



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 30 2004

Michael L. Retzer, Treasurer
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 5390

Dear Mr. Retzer:

On September 14, 2004, the Federal Election Commission found that there is reason to believe the Republican National Committee and you, as treasurer, violated 2 U.S.C. § 441b, 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 finding, 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 your 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.

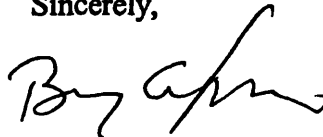
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other 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 investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**
2 **FACTUAL AND LEGAL ANALYSIS**
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4

5 **RESPONDENT:** Republican National Committee and MUR 5390
6 Michael L. Retzer, as treasurer
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8 **I. INTRODUCTION**
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10 This matter was generated by the Federal Election Commission ("Commission")
11 pursuant to information ascertained in the normal course of carrying out its supervisory
12 responsibilities.

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 In October 2002, Freddie Mac reportedly contributed \$150,000 to the Republican
15 Governor's Association ("RGA"). At that time, the RGA was a part of the Republican
16 National Committee. The RGA reportedly misreported the contribution as a personal
17 contribution from Mr. Delk, and Mr. Delk and Freddie Mac's outside counsel became
18 aware of the misreporting "a number of months later." Freddie Mac's counsel reportedly
19 contacted the RGA and learned that, in addition to the misreporting of the source of the
20 contribution, the RGA had erroneously deposited the contribution into a non-building
21 fund account. In June 2003, the RGA reportedly refunded the contribution to Freddie
22 Mac.

23 The Act prohibits "any corporation organized by authority of any law of
24 Congress" from making "a contribution or expenditure in connection with any election to
25 any political office." 2 U.S.C. § 441b(a). The Act also prohibits "any candidate, political
26 committee, or other person" from knowingly accepting or receiving "any contribution
27 prohibited by this section." *Id.* For purposes of Section 441b, the terms "contribution"
28 and "expenditure" include "any direct or indirect payment, distribution, loan, advance,

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1 deposit, or gift of money, or any services, or anything of value . . . to any candidate,
2 campaign committee, or political party or organization, in connection with any election to
3 any of the offices referred to in" Section 441b.

4 Importantly, the Act excludes from the definition of contribution:

5 any gift, subscription, loan, advance, or deposit of money or anything of
6 value to a national or a State committee of a political party *specifically*
7 *designated* to defray any cost for construction or purchase of any office
8 facility not acquired for the purpose of influencing the election of any
9 candidate in any particular election for Federal office.

10
11 2 U.S.C. § 431(8)(B)(viii) (emphasis added). This is the so-called "building fund
12 exemption." *See, e.g.,* Advisory Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14,
13 and 1983-8. Funds falling under the building fund exemption are exempt from the
14 prohibitions of 2 U.S.C. § 441b. *See* 11 C.F.R. § 114.1(a)(2)(ix); *see also* Advisory
15 Opinions 2001-12, 2001-1, 1998-8, 1998-7, 1997-14, 1983-8, and 1979-17. Therefore,
16 national and state committees of political parties may accept donations covered by the
17 building fund exemption from corporations, including those like Freddie Mac, which are
18 organized by authority of any law of Congress.¹ *See id.*

19 Reportedly, it was Freddie Mac intention to make a permissible building fund
20 contribution. Mr. Delk reportedly stated that the \$150,000 contribution was part of a
21 single \$250,000 commitment of support that he made to the RGA on behalf of Freddie
22 Mac; the other \$100,000 had been contributed by Freddie Mac in March 2002 and was
23 properly deposited by the RGA into the building fund account. Mr. Delk further stated
24 that he communicated to the RGA, through Wayne Berman, the Honorary Finance

¹ The Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81 (2002), which took effect November 6, 2000, just days after Freddie Mac's \$150,000 contribution, removed the building fund exemption for national party committees.

1 Chairman of the RGA, his intention that the contributions were to be deposited into the
2 building fund account.

3 Significantly, Freddie Mac reportedly had an internal procedure, which addressed
4 building fund contributions and was established in 1994 to ensure compliance with the
5 Act. The procedure provided for "a cover letter that notifies the recipient that the funds
6 are to be used only for building fund purposes in accordance with" the Act. Further, the
7 procedure established a "designated compliance officer responsible for reviewing
8 requests under" the corporate procedure to ensure compliance with the Act.²

9 Available documentation related to the two Freddie Mac contributions reflects
10 that for the first contribution of \$100,000, which was made payable to the "Republican
11 Governors Association Eisenhower Building Fund," a copy of the required cover letter
12 notifying the recipient that the funds were to be used only for building fund purposes
13 accompanied the contribution. In contrast, the documentation for the \$150,000
14 contribution, which was made payable only to the "Republican Governors Assn," did not
15 include a copy of the required cover letter.

16 An affidavit sworn to by Wayne Berman states that during a telephone
17 conversation in which Mr. Delk agreed to seek a contribution of \$250,000 from Freddie
18 Mac to support the RGA, Mr. Delk reminded him that a Freddie Mac contribution was
19 required to be used to support the RNC building fund. Mr. Berman further avers that he
20 received the first installment of the Freddie Mac contribution from Mr. Delk with a letter

² Freddie Mac's corporate procedure does not name a "designated compliance officer," but instead states that "the Senior Deputy General Counsel, Corporate Affairs, or his/her designee, shall review the request [for building fund expenditures] to determine whether it complies with the Act." However, documents submitted by Freddie Mac suggest that Bruce S. Oliver, Freddie Mac's Associate General Counsel for Mortgage Law, served in this capacity with respect to Freddie Mac's earlier \$100,000 contribution to the RGA. Specifically, Freddie Mac submitted a copy of the required cover letter with respect to its earlier \$100,000 contribution, which contained a statement that the corporation's procedure was followed. The statement was signed by Mr. Oliver.

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1 instructing the RGA to apply the contribution to the appropriate accounts, and that he
2 forwarded the check and the letter to Susan Nelson, the RGA Finance Director, consistent
3 with his normal practice. Mr. Berman further states that in October 2002, Mr. Delk gave
4 him a Freddie Mac check for the remainder of the contribution; that the check was
5 accompanied by a letter with instructions exactly like the letter that accompanied the first
6 portion of the contribution; and that he forwarded the check and the letter to Ms. Nelson.
7 Finally, Mr. Berman states that after handing him the contribution, Mr. Delk reiterated
8 that the contribution was to support the RNC building fund only.

9 While Mr. Berman states that the \$150,000 was specifically designated in writing
10 to be for building fund purposes, a copy of the cover letter is not contained in the record.
11 Given that -- (1) the \$150,000 contribution check was not specifically designated, on its
12 face, for building fund purposes, in contrast to the first installment; (2) a copy of the
13 cover letter required pursuant to corporate procedure is not contained in the record; and
14 (3) the record does not contain information regarding whether Freddie Mac followed its
15 corporate procedure with respect to the payment -- on balance, the available information
16 supports a finding that the \$150,000 may have been outside of the building fund
17 exemption. Accordingly, there is reason to believe that the Republican National
18 Committee and Michael L. Retzer, as treasurer, violated 2 U.S.C. § 441b by knowingly
19 receiving a prohibited contribution.

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