



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

1. COLLECTION
COMMISSION
SECRETARIAT

2006 AUG 16 A 9 37

SENSITIVE

VIA FAX AND CERTIFIED FIRST CLASS MAIL

Helen-Mary B McGovern
Brand Law Group
923 Fifteenth Street, N W
Washington, D C 20005

AUG 16 2006

RE MUR 5726
Jack Davis for Congress and Robert R. Davis,
in his official capacity as treasurer

Dear Ms McGovern

After considering all the available evidence, the Office of the General Counsel is prepared to recommend that the Federal Election Commission (the "Commission") find probable cause to believe that your client, Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U S C §§ 441a-1(b)(1)(C) and 441a-1(b)(1)(D), provisions of the Federal Election Campaign Act of 1971, as amended, and 11 CFR §§ 400 21(b) and 400 22(b). Enclosed for your review is a brief stating the position of the General Counsel on the legal and factual issues of this matter.

You may file a brief stating your position on the issues and replying to the brief of the General Counsel. Your brief should be submitted to the Secretary of the Commission (ten copies if possible) within fifteen days of receipt of this notice. Three copies of your brief should also be forwarded to the Office of the General Counsel, if possible. The General Counsel's brief and any brief you submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within fifteen days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing at least five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not grant extensions greater than twenty days.

The Commission may or may not approve the General Counsel's probable cause recommendation. If the Commission finds probable cause to believe a violation has occurred,

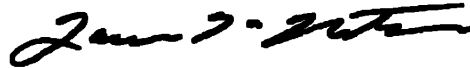
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the Office of the General Counsel will contact you and attempt, for a period of not less than thirty days, but not more than ninety days, to settle this matter through conciliation

Should you have any questions, please contact Zachary Mahshie, the attorney assigned to this matter, at (202) 694-1650

Sincerely,



Lawrence H Norton
General Counsel

Enclosure
Brief

28044204219

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of)

3)
4 Jack Davis for Congress and Robert R. Davis,)
5 in his official capacity as treasurer)
6)
7)

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8 **GENERAL COUNSEL'S BRIEF**

9 **I. INTRODUCTION**

10 On April 4, 2006, the Federal Election Commission ("Commission") found reason to
11 believe that Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer,
12 violated several reporting requirements arising under the "millionaire's amendment" of the
13 Bipartisan Campaign Finance Reform Act of 2002. Specifically, the Commission found that
14 Jack Davis for Congress and Robert R. Davis, in his official capacity as treasurer, violated 1)
15 2 U.S.C. § 441a-1(b)(1)(C) and 11 C.F.R. § 400.21(b) by failing to file the initial notification of
16 expenditures of \$350,000 in personal funds, and 2) 2 U.S.C. § 441a-1(b)(1)(D) and 11 C.F.R.
17 § 400.22(b) by failing to file multiple notifications of expenditures of additional personal funds.

18 Based on the following factual and legal analysis, this Office is prepared to recommend
19 that the Commission find probable cause to believe that Jack Davis for Congress and Robert R.
20 Davis, in his official capacity as treasurer, violated 2 U.S.C. § 441a-1(b)(1)(C), 2 U.S.C.
21 § 441a-1(b)(1)(D), 11 C.F.R. § 400.21(b), and 11 C.F.R. § 400.22(b) by failing to file multiple
22 notifications of expenditures of personal funds.

23 **II. FACTUAL SUMMARY**

24 Jack Davis declared his candidacy for New York's 26th District seat in the United States
25 House of Representatives to the Federal Election Commission on March 18, 2004, by filing FEC
26 Form 2, Statement of Candidacy. As part of the Form 2, Mr. Davis declared his intention to

1 spend \$500,000 in personal funds for the general election. Mr. Davis ran unopposed in the
2 Democratic primary, but he lost in the general election on November 2, 2004.

3 Mr. Davis started spending personal funds on his campaign on March 18, 2004 with a
4 \$10,000 direct contribution. On March 31, 2004, he made his only other direct contribution to
5 his campaign, in the amount of \$7,280. Between March 31 and October 22, 2004, Mr. Davis
6 made loans to the Committee totaling \$1,240,000, which increased his total personal
7 expenditures to \$1,257,280. All contributions and loans from the candidate's personal funds
8 were designated for the general election. The following chart outlines all disclosed contributions
9 and loans made by Mr. Davis to the Committee. As illustrated, Mr. Davis exceeded \$350,000 in
10 personal funds expended on his general election candidacy when he lent \$80,000 to his campaign
11 on September 2, 2004.

Date	Amount	Type	Running Total
March 18, 2004	\$10,000	Contribution	\$10,000
March 31, 2004	\$7,280	Contribution	\$17,280
March 31, 2004	\$100,000	Loan	\$117,280
May 11, 2004	\$50,000	Loan	\$167,280
June 7, 2004	\$40,000	Loan	\$207,280
August 6, 2004	\$60,000	Loan	\$267,280
August 11, 2004	\$80,000	Loan	\$347,280

12 Neither Mr. Davis nor the Committee filed an initial notification or any additional notifications
13 (FEC Form 10s) with the Commission or with Mr. Davis's opponents and their national parties
14 disclosing his expenditures from personal funds.

1 The Commission sent Requests For Additional Information to the Committee on October
2 21, November 16, and December 23, 2004, requesting explanations for the non-filed FEC Form
3 10s. On December 20, 2004, the Commission received a letter from the Committee explaining
4 that its failure to file any Form 10s was "a direct result of [its] inexperience in filing requirements
5 for a congressional candidate" and that "there was no intent to conceal facts or to mislead the
6 FEC." Miscellaneous Report to FEC, Jack Davis for Congress (December 20, 2004). The
7 Committee provided no additional explanation in response to the Commission's Factual and
8 Legal Analysis for its failure to file the required Form 10s.

9 **III. LEGAL ANALYSIS**

10 When a candidate for the U.S. House of Representatives makes aggregate expenditures
11 from personal funds of \$350,000 or more for an election, the candidate or his or her authorized
12 committee shall file a notification of the expenditure (FEC Form 10) within 24 hours of
13 exceeding the threshold.¹ 2 U.S.C. § 441a-1(b)(1)(C), 11 C.F.R. § 400.21(b). For each
14 additional expenditure of \$10,000 or more, the candidate is required to file an additional
15 notification within 24 hours. 2 U.S.C. § 441a-1(b)(1)(D), 11 C.F.R. § 400.22(b). These
16 notifications must be filed with the Commission, each candidate in the same election, and the
17 national party of each such candidate and must include, among other things, the date and amount

¹ An expenditure from personal funds includes direct contributions, an expenditure made by a candidate using personal funds, loans made by a candidate using personal funds, or a loan secured using such funds to the candidate's authorized committee. 2 U.S.C. § 441a-1(b)(1)(A). There is a separate \$350,000 threshold for the primary and general elections. 11 C.F.R. § 400.2(b). However, as discussed above, Mr. Davis designated all of his contributions and loans to the general election. *Supra*, Section II, at 3.

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General Counsel's Brief**

1 of the expenditures and the total amount expended as of the date of the filing² 2 U S C

2 §§ 441a-1(b)(1)(E) and (F); 11 C F R § 400 23

3 As noted, Mr Davis exceeded the \$350,000 threshold on September 2, 2004, which
4 obligated the Committee and candidate to file an FEC Form 10, Notification of Expenditures
5 from Personal Funds, within 24 hours of the threshold expenditure, or by September 3, 2004
6 2 U S C § 441a-1(b)(1)(C) However, the Committee completely failed to file a Form 10 with
7 the Commission or send copies to his opponents and their national parties Therefore, this Office
8 is prepared to recommend that the Commission find probable cause to believe that Jack Davis for
9 Congress and Robert R. Davis, in his official capacity as treasurer, violated 2 U S C
10 § 441a-1(b)(1)(C) and 11 C F R § 400 21(b)

11 In addition, the Committee failed to file additional FEC Form 10s regarding six additional
12 loans in excess of \$10,000 made by Mr Davis to the Committee between September 17 and
13 October 22, 2004 Therefore, this Office is prepared to recommend that the Commission find
14 probable cause to believe that Jack Davis for Congress and Robert R. Davis, in his official
15 capacity as treasurer, violated 2 U S C § 441a-1(b)(1)(D) and 11 C F R § 400 22(b)

² A candidate's personal expenditures could entitle his opponents to a threefold increase in the contribution limit under 2 U S C § 441a(a)(1)(A) and a waiver of the limits on coordinated party expenditures under 2 U S C § 441a(d) See 2 U S C § 441a-1(a)(1), 11 C F R § 400 41

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IV. RECOMMENDATIONS

- 1 Find probable cause to believe that Jack Davis for Congress and Robert R. Davis, in his
official capacity as treasurer, violated 2 U S C § 441a-1(b)(1)(C), 2 U S C
§ 441a-1(b)(1)(D), 11 CFR § 400 21(b), and 11 CFR § 400 22(b)

8/15/06
Date

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