FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

E. Mark Braden
Baker & Hostetler
Washington Square, Suite 1100
1050 Connecticut Avenue, N.S.
Washington, D.C. 20036

MAR 12 2007

RE: MUR 5888
Raese for Senate Committee and
James Troy, in his official capacity
as Treasurer
John Reeves Raese

Dear Mr. Braden:

On December 18, 2006, the Federal Election Commission notified your clients, Raese for Senate Committee and James Troy, in his official capacity as Treasurer ("the Committee"), and John Reeves Raese, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, information supplied by you, and in the normal course of carrying out its supervisory responsibilities, the Federal Election Commission ("the Commission"), on March 6, 2007, found that there is reason to believe the Committee violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) and 11 C.F.R. §§ 400.21(a) and 499.22(a) of the Act, and that Mr. Raese violated 2 U.S.C. §§ 434(a)(6)(B)(iii) and (iv) of the Act. The Factual and Legal Analyses, which formed a basis for the Commission's findings, are attached for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, 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. In the meantime, 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.

[redacted]

We look forward to your response.

Sincerely,

Robert D Lenhard
Chairman

Enclosures
Factual and Legal Analysis (2)
Procedures

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Raese for Senate Committee and
James Troy, in his official capacity as Treasurer **MUR:** 5888

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities, *see* 2 U.S.C. § 437g(a)(2); and by a complaint filed with the Commission by Matthew Miller, Treasurer, Lewis for Senate, Inc. *See* 2 U.S.C. § 437g(a)(1). This matter concerns reporting requirements, arising under the so-called "Millionaire Amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of certain thresholds.

II. FACTUAL SUMMARY

The Raese for Senate Committee and James Troy, Treasurer ("Committee"), was the principal campaign committee for John Reeves Raese, a 2006 Senate candidate in West Virginia. On February 10, 2006, John Raese filed FEC Form 2, his Statement of Candidacy. Mr. Raese's Form 2 stated "0" as the amount of personal funds he intended to expend in excess of the West Virginia threshold ($207,360) for the Primary and General Elections [1] Mr. Raese won the Republican primary but lost in the general election

[1] For Senate races, "*threshold amount* means the sum of $150,000 plus an amount equal to the voting age population of the State multiplied by $0 04." 11 C.F.R § 400.9(a) For the 2006 West Virginia Senate race, the calculation is $150,000 + (1,434,000 x $0.04) = $207,360 The reporting threshold amount, which triggers the Millionaire Amendment's Form 10 and notice requirements, is twice the threshold amount -- $414,720.

Mr Raese started spending personal funds on his campaign on January 31, 2006 with a $35,000 loan. Between January 31 and May 3, 2006, Mr. Raese made loans to the Committee totaling $525,000. All loans from the candidate were designated for the primary election. The following chart outlines all disclosed loans made by Mr. Raese to the Committee. As illustrated, Mr. Raese exceeded the $414,720 personal funds threshold when he lent $70,000 to his campaign on April 19, 2006.

Date	Amount	Type	Total to Date
January 31, 2006	$35,000	Loan	$35,000
March 24, 2006	$ 90,000	Loan	$125,000
April 7, 2006	$30,000	Loan	$155,000
April 11, 2006	$200,000	Loan	$355,000
April 19, 2006	$70,000	Loan	$425,000
April 27, 2006	$100,000	Loan	$525,000
May 3, 2006	$80,000	Loan	$605,000

On May 3, 2006, the Committee filed its initial FEC Form 10 (24-hour Notice of Expenditure from Candidate's Personal Funds) disclosing the April 19 $70,000 loan, the April 27 $100,000 loan, and the May 3 $80,000 loan. On July 20, 2006, the Commission sent the Committee a Request For Additional Information noting that the candidate and the Committee appeared to have filed notice of the April 19 and April 27 loans from the candidate thirteen days and five days late, respectively. The Committee does not dispute the above facts and states that the failure to file the necessary Form 10s was not intentional but rather the result of the treasurer who was not experienced or knowledgeable about the reporting requirements of the Millionaire Amendment and who relied upon "expert advisors" who did not ensure that the respondents complied with the law.

III. LEGAL ANALYSIS

A Senate candidate who intends to make expenditures from personal funds in an election that exceed the established state threshold must, within fifteen days of becoming a candidate, file with the Commission and each candidate in the same election a declaration stating the total amount of such intended expenditures. 2 U.S.C. § 434(a)(6)(B)(ii) and 11 C.F.R. § 400.20. Not later than 24 hours after initially exceeding the reporting threshold, which is twice the established state threshold, the candidate and committee must file a notification (Form 10) with the Commission, the Secretary of the Senate, and each candidate in the same election. 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). Thereafter, the candidate and committee must file an additional Form 10 each time the candidate expends more than $10,000 in personal funds. 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a).

Mr. Raese exceeded the $414,720 reporting threshold on April 19, 2006, which obligated the Committee and the candidate to file an initial FEC Form 10, Notification of Expenditures from Personal Funds, within 24 hours of the threshold expenditure, or by April 20, 2006. *See* 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). The Committee did not file the Form 10 until May 3, 2006, thirteen days late. Therefore, there is reason to believe that Raese for Senate

Committee and James Troy, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a).[2]

In addition, the Committee failed to file an additional FEC Form 10 for the $100,000 loan made by Mr. Raese to the Committee on April 27, 2006 within 24 hours. This Form 10 was not filed until May 3, 2006, five days late. Therefore, there is reason to believe that Raese for Senate Committee and James Troy, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a).

Although the complaint alleges that these violations were knowing and willful, we do not recommend knowing and willing findings at this time The complaint alleges no facts in support of this allegation, and there is no information otherwise available suggesting that the respondents knowingly and willfully violated the Millionaire Amendment's disclosure requirements.

[2] The complaint alleges that Mr. Raese and the Committee should have filed an amended Statement of Candidacy and/or initial Form 10 when Mr. Raese took out a $400,000 line of credit on March 14, 2006. Opening a line of credit, however, does not constitute an expenditure of personal funds until the candidate gives the funds to the campaign or expends the funds on behalf of the campaign. The Commission's regulations define when an "expenditure from personal funds" is made, and it is either the date the funds are deposited into the account designated by the candidate's authorized committee as the campaign depository, the date the instrument transferring the funds is signed, or the date the contract obligating the personal funds is executed, whichever is earlier. 11 C.F.R § 400.4(b). According to the Committee, Mr. Raese first drew on the line of credit when he made his $30,000 loan to the Committee on April 7, 2006 and then again when he made his $70,000 loan to the campaign on April 19, 2006. As discussed above, once he made the $70,000 loan on April 19, he and the Committee exceeded the reporting threshold and were required to file the initial FEC Form 10 on April 20.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: John Reeves Raese MUR: 5888

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities; *see* 2 U.S.C. § 437g(a)(2); and by a complaint filed with the Commission by Matthew Miller, Treasurer, Lewis for Senate, Inc. *See* 2 U.S.C. § 437g(a)(1). This matter concerns reporting requirements, arising under the so-called "Millionaire Amendment" of the Bipartisan Campaign Reform Act, which obligate candidates to comply with special reporting and notification requirements after expending personal funds in excess of certain thresholds.

II. FACTUAL SUMMARY

On February 10, 2006, John Raese filed FEC Form 2, his Statement of Candidacy, for the West Virginia 2006 Senate race. Mr. Raese's Form 2 stated "0" as the amount of personal funds he intended to expend in excess of the West Virginia threshold ($207,360) for the Primary and General Elections.[1] Mr. Raese won the Republican primary but lost in the general election.

Mr. Raese started spending personal funds on his campaign on January 31, 2006 with a $35,000 loan. Between January 31 and May 3, 2006, Mr. Raese made loans to the Raese for Senate Committee ("Committee") totaling $525,000. All loans from the candidate were designated for the primary election. The following chart outlines all disclosed loans made by Mr.

[1] For Senate races, "*threshold amount* means the sum of $150,000 plus an amount equal to the voting age population of the State multiplied by $0.04." 11 C.F.R. § 400.9(a). For the 2006 West Virginia Senate race, the calculation is $150,000 + (1,434,000 x $0.04) = $207,360. The reporting threshold amount, which triggers the Millionaire Amendment's Form 10 and notice requirements, is twice the threshold amount -- $414,720.

Raese to the Committee. As illustrated, Mr. Raese exceeded the $414,720 personal funds threshold when he lent $70,000 to his campaign on April 19, 2006.

Date	Amount	Type	Total to Date
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On May 3, 2006, the Committee filed its initial FEC Form 10 (24-hour Notice of Expenditure from Candidate's Personal Funds) disclosing the April 19 $70,000 loan, the April 27 $100,000 loan, and the May 3 $80,000 loan. On July 20, 2006, the Commission sent the Committee a Request For Additional Information noting that the candidate and the Committee appeared to have filed notice of the April 19 and April 27 loans from the candidate thirteen days and five days late, respectively. Mr. Raese does not dispute the above facts and states that his failure to file the necessary Form 10s was not intentional but rather the result of the treasurer who was not experienced or knowledgeable about the reporting requirements of the Millionaire Amendment and who relied upon "expert advisors" who did not ensure that the respondents complied with the law.

III. LEGAL ANALYSIS

A Senate candidate who intends to make expenditures from personal funds in an election that exceed the established state threshold must, within fifteen days of becoming a candidate, file with the Commission and each candidate in the same election a declaration stating the total amount of such intended expenditures. 2 U.S.C. § 434(a)(6)(B)(ii) and 11 C.F.R. § 400.20. Not later than 24 hours after initially exceeding the reporting threshold, which is twice the established

state threshold, the candidate and committee must file a notification (Form 10) with the Commission, the Secretary of the Senate, and each candidate in the same election. 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). Thereafter, the candidate and committee must file an additional Form 10 each time the candidate expends more than $10,000 in personal funds. 2 U.S.C § 434(a)(6)(B)(iv) and 11 C.F.R. § 400.22(a). Candidates must ensure that their principal campaign committees file all reports required by these provisions in a timely manner 11 C.F.R. § 400.25.

1. Failure to File 24-Hour Notice of Personal Spending Over the Reporting Threshold

Mr Raese exceeded the $414,720 reporting threshold on April 19, 2006, which obligated the Committee and the candidate to file an initial FEC Form 10, Notification of Expenditures from Personal Funds, within 24 hours of the threshold expenditure, or by April 20, 2006. *See* 2 U.S.C. § 434(a)(6)(B)(iii) and 11 C.F.R. § 400.21(a). The respondents did not file the Form 10 until May 3, 2006, thirteen days late. Because the Act places a requirement on the candidate to ensure that the appropriate filings are made in a timely manner with respect to expenditures from personal funds, there is reason to believe that John Raese violated 2 U.S.C. § 434(a)(6)(B)(iii).[2]

In addition, Mr. Raese failed to file an additional FEC Form 10 for the $100,000 loan made by Mr. Raese to the Committee on April 27, 2006 within 24 hours. This Form 10 was not

[2] The complaint alleges that Mr. Raese should have filed an amended Statement of Candidacy and/or initial Form 10 when Mr. Raese took out a $400,000 line of credit on March 14, 2006. Opening a line of credit, however, does not constitute an expenditure of personal funds until the candidate gives the funds to the campaign or expends the funds on behalf of the campaign. The Commission's regulations define when an "expenditure from personal funds" is made, and it is either the date the funds are deposited into the account designated by the candidate's authorized committee as the campaign depository, the date the instrument transferring the funds is signed, or the date the contract obligating the personal funds is executed, whichever is earlier. 11 C.F.R § 400.4(b) According to Mr. Raese, he first drew on the line of credit when he made his $30,000 loan to the Committee on April 7, 2006 and then again when he made his $70,000 loan to the campaign on April 19, 2006. As discussed above, once he made the $70,000 loan on April 19, he exceeded the reporting threshold and was required to file the initial FEC Form 10 on April 20.

filed until May 3, 2006, five days late. Therefore, there is reason to believe that John Raese violated 2 U.S.C. § 434(a)(6)(B)(iv).

Although the complaint alleges that these violations were knowing and willful, we do not recommend knowing and willing findings at this time. The complaint alleges no facts in support of this allegation, and there is no information otherwise available suggesting that the respondents knowingly and willfully violated the Millionaire Amendment's disclosure requirements.

2. Alleged Failure of Mr. Raese to Declare Intention to Expend Personal Funds Over the Threshold

The complaint alleges that Mr. Raese violated the Act by failing to disclose in his original Form 2, filed February 10, 2006, his intention to expend personal funds in excess of the state threshold, in violation of 2 U.S.C. § 434(a)(6)(B)(ii) and 11 C.F.R. § 400.20. Those provisions require candidates to file, within 15 days of becoming a candidate, a declaration of intent stating the amount of personal funds the candidate intends to expend in excess of the established threshold amount, in this case $207,360.

In response to the complaint, Mr. Raese submitted an affidavit from the treasurer, who states that based on a conversation the treasurer had with Mr. Raese at the time he filed his Statement of Candidacy, Mr. Raese had no intention of "expending personal funds in excess of the threshold amount."[3] While we do not have an affidavit from Mr. Raese attesting to his intention, there is no information suggesting otherwise, and it is entirely possible that Mr. Raese changed his intention as the campaign progressed. In fact, on April 24, 2006, before Mr. Raese did in fact expend personal funds in excess of the state threshold, he filed an amended Form 2

[3] In his affidavit, the treasurer states that the relevant threshold is $414,720. In fact, the requirement that a candidate declare his or her intention to expend excess personal funds refers to the *state established threshold amount* – in this case $207,360 – not $414,720, which is the *reporting* threshold amount. *See* 2 U.S.C. § 434(a)(6)(B)(ii) and 11 C.F.R. § 400.20.

declaring his intention to expend $250,000 in excess of this amount. Therefore, there is no reason to believe that Mr. Raese violated 2 U.S.C. § 434(a)(6)(B)(ii) and 11 C.F.R. § 400.20(a).