



FEDERAL ELECTION COMMISSION

Washington, DC 20463

JUL 8 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James W. Treffinger

c/o FPC Schuylkill
P.O. Box 700
Minersville, PA 17954

RE: MUR 5388
James W. Treffinger

Dear Mr. Treffinger:

On June 8, 2004, the Federal Election Commission found that there is reason to believe you, James W. Treffinger, knowingly and willfully violated 2 U.S.C. § 441a(f), a provision 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 findings, 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. 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.

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

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, 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.

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 Renee Salzmann, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: James W. Treffinger

MUR: 5388

I. GENERATION OF 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. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

This matter involves the acceptance of excessive contributions by James W. Treffinger related to his 2000 campaign for U.S. Senate. Mr. Treffinger's committee, Jim Treffinger for Senate, Inc. ("Committee"), received \$227,080 in contributions designated for the 2000 general election. On June 6, 2000, Mr. Treffinger lost the primary election for U.S. Senate.

The Act provides that an individual or political committee may not make a contribution to a candidate in excess of \$1,000 per-election.¹ 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

Candidates and political committees are prohibited from knowingly accepting contributions in excess of the limitations in section 441a. See 2 U.S.C. § 441a(f).

The Act also addresses violations of law that are knowing and willful. See 2 U.S.C.

§ 437g(a)(5)(B). 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). See also *Federal Election Commission v. John A. Dramesi*

¹ The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by or subsequent to BCRA.

for Congress Committee, 640 F. Supp. 985, 987 (D.N.J. 1986) (knowing and willful standard requires knowledge that one is violating the law).

The Act allows candidates to accept contributions for the general election prior to the primary election, but an acceptable accounting method must be employed to distinguish between primary and general election contributions. 11 C.F.R. § 102.9(e); AO 1980-122, at 1-2. If the candidate does not win the primary election, all general election contributions must be refunded.

AO 1986-17 at 5.

After Mr. Treffinger lost the 2000 primary election, the contributions designated for the 2000 general election became excessive because Mr. Treffinger was no longer eligible to be a candidate in that election. See 11 C.F.R. §§ 102.9(e)(3), 110.1(b); AO 1992-15 at 2-3; AO 1986-17 at 3-4. The general election contributions had to be reattributed, redesignated, or refunded within sixty days of Mr. Treffinger's primary loss on June 6, 2000. 11 C.F.R. § 102.9(e)(3); AO 1992-15 at 3. There is no evidence that this occurred.

The Committee also received \$10,550 in excessive 2000 primary election contributions, originating from thirteen individuals who had already contributed \$1,000 for the 2000 primary election. There is no evidence that the excessive contributions were reattributed, redesignated, or refunded within sixty days of receipt as required by 11 C.F.R. § 110.1(b)(5).

On July 25, 2003, the Commission issued Advisory Opinion 2003-17 to Mr. Treffinger concerning the Committee's ability to pay his legal fees. In that Opinion, the Commission concluded that Mr. Treffinger, who had pled guilty to two counts of a 20-count Federal criminal indictment concerning actions he took as County Executive of Essex County, New Jersey, could use the Committee's funds to pay for legal fees to defend against those portions of the charges

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that arose directly from his campaign activity. AO 2003-17 at 6. However, the Commission warned that "the Committee accepted contributions for the general election campaigns in 2000 and 2002," and "[t]o the extent that the Committee must still make refunds to its general election contributors under 11 C.F.R. § 102.9(e)(3), any funds needed for this purpose must not be used to pay the legal expenses permitted by this advisory opinion." *Id.* at n.6.

Beginning in August 2003, six significant payments were made to law firms that represented Mr. Treffinger in his May 2003 court appearance and October 2003 criminal sentencing, presumably for legal expenses of the criminal case. Jim Treffinger for Senate, Inc. October Quarterly Report (Oct. 21, 2003); Jim Treffinger for Senate, Inc. Year End Report (Feb. 2, 2004); Jim Treffinger for Senate, Inc. April Quarterly Report (April 20, 2004). At the time of the Advisory Opinion, the Committee's refund obligation already exceeded its cash on hand. Thus, contrary to the explicit language of the Opinion, funds needed to meet the Committee's refund obligation were used to pay Mr. Treffinger's legal fees.

After being put on notice of the requirement to refund the excessive contributions, Mr. Treffinger knowingly and willfully accepted the 2000 contributions when he directed payments to his attorneys, totaling \$115,394.92, before all excessive contributions were refunded.² See 11 C.F.R. § 103.3(b); MUR 4547 (Clinton/Gore '96) (Commission found reason to believe that the recipient committee violated 2 U.S.C. § 441a(f) and 441f when it learned of illegal contributions and failed to refund them under 11 C.F.R. § 103.3(b)(2)).

Therefore, there is reason to believe James W. Treffinger knowingly and willfully violated 2 U.S.C. § 441a(f).

² Jim Treffinger for Senate, Inc. October Quarterly Report (Oct. 21, 2003); Jim Treffinger for Senate, Inc. Year End Report (Feb. 2, 2004); Jim Treffinger for Senate, Inc. April Quarterly Report (April 20, 2004).