



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
) )  
Alaska Democratic Party and Rolando Rivas, in his )  
official capacity as treasurer; and ) MUR 5575  
) )  
Tony Knowles for U.S. Senate Committee, and )  
Leslie Ridle in her official capacity as treasurer )

29044250477

**STATEMENT OF REASONS**  
**Vice Chairman MATTHEW S. PETERSEN and**  
**Commissioners CYNTHIA L. BAUERLY, CAROLINE C. HUNTER and**  
**DONALD F. McGAHN**

On May 19, 2009, the Commission voted against adopting the Office of General Counsel’s (“OGC”) recommendation to find probable cause to believe a violation occurred in this matter involving the Alaska Democratic Party (“ADP”) and the Tony Knowles for U.S. Senate Committee.<sup>1</sup> At issue was section 100.87(g) of the Commission’s regulations, which concerns an exception to the exemption for volunteer activity by state parties. That regulation states:

Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee *for the purchase of such materials*, shall not qualify under this exemption [to the contribution limits applicable to state party committees].<sup>2</sup>

In this matter, we conclude there was not sufficient evidence that funds transferred from the Democratic Senatorial Campaign Committee (“DSCC”) to the ADP were donated “for the purchase of such materials” used in connection with the party’s volunteer programs to support Tony Knowles, the party’s nominee for U.S. Senate. For the reasons set forth below, we voted against finding probable cause, and closed the file.

<sup>1</sup> MUR 5575, Certification dated May 19, 2009.

<sup>2</sup> 11 C.F.R. 100.87(g) (emphasis added).

**I. BACKGROUND**

This matter was generated by a complaint that alleged that the ADP and the Tony Knowles for Senate campaign violated the Federal Election Campaign Act of 1971, as amended (“the Act”), in connection with the dissemination of three “mailers being sent by the ADP to thousands of residents in Alaska” after exceeding the limits for party coordinated expenses on other items.<sup>3</sup> Specifically, the Complainant alleged that the mailers could not have qualified for the “volunteer exemption” since it was “apparent that these mailers are done by a commercial vendor,” because:

“[A]s you can see these mailers are printed, machine addressed and use a preprinted Non-Profit Organization mailing permit...It was not hand addressed, the postage was not fixed by hand and the material was not placed in an envelope by volunteers. Thus, there was no volunteer component to this mailing.”<sup>4</sup>

The remainder of the complaint, regarding disclaimers and excessive contributions, relied upon the essential premise that the mailings did not qualify for the volunteer exemption and did not raise any allegations regarding the source of funding for the mailers.

In their replies, the Respondents explained that the mailers were exempt state party committee volunteer activities. The ADP provided seventy-one photographs of its volunteers operating the machinery which addressed and folded the mailers, as well as a declaration from an ADP volunteer who stated that the volunteers sorted the mailers, bundled them, and placed them in mailing trays with the appropriate zip code designations.<sup>5</sup> The Knowles Committee further noted that there were “no envelopes to stuff; the materials were merely folded.”

In its recommendation to the Commission, OGC stated that, “[i]n matters involving mailings where a state party committee has claimed that such disbursements did not constitute contributions or expenditures under the Act, the Commission has focused on whether a volunteer effort, rather than a commercial mailing house or other vendor, was responsible for preparing the mailings and delivering them to the post office.”<sup>6</sup> Although not raised in the complaint, OGC maintained that “it is unclear from ADP’s disclosure reports, how much was spent on the mailers and when such disbursements were made,” and suggested that an analysis of the potential funding of the

<sup>3</sup> MUR 5575, Complaint at 1.

<sup>4</sup> *Id.*

<sup>5</sup> The facts as regards the amount of volunteer participation are very similar to the facts in MUR 5598 (Swallow for Congress) which was dismissed. See MUR 5598, Statement of Reasons of Vice Chairman Matthew Petersen and Commissioners Cynthia Bauerly, Caroline Hunter, and Ellen Weintraub.

<sup>6</sup> MURs 5564 and 5575, First General Counsel’s Report at 22-23.

29044250478

mailers was appropriate because three quarters of the ADP's total funds came from national party committees.<sup>7</sup> The Commission voted 6-0 to find reason to believe the respondents violated the Act and authorized an investigation to determine, *inter alia*, whether the source of the funds used prevented the mailings from qualifying for the volunteer materials exemption. Respondents were served with a factual and legal analysis of the Commission's decision.<sup>8</sup>

OGC, with the assistance of the Commission's Audit Division, did a "modified first in-first out" ("FiFo") analysis of the ADP's accounts, and determined that the ADP spent \$675,926 from funds transferred by national party committees on the mailings in question. There is no dispute that the state party spent funds transferred by a national party on volunteer materials (although Respondents dispute the precise amount). After a lengthy investigation, however, OGC uncovered no evidence that the funds were transferred to the ADP for the purpose of funding the volunteer mailers. Respondents asserted that the funds had been transferred to the ADP without any restrictions whatsoever on their use by the state party.

## II. DISCUSSION

Under section 100.87(g) of the Commission's regulations (quoted above), the so-called "volunteer exemption" is not applicable to materials purchased by national party committees. The plain meaning of the regulation is that the phrase "funds donated by the national committee to such state or local committee for the purchase of such materials" describes funds which have been transferred by the national committee for specific purposes, and not funds which have been donated to the state or local party for the general operation of that state or local party as the state or local party sees fit.

The Commission's explanation and justification confirms this interpretation:

Subsection [100.7](b)(17)(vii)<sup>9</sup> provides that if payments for voter registration and get-out-the-vote activities are made *from funds donated for that purpose* to a State or local party committee by a national committee, such payments are not exempt. House Report 96-422 at page 9, makes it clear that *campaign materials purchased by a national party committee* and given to a State or local committee do not qualify for the exemption at 2 USC § 431(8)(B)(x).<sup>10</sup> This subsection extends the same rationale to payments made for voter registration and get-out-the vote

---

<sup>7</sup> *Id.* at 23.

<sup>8</sup> MURs 5564 and 5575, Factual and Legal Analysis.

<sup>9</sup> 11 C.F.R. 100.87(g) was previously codified at 100.7(b)(17)(vii).

<sup>10</sup> 2 U.S.C. § 431(8)(B)(x) governs volunteer materials pertaining to candidates.

29044250479

activities where the national committee donates funds to the State or local committee *for such activities*.<sup>11</sup>

The House report, in turn, explains:

The cost of campaign materials purchased by a state or local party organization which support federal candidates who have been nominated by a political party are not contributions to the federal candidates if the campaign materials are used by the state or local party organization in connection with volunteer activities. To be eligible for the exemption, the campaign materials must be purchased by the state or local party committee. *Campaign materials purchased by the national committee of a political party and delivered to a state or local party committee would not come within the exemption.*<sup>12</sup>

OGC recommended that the Commission find probable cause to believe that the ADP's disbursements for the materials were not entitled to the volunteer exemption. In its view, the FiFo accounting analysis provided sufficient evidence to demonstrate that the national party funds were donated to the ADP and used for the purchase of the vast majority of the materials, and as such, the ADP's disbursements for those materials were not entitled to the exemption. General Counsel's Brief at 3-4.

In light of the statutory and regulatory history, the volunteer materials exemption is nullified only if a national party committee purchases such materials, or donates funds specifically "*for the purchase of such materials.*" There must be something more to demonstrate that the funds were transferred specifically to fund the activity than what was uncovered during the investigation in this matter. Had the investigation revealed an agreement about how the funds would be used, or some other evidence to show that the funds were donated specifically to pay for volunteer exempt activity, the outcome of this case may have been different. Absent that evidence, however, we do not believe a violation occurred. The bottom line is that a national committee cannot earmark funds for volunteer exempt activities, but a state or local committee can use funds transferred to it by a national committee for unrestricted use at the state or local parties' discretion, including for volunteer exempt activity if the state or local party so chooses. To read 11 C.F.R. 100.87(g) otherwise would necessarily read the phrase "*for the purchase of such materials*" as a nullity and violate the canon of statutory interpretation "that it is generally presumed that . . . language is not superfluous."<sup>13</sup>

---

<sup>11</sup> Explanation and Justification of Regulations Concerning January 8, 1980 Amendments to the Federal Election Campaign Act of 1971, 45 Fed. Reg. 15080, 15082, Mar. 7, 1980 (emphasis added).

<sup>12</sup> H. Rep. No. 96-422, at 9 (1979).

<sup>13</sup> See, e.g., *Arlington Central School District Bd. of Ed. v. Murphy*, 548 U.S. 291, 299 n.1 (2006).

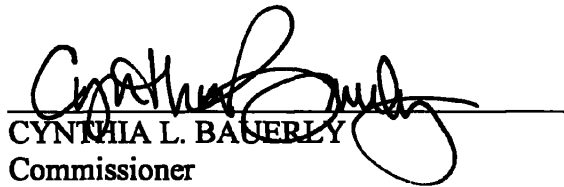
29044250480

**III. CONCLUSION**

For the reasons stated above, we concluded that 11 C.F.R. 100.87(g) does not prevent a state or local party from using money transferred by a national party to a state or local party for any use at the discretion of the state or local party for exempt party activities. Therefore, we voted against OGC's recommendation in this matter.

  
\_\_\_\_\_  
MATTHEW S. PETERSEN  
Vice Chairman

7/27/09  
Date

  
\_\_\_\_\_  
CYNTHIA L. BAUERLY  
Commissioner

7/27/09  
Date

  
\_\_\_\_\_  
CAROLINE C. HUNTER  
Commissioner

7/27/09  
Date

  
\_\_\_\_\_  
DONALD F. McGAHN II  
Commissioner

7/27/09  
Date

29044250481