined contribution limit, in violation of 2 U.S.C. § 441a(f). *Complaint* at 5. A review of the Receipts and Disbursements reports for the 2002 calendar year shows that the Caucus received donations from an individual contributor, Vance K. Opperman, which exceeded the committees' shared contribution limit by \$5000, in violation of 2 U.S.C. §§ 441a(a)(1) and 441a(f). To date, this excessive contribution has not been refunded.

Thus, there is reason to believe that the Caucus and its treasurer accepted contributions in excess of the limits set forth in 2 U.S.C. § 441a(a)(1), in violation of 2 U.S.C. § 441a(f).

4. Impermissible Transfers

The Act provides that state, district and local party committees that finance political activity in connection with both federal and non-federal elections must establish separate accounts for their federal and non-federal activities. *See* 11 C.F.R. § 102.5(a). Disbursements, contributions, expenditures and transfers made in connection with any federal election shall only be made from the committee's federal account and "no transfers may be made to such federal

¹¹ In fact, with the exception of a donation of \$250 from Voters Organized to Empower PAC, the Party was the only multicandidate committee to make a contribution to the Caucus in 2002.

account from any other accounts maintained by such organization for the purpose of financing activity in connection with non-federal elections.” 11 C.F.R. § 102.5(a)(1)(i).¹²

Additionally, the Act prohibits corporations and labor organizations from making contributions in connection with federal elections and prohibits political committees from knowingly accepting such contributions. 2 U.S.C. § 441b(a). A committee with federal and non-federal accounts, which appears to have violated 11 C.F.R. § 102.5 by disbursing funds from its non-federal account in connection with a federal election, may also have violated 2 U.S.C. § 441b if the non-federal account contained corporate or labor organization funds at the time of disbursement.

The Commission initially identified and inquired about a total of \$50,900 in apparently impermissible transfers from the Caucus’s non-federal account to its federal account.¹³ Despite repeated requests, the Caucus did not respond to the Commission’s warnings about the transfers until June 24, 2003 (after the Complaint had been filed), at which point the Caucus simply claimed to have identified the source of the confusion, but made no effort to remedy the problem.

In its August 29, 2003 email correspondence to the Commission, the Caucus stated that an internal audit had identified a total of \$69,200 in transfers from by the Caucus’s state account

¹² The regulation further directs that administrative expenses for political committees shall be allocated pursuant to 11 C.F.R. § 106.7, which requires, “State, district and local party committees that are political committees that have established separate Federal and non-Federal accounts...shall allocate expenses between those accounts.” 11 C.F.R. § 106.7(b).

¹³ The Commission had repeatedly warned the Caucus that transfers between its federal and non-federal accounts appeared to be in violation of 11 C.F.R. §§ 102.5(a) and 106.7 and requested that the Caucus immediately return the funds to the appropriate account and submit documentation of its corrective action. See RFAs dated April 16, 2003, May 16, 2003 and September 17, 2003.

to its federal account, and averred, "The entire sum of the transfers (\$69,200) has been returned from the Federal Account to the State Account to fully repay those transfers."¹⁴

Therefore, there is reason to believe the Caucus and Paul Rogosheke, as treasurer, violated 11 C.F.R. § 102.5(a)(1)(i) when it made the transfers totaling \$69,200 from its non-federal to its federal account. Moreover, because this transaction may have led to the use of corporate or union funds in a federal election, there is reason to believe that the Caucus and its treasurer violated 2 U.S.C. § 441b(a).

¹⁴ Through a review of the Caucus's disclosure reports the Commission has been able to confirm \$64,100 in impermissible transfers from the Caucus's nonfederal to its federal account; however, the Caucus has admitted to making a total of \$69,200 in impermissible transfers.