



FEDERAL ELECTION COMMISSION

Washington, DC 20463

JUL 8 2004

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert A. Mathers
100 Forest Avenue
Verona, NJ 07044

RE: MUR 5388
Robert A. Mathers

Dear Mr. Mathers:

On June 8, 2004, the Federal Election Commission found that there is reason to believe you, Robert A. Mathers, knowingly and willfully violated 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. § 102.9(e), a provision of the Commission's Regulations. 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 demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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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 Salzmänn, 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: Robert A. Mathers

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 and by a complaint filed with the Commission by Jay Hochberg. See 2 U.S.C. § 437g(a)(1), (2).

II. FACTUAL AND LEGAL ANALYSIS

This matter involves the acceptance of excessive contributions by the Jim Treffinger for Senate, Inc. committee ("Committee") and Robert A. Mathers, as treasurer, (collectively the "Respondents"). The Committee accepted contributions for both the 2000 primary election and the 2000 general election after Mr. Treffinger filed his statement of candidacy for the 2000 primary election on October 1, 1999. The 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).

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.

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 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 the Committee to accept contributions for the general election prior to the primary election, but the Committee must employ an acceptable accounting method to distinguish between primary and general election contributions. 11 C.F.R. § 102.9(e); AO 1980-122, at 1-2. While general election contributions may be used to make advance payments for general election purposes, if the candidate does not win the primary election, the committee must have enough cash on hand to refund all general election contributions, including those already used for such payments. 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.

When a committee accepts excessive contributions, the treasurer has sixty days from the date of receipt to obtain reattribution of the contributions to another contributor in accordance with 11 C.F.R. § 110.1(k)(3), to obtain redesignation of the contributions to another election in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5), or to refund the contributions. 2 U.S.C. § 441a(f); 11 C.F.R. § 102.9(e); AO 1992-15 at 2; AO 1988-41 at 2; *see also* 11 C.F.R. §§ 110.1(b)(3), 110.2(b)(3), 103.3(b)(3). For a redesignation to be valid, a committee must have

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notified contributors that they have a right to a full refund or may choose to redesignate their contributions; the contributor must affirmatively act to redesignate the contribution by providing a written redesignation within the sixty-day period. See 11 C.F.R. § 110.1(b)(5)(ii)(A). Once the general election contributions became excessive after Mr. Treffinger lost the primary, the Committee had sixty days from the date of the primary, June 6, 2000, to reattribute, redesignate, or refund the contributions. 11 C.F.R. § 102.9(e)(3); AO 1992-15 at 3.

Thirty-four days after the primary election, the Committee's treasurer contacted the Commission's Reports Analysis Division ("RAD") about the 2000 general election contributions it had already collected, seeking to apply them to the 2002 primary election. A RAD analyst informed the treasurer that any such redesignation must occur within sixty days of the primary election. Five days after this conversation, the Committee sent the Commission a letter describing its intent to obtain redesignations.

Despite the Committee's assertion of its intent, there is no evidence that redesignation occurred. To the contrary, there is evidence that it did not. Four pieces of evidence indicate that a proper redesignation did not take place. First, the Committee notified the Commission in 2002 that it had used \$50,000 of the \$227,080 to pay for 2000 primary election expenses. Since the Committee had already spent this money on 2000 primary election expenses, it could not redesignate the \$50,000 for the 2002 primary election. Next, Mr. Hochberg's allegation that he did not receive a refund of his 2000 general election contributions without mention of an offer of redesignation or refund from the Committee, strongly suggests the Committee never notified him of his right to a refund or need to redesignate. Third, the Committee gave nine contributors refunds of their 2000 general election contributions months or years after the original sixty-day

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period for redesignation ended, so these refunds were not in response to timely redesignation notices. In addition, if the Committee had received permission to redesignate the contributions within the original sixty-day period, then the contributors could not receive a later refund. See 11 C.F.R. § 110.1(b)(5). Finally, the Committee failed to amend its reports, as required, to show that redesignation took place.

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 Committee reattributed, redesignated, or refunded the excessive contributions within sixty days of receipt as required by 11 C.F.R. § 110.1(b)(5).

The Committee claimed that the excessive 2000 primary election contributions were actually 2000 general election contributions that had been misreported as 2000 primary election contributions due to a data entry problem. However, the Committee failed to correct the asserted reporting problem by filing an amended Schedule A. Moreover, eight excessive contributions from seven contributors totaling \$6,050 could not have been properly designated for the 2000 general election because those seven contributors had already "maxed out" with respect to that election. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 110.1(b)(1). Moreover, there is no affirmative evidence that the Committee ever reattributed or redesignated the remaining \$4,500. There is evidence that the Committee refunded one of the remaining contributions, in the amount of \$1,000, two years after the 2000 primary election.

The Committee's involvement with the 2000 general election contributions continued into 2002 and 2003 with its new treasurer. Mr. Mathers became the Committee's treasurer in March 2002, and in that same month RAD contacted him to discuss the excessive 2000 general

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election contributions. After their discussion, RAD faxed Mr. Mathers documentation of the excessive contributions. In June 2002, Mr. Mathers met with RAD to discuss the steps he needed to take to deal with both the 2000 and 2002 general election contributions since Treffinger had dropped out of the 2002 primary race in late April. RAD again gave Mr. Mathers documentation of the outstanding 2000 general election contributions. Despite properly refunding all of the 2002 general election contributions, Mr. Mathers did not resolve the problem with the 2000 general election contributions. The final communication between RAD and Mr. Mathers took place in September 2002 when Mr. Mathers verified that he refunded a small portion of the excessive 2000 general election contributions during 2002.

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 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 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, the Committee made six significant payments 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.

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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). Mr. Mathers

was the Committee's treasurer when the Commission issued the Committee its Advisory Opinion and at the time of the payments.²

The Commission's regulations required Mr. Mathers to refund the excessive 2000 general election contributions. 11 C.F.R. § 102.9(e). Specifically, "[t]he treasurer of a political committee . . . shall fulfill all recordkeeping duties as set forth" in section 102.9(e). *Id.*

If a candidate is not a candidate in the general election, any contributions made for the general election shall be refunded to the contributors, redesignated in accordance with 11 CFR 110.1(b)(5) or 110.2(b)(5), or reattributed in accordance with 11 CFR 110.1(k)(3), as appropriate.

11 C.F.R. § 102.9(e)(3). Thus, it is the treasurer's personal responsibility to take all actions required by section 102.9(e)(3) if the candidate fails to qualify for the general election. The Commission's Advisory Opinion explicitly directed attention to this regulation, but rather than complying with it, Mr. Mathers authorized the payment of \$115,394.92 in legal expenses. 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). Thus, Mr. Mathers knowingly and willfully violated 11 C.F.R. § 102.9(e).

Through his interaction with RAD, Mr. Mathers knew of his obligation to refund the excessive 2000 contributions not later than June 2002, but he did not do so. To the contrary, despite the explicit warning in the Advisory Opinion, he used the illegal contributions to pay for

² Although it was Mr. Treffinger's counsel who requested and received the Advisory Opinion on behalf of Mr. Treffinger regarding the Committee's funds, it was Mr. Mathers who, once the Advisory Opinion was issued, began authorizing payments.

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Treffinger's legal fees. *See* 11 C.F.R. § 103.3(b); MUR 4547 (Clinton/Gore '96) (Commission found liability under 2 U.S.C. §§ 441a(f) and 441f when, upon learning that contributions were illegal, the contributions were not refunded as required by 11 C.F.R. § 103.3(b)(2)). Thus, Mr. Mathers knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting excessive 2000 contributions.

Therefore, there is reason to believe Robert A. Mathers knowingly and willfully violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.9(e).

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