



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 27 2004

Carl Koupal
3768 SW Clarion Park Drive
Topeka, Kansas 66610

RE: MUR 5573

Dear Mr. Koupal:

On October 19, 2004, the Federal Election Commission found that there is reason to believe you violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f), provisions of the Commission's implementing 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 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.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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.

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.

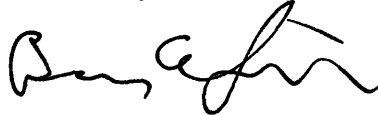
25044121090

MUR 5573
Carl Koupal
Page 2

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 attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548.

Sincerely,



Bradley A. Smith
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form
Conciliation Agreement

25044121091

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Carl Koupal

MUR: 5573

I. INTRODUCTION

This matter was generated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities.

II. FACTUAL SUMMARY

A. Background

Westar Energy, Inc. ("Westar"), formerly known as Western Resources, Inc., is a Kansas public corporation headquartered in Topeka.¹ It is the largest electricity provider in Kansas, serving more than 600,000 customers and employing more than 2,000 people.

Westar has been politically active since the late 1980s, mostly as an advocate for public utility deregulation. The company's political activities have included direct corporate contributions to state and local candidates (permitted under state law), contributions from Westar's separate segregated fund, most recently known as the Western Resources Political Action Committee ("Westar PAC"), to federal candidates, and earmarked contributions from Westar executives to federal candidates, primarily within the Kansas congressional delegation. Notably, after 1998, employee contributions to the Westar

¹ Two utility companies dating to the early 1900s merged to form Western Resources in 1992. In 2002, Western Resources, Inc., changed its name to "Westar Energy."

25044121092

PAC declined significantly and individual earmarked contributions from Westar executives increased in their place.²

B. The Special Report

In September 2002, the U.S. Attorney's Office in Topeka served subpoenas on Westar seeking information about Westar's business practices.

On April 29, 2003, the Special Committee presented the Westar Board of Directors with the results of its investigation in an almost 400-page report ("Special Report").⁵

² On March 29, 2001, the PAC notified the Commission that it was terminating effective December 31, 2000. As part of its recent corporate reform efforts, Westar has resurrected a PAC, the Westar Energy Employees Political Action Committee, which filed its Statement of Organization with the Commission on October 3, 2003.

⁵ See http://media.corporate-ir.net/media_files/nys/wr/reports/custom_page/WestarEnergy.pdf.

25044121093

25044121094

The Special Report describes organized efforts by Douglass Lawrence and Carl Koupal between 2000 and 2002 to make contributions to state and federal candidates who were in positions to benefit Westar. Special Report, at 341-344.

According to the Special Report, “management had a practice of soliciting individual officers for recommended political contributions earmarked for particular candidates.” *See id.*, at 342. The Special Committee interviewed many of the executives who were asked to make contributions and reviewed relevant documents, including email communications.

the Special Report noted that “employees indicated in interviews that they could refuse to make contributions to a particular candidate” and “none of the officers

we spoke to reported having been told that his or her job would be in jeopardy or that there would be any other form of retribution if he or she did not contribute.” *Id.* In conclusion, the Special Committee recommended that Westar hire election counsel to further analyze the events. *Id.*, at 348-349.

In May 2003, Westar posted the Special Report and the accompanying 246 exhibits on Westar’s website.

C. September 2000 Contribution Activities

The Special Report described an incident in September 2000 where Koupal solicited six executives and requested \$15,500 in political contributions through a payment schedule tied to each executive’s pay grade. *Id.*, at 342. An email communication from Koupal dated Sept. 20, 2000, outlined a plan to request contribution checks and “deliver them together,” indicating an intent that the contributions be sent as a package to the various candidates. According to disclosure reports, it appears that this solicitation resulted in \$13,500 in contributions to four federal candidates. Chart 1 below sets forth the September 2000 contribution effort, and Chart 2 identifies the targeted legislators and the contributions they received.

25044121095

CHART 1
Westar Executives' Contribution Schedule for Federal Candidates
September 2000 Plan

NAME	TITLE	TOTAL AMOUNT REQUESTED	TOTAL AMOUNT CONTRIBUTED
David Wittig	President and CEO	\$5,500	\$5,500
Doug Lake	Executive VP Corp. Strat.	\$3,000	\$3,000
Thomas Grennan	Executive VP	\$2,000	\$2,000
Carl Koupal	Chief Administrative Officer	\$1,750	\$0
Richard Terrill	General Counsel	\$1,750	\$1,750
Rita Sharpe	Executive VP	\$1,500	\$1,250
Total:		\$15,500	\$13,500

CHART 2
Recipients of Westar Contributions
September 2000 Plan

COMMITTEE	PROPOSED CONTRIBUTION	TOTAL RECEIVED
Dennis Moore for Congress	\$3,500	\$2,750
Moran for Congress	\$1,750	\$1,500
Jim Ryun for Congress	\$5,250	\$6,750
Tiaht for Congress	\$5,000	\$2,500
Total:	\$15,500	\$13,500

Based on interviews with Westar executives, the Special Report states responsibility for devising this payment schedule and choosing the candidates, in consultation with others, including Koupal. *Id.*, at 342. Until he left Westar in late 2001, Koupal had primary responsibility for soliciting the executives, collecting contribution checks, and sending the checks to recipient committees.⁷ *Id.*, at 343.

⁷ Based on disclosure reports, the following additional seemingly bundled contribution occurred: June 15, 2001, \$1,250 from 5 Westar executives to Pat Roberts for Senate.

III. LEGAL ANALYSIS

Koupal, helped select the candidates to whom contributions should be made. Koupal acted as a conduit or intermediary by collecting earmarked contribution checks from Westar executives and forwarding them as a package to various recipient committees.

Corporations are prohibited from acting as conduits for contributions earmarked to candidates or their authorized committees. *See* 11 C.F.R. § 110.6(b)(2)(ii). In addition, the prohibition against corporate contributions embodied in 2 U.S.C. § 441b(a) includes the facilitation of earmarked contributions by a corporation and its officers, directors, or agents. *See* 11 C.F.R. § 114.2(f)(1). Examples of facilitation include directing subordinates to plan, organize, or carry out a fundraising project as part of their work responsibilities, using corporate resources and providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes or other similar items, or using coercion to urge individuals to make contributions. 11 C.F.R. §§ 114.2(f)(2)(ii) and 114.2(f)(2)(iv).

Koupal solicited, collected and bundled the earmarked contributions from Westar executives using corporate resources and at the request and direction of Westar

Thus, Koupal, acting in his corporate capacity, acted as a conduit and facilitated the making of corporate contributions by forwarding individual earmarked contributions to political committees on behalf of Westar.

IV. CONCLUSION

Accordingly, there is reason to believe that Carl Koupal violated 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f) by participating in and/or consenting to corporate facilitation and improper conduit activity.

25044121098