FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

MAY 2 0 2005

Dean Proctor
[redacted]
Hickory, NC 28601-6051

RE: MUR 5496
Dean Proctor

Dear Mr. Proctor:

On May 5, 2005, the Federal Election Commission found that there is reason to believe that you knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information. Please note that this matter has been merged with MUR 5507.

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 and proceed with conciliation..

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

[redacted]

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.

[redacted]

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 Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FACTUAL AND LEGAL ANALYSIS

MUR 5496

RESPONDENT: Dean Proctor

I. INTRODUCTION

The Commission received two complaints questioning the source and legality of a number of loans the candidate, Lawrence David Huffman, made to the Huffman for Congress committee ("the Committee") during the 2004 election cycle.[1] According to the complaints, the candidate obtained over $250,000 in bank loans and reported the source of the money as personal funds. However, according to the allegations, the candidate did not possess enough assets to make those loans.

At about the same time the complaints were submitted, the Committee, through its counsel, made a *sua sponte* submission disclosing the details of a $100,000 loan the candidate obtained through Dean Proctor, the campaign's Finance Chairman.[2] Based on all of the information available in this matter, and for the reasons set forth below, the Commission finds

[1] Huffman was a candidate for the U.S. House of Representatives from the 10th District of North Carolina during the 2004 primary election. Huffman received 35% of the vote in the primary election, but needed 40% to avoid a runoff. Heather Howard, *Recount Confirms McHenry Winner; GOP Candidate for Congressional Seat Says He Hopes to Unite Party*, CHARLOTTE OBSERVER, August 26, 2004, at 1B. On August 17, 2004, he lost the runoff election by 85 votes to Patrick McHenry. *Id.* This was Huffman's first federal campaign. Previously, Huffman served as Sheriff of Catawba County, North Carolina, an elected position, for 22 years. Jim Morrill, *Lawmakers Weigh in on 10th Race; Group Backed by GOP Officials Runs Ad Blasting 3 Candidates in Primary*, CHARLOTTE OBSERVER, July 17, 2004, at 1B. Huffman's three opposing candidates in the primary election submitted one of the complaints in this matter.

[2] Counsel for the Committee contacted the Commission's Office of General Counsel on July 20, 2004 and then met with staff on July 30, 2004. The candidate, Dean Proctor, and Jamie Parsons, the campaign chairman, also attended the meeting. The *sua sponte* documents were submitted to the Commission on August 9, 2004.

[redacted]

reason to believe that Dean Proctor knowingly and willfully made an excessive contribution to Huffman for Congress and knowingly and willfully made a contribution in the name of another in violation of 2 U.S.C. §§ 441a(a)(1) and 441f.

II. FACTUAL AND LEGAL ANALYSIS

In a Chronology of Events ("Chronology") the Committee submitted as part of its *sua sponte* submission, the Committee specifically discusses the June 17, 2004 loan in the amount of $100,000. According to the candidate, in June 2004, he planned to obtain an additional loan to use in connection with his federal campaign and discussed the matter with Dean Proctor, the Committee's Finance Chairman. Proctor approached a number of banks about making a loan to the candidate. Proctor avers that "as a matter of convenience" because the candidate was traveling out of town at the time and because he "was asked by the campaign to expedite the loan to David Huffman because of the increasing expenses of the campaign," he decided to draw on his own personal credit line with Branch Banking and Trust Company ("BB&T") and provide those funds to the campaign. His intention, he avers, was that when the candidate returned, he and BB&T would "execute the paperwork to make the loan directly to [the candidate]." Proctor withdrew $100,000 from his personal line of credit, endorsed the check made out to him, and gave the check to the candidate, who then deposited the funds into his personal bank account. The candidate then wrote a check for $100,000 to the Committee from his personal bank account, which the Committee subsequently recorded as a loan from the candidate in its 2004 July Quarterly Report. When it initially reported the loan, the Committee did not disclose that Proctor was the source of the funds.

Shortly after the Committee filed its 2004 July Quarterly Report with the Commission, questions were raised in the press about the candidate's loans to his campaign. *See* Morrill,

supra note 1, at 1B. According to Respondents, on July 17, 2004, the same date that a news account concerning the loans appeared in a local paper, Gaye Watts, a friend of Proctor's who was also the Finance Director for a rival candidate, went to Proctor's house to discuss the candidate's loans. Proctor states that he described to her "the manner in which the [June 17] loan had been obtained for the campaign." At that point, according to Proctor, Watts told him that the transaction was illegal. Upon learning of the illegality, Proctor says he immediately contacted others involved with the campaign's finances and discussed the matter with them. They also contacted an attorney who confirmed the impropriety of the arrangement. Upon receiving such confirmation, Proctor, the candidate and the Committee assert they immediately took steps to reverse the transaction.

On July 19, 2004, the candidate cashed the certificate of deposit that was previously used as collateral for a March 30, 2004 loan and which now held the proceeds of a June 30, 2004 renewal loan, and used the proceeds to repay Proctor. According to the candidate, his intent was to unwind the transaction and correct any mistakes. Since the certificate of deposit had been intended to be used by the campaign, when the candidate cashed the certificate of deposit, he asked People's State Bank to provide a cashier's check to "Huffman for Congress" instead of payable to the candidate himself. Upon receipt of the cashier's check, the Committee then produced a check in the amount of $100,000 payable to the candidate in order to repay him for the June 17 loan that had been reported as being from the candidate's personal funds but was really from Proctor. The candidate used that $100,000 payment from the Committee to repay Proctor, who then repaid his own line of credit.

The Committee reported the receipt of the funds from the certificate of deposit and reported that it made a $100,000 disbursement to the candidate on July 19, 2004. Both

transactions appeared in the Committee's Pre-Runoff Report. In addition, the Committee amended its 2004 July Quarterly Report with respect to the June 17 loan by adding Proctor as an endorser/guarantor on the corresponding Schedule C-1. 11 C.F.R. § 104.3(d). Then, because the Committee paid it off in July, the June 17 loan no longer appeared in subsequent disclosure reports to the Commission.

Proctor exceeded the Act's contribution limits when he drew $100,000 on his line of credit and then provided those funds to the candidate for use in his federal campaign. 2 U.S.C. § 441a(a). A loan is considered a contribution under the Act and thus, cannot exceed the contribution limits. 11 C.F.R. § 100.52. Further, loans endorsed or guaranteed by persons, other than a bank or a spouse, are also considered contributions under the Act. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. §§ 100.52(a) and (b)(3). According to Commission records, Proctor had contributed $4,000 to the Huffman campaign, distributed among the primary and runoff elections. Therefore, any additional funds provided by Proctor to the candidate or the Committee would exceed the Act's contribution limits. Likewise, any loan that Proctor made or guaranteed for the candidate would also be considered a contribution and could not exceed the limits. The June 17 loan that Proctor obtained on behalf of the candidate exceeded the Act's limits.

Moreover, Proctor provided the funds to the candidate, who acted as an intermediary, and provided them to the campaign in his own name. Because a loan is a contribution, Proctor made a contribution in the name of another through the June 17 transaction. Accordingly, there is reason to believe that Dean Proctor violated 2 U.S.C. §§ 441a(a)(1) and 441f.

The information available at this time provides reason to investigate whether Proctor's excessive contribution and contribution in the name of another were knowing and willful. 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). 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. H 3778 (daily ed. May 3, 1976); *see also Fed. Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). The evidence does not have to show that a respondent "had specific knowledge of the regulations" or "conclusively demonstrate" a respondent's "state of mind," if there are facts and circumstances from which a reasonable inference can be made that the respondent knew his or her conduct was illegal. *Id.* at 213–15. An inference of a knowing and willful violation can be drawn from an "elaborate scheme [to] disguis[e]." *Id.*

Proctor avers that he did not attempt to hide the facts of the illegal loan, but rather was open in discussing the details of the loan with an opposing candidate's Finance Director. If it occurred as he describes it, Proctor's discussion with Ms. Watts would not be consistent with the actions of a person who was trying to conceal a 441f scheme. Indeed, Proctor asserts that until she told him, he did not know that the transaction was illegal. Further, upon discovery of the illegality both Proctor and the candidate appear to have immediately taken steps to rectify the situation.

However, Proctor's account remains to be verified. No reference to his conversation with Watts appears anywhere in the complaint filed by the opposing candidates. *See* Complaint dated August 3, 2004. One might think that if an opposing campaign knew of Proctor's admission that he was the source of the funds, it would have referred to the admission in the complaint. Moreover, the Committee has offered no affidavit by Watts or any other similar corroboration of

this portion of Proctor's account. In addition, there are inconsistencies between the version of events Proctor offered at his meeting with staff and the version in the written *sua sponte* materials, as well as between each of those versions and extrinsic facts. At the July 30 meeting with staff, Proctor indicated that the Committee did not immediately need the proceeds of the June 17 loan, but that there was a desire to obtain the loan quickly in order to make the Committee's financial position, as reflected in its cash on hand, look stronger at the time of its next disclosure report. In the Committee's written submission, Proctor indicates that there was a desire to obtain the loan quickly "because of the increasing expenses of the campaign." These rationales are potentially at odds with each other. Moreover, if the former justification was the case, it is unclear why, with the close of books date for the next report still 13 days away, the Committee could not wait for Huffman to return from out of town to obtain the loan himself; and if the latter justification was the case, it is unclear why the Committee could not simply draw on the $100,000 Huffman had on deposit at People's State Bank for precisely such a contingency.[3]

In another potential inconsistency, Proctor stated in the July 30 meeting, and local media accounts refer to Huffman as saying, that one of the earlier loans was borrowed against Huffman's retirement. *See* Andrew Mackie, *High Stakes; Candidates Ante up $1.4 Million of Their Own Money in Republican Primary,* HICKORY DAILY RECORD, July 18, 2004. However, none of the reports filed by the Committee and none of the *sua sponte* documents show any loan either borrowed from or collateralized by Huffman's retirement savings.

Ultimately, because the Commission will be investigating these potential inconsistencies in part for the purpose of determining whether the violations were knowing and willful, in the

[3] Both Proctor and the candidate aver that "the campaign had at its disposal the $100,000 on deposit at People's State Bank, starting from the date when the BB&T bank loan proceeds were deposited into the campaign account through the date when the BB&T loan was repaid."

interest of fair notice to the Respondent the Commission finds that the violations connected to the Proctor transaction were knowing and willful.