



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Democratic Party of Hawaii, and) MUR 5518
Lynn Matusow, in her official capacity as treasurer)

**STATEMENT OF REASONS OF CHAIRMAN ROBERT D. LENHARD,
VICE CHAIRMAN DAVID M. MASON AND COMMISSIONERS
MICHAEL E. TONER AND STEVEN T. WALTHER**

The matter arises from a complaint filed by the Hawaii Republican Party. The Commission voted to dismiss the complaint,¹ and we write to explain the Commission's reasons for dismissing those allegations on which the Office of General Counsel ("OGC") recommended that the Commission find reason to believe ("RTB") that a violation of the Federal Election Campaign Act ("FECA"), 2 U.S.C. § 431 *et seq*, occurred.

In February 2004, the Democratic Party of Hawaii ("DPH") sent a letter to party members inviting them to precinct meetings and asking for contributions.² The complaint makes multiple allegations based on the premise that the invitation was "federal election activity" ("FEA").³ OGC agrees and recommends that the Commission find RTB that Respondents violated FECA. However, given the small amount of money at issue, OGC recommends taking no further action and closing the file.

The remaining issue on which OGC recommends finding RTB, but taking no further action and closing the file, involves an alleged improper disclaimer on the DPH letter.⁴

FECA defines FEA, *id.* § 431(20)(A) (2002), and then provides that FEA does not include money spent by a state, district, or local political-party committee for the costs of a state, district, or local political convention. *Id.* § 431(20)(B)(iii). It is not necessary in this matter to consider whether invitations to such conventions – regardless of the content of the invitations – are part of the conventions themselves and therefore fall within the exemption for conventions because the low dollar amount and the limited circulation of the invitation make pursuing this matter not worthy of the Commission's limited resources. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

However, rather than finding RTB, the Commission is dismissing the complaint because the Commission is not conducting an investigation or seeking conciliation and, even if there is a FECA violation here, it is a minor one that is not worthy of the Commission's resources.

¹ Voting affirmatively were Commissioners Lenhard, Mason, Toner, von Spakovsky, Walther, and Weintraub.

² *See* First Gen. Counsel's Rep. ("GCR") at 3 (Nov. 29, 2006).

³ *Id.* at 5-11.

⁴ *Id.* at 10-11.

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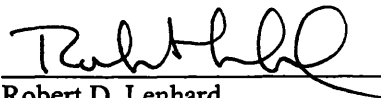
One additional observation for future reference: The FECA definition of FEA includes a "public communication" that refers to a clearly identified⁵ candidate for federal office and promotes, supports, attacks, or opposes a candidate for that office. 2 U.S.C. § 431(20)(A)(iii).⁶ In turn, "public communication" includes a "mass mailing," *id.* § 431(22),⁷ which means a mailing by United States mail or facsimile of more than 500 identical or substantially similar pieces within 30 days. *Id.* § 431(23).⁸ One method by which OGC seeks to demonstrate whether DPH engaged in FEA involves dividing what DPH spent on postage for return envelopes by the price of a first-class stamp, and concluding that, since the result is greater than 500, DPH must have mailed more than 500 pieces. Here the specific calculation is: \$606 for return-envelope postage divided by \$0.37 per first-class stamp equals more than 1,600 return envelopes.⁹

However, if DPH used business-reply mail ("BRM") instead of first-class stamps, the calculation would differ. On the one hand, the cost of BRM postage is greater than the cost of first-class stamps. On the other hand, one incurs BRM postage only for those items that are mailed back.¹⁰

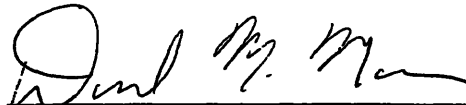
This additional observation may not affect this matter. Why? Because given the BRM postage rates¹¹ and DPH's return-postage costs of \$606, DPH's BRM count would still have exceeded 500, in which case we would presume its February 2004 mailing exceeded 500 as well and therefore was a mass mailing under FECA. *See id.*

In another matter before it, however, the Commission may need to consider whether a respondent used BRM or first-class stamps for return envelopes.

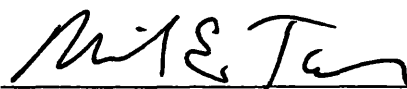
March 8, 2007



Robert D. Lenhard
Chairman



David M. Mason
Vice Chairman



Michael E. Toner
Commissioner



Steven T. Walther
Commissioner

⁵ Defined in 2 U.S.C. § 431(18).

⁶ See also 11 C.F.R. § 100.24(b)(3) (2002).

⁷ See also *id.* § 100.26 (2002), amended, 71 FED. REG. 18589, 18612 (April 12, 2006). The 2006 amendment does not change the regulation in this respect

⁸ See also *id.* § 100.27 (2002)

⁹ GCR at 7.

¹⁰ See Reply Mail Rates & Fees (current rates), available at <http://www.usps.com/replymail/rates.htm> (all Internet sites visited Dec. 28, 2006); Business Reply Mail (BRM) (rates as of August 2003), available at <http://pe.usps.com/cpim/ftp/manuals/qsg/Q922.pdf>.

¹¹ See *supra* n.10

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