



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ms. Cleta Mitchell, Esq.
Foley & Lardner, LLP
3000 K Street, NW
Suite 500
Washington, DC 20007

SEP 25 2008

RE: MUR 5962
Istook for Congress, James R. Hale
as treasurer, and Ernest J. Istook

Dear Ms. Mitchell:

On September 10, 2008, the Federal Election Commission accepted the signed conciliation agreement and civil penalty submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 434(b), 441a(f), 441b(a), 432(c)(5), 434(a) and 439a(b) and 11 C.F.R. § 104.3(b). Accordingly, the file has been closed in this matter.

Paragraph X of the Conciliation Agreement reads: "The Committee will either provide documentation of refund, refund to the contributor, or in the alternative, disgorge to the U.S. Treasury, the remaining \$2,000 in excessive contributions received in violation of 2 U.S.C. § 441a(a)(1)(A)." [REDACTED]

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1650.

Sincerely,

April J. Sands
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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In the Matter of)
)
Ernest Istook) MUR 5962
Kyle Loveless)
Istook for Congress and James R. Hale,)
in his official capacity as treasurer)
)

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CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Istook for Congress and James R. Hale, in his official capacity as treasurer violated 2 U.S.C. §§ 434(b), 441a(f), 441b(a), 432(c)(5), 434(a) and 439a(b) and 11 C.F.R. § 104.3(b), and that Ernest Istook and Kyle Loveless violated 2 U.S.C. § 439a(b) (collectively "Respondents").

NOW, THEREFORE, the Commission and the Respondents having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Istook for Congress (“the Committee”) is the principal campaign committee for Ernest Istook within the meaning of 2 U.S.C. § 431(5).

2. Istook for Congress was known as Friends of Ernest Istook during 2003 and 2004, having changed its name on September 30, 2005.

3. James R. Hale is the current treasurer of Istook for Congress and was the treasurer during 2003 and 2004.

4. Ernest Istook was a U.S. Congressman representing Oklahoma’s 5th District. He was originally elected to that Federal office during the 1992 election cycle.

5. Kyle Loveless was the campaign manager for Istook for Congress during 2003 and 2004.

6. Candidates and committees may not accept contributions from the treasury funds of corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative) or limited liability companies (“LLCs”) that elect to be treated as corporations under IRS rules. 2 U.S.C. § 441b(a); 11 C.F.R. § 110.1(g)(3).

7. Contributions that on their face exceed the Act’s contribution limitations, and contributions which do not appear to be excessive on their face, but which exceed the Act’s contribution limits when aggregated with other contributions from the same contributor, may be either deposited into an appropriate campaign depository or refunded to the contributor. 11 C.F.R. § 103.3(b)(3). For those contributions deposited, the treasurer must, among other things, notify the contributor in writing within 60 days of the treasurer’s receipt of the contribution, that a portion of the contribution that was redesignated and that the contributor may request a refund of the contribution. 11 C.F.R. § 110.1(b).

8. In 2003 and 2004, political committees were prohibited from receiving more than a total of \$2,000 per election from any one person. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. §§ 110.1(a) and (b).

9. Use of campaign funds for personal use is prohibited. 2 U.S.C. § 439a(b).

10. The Commission's regulations define "personal use," as the use of any funds in a campaign account of a present or former candidate to fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 C.F.R. § 113.1(g). "Federal Office" is defined as to include the office of a Representative in Congress. 2 U.S.C. § 431(3).

11. For each disbursement, the treasurer of a political committee must keep records on the: amount; date; name and address of the payee; purpose (a brief description of why the disbursement was made); and if the disbursement was made on behalf of a candidate, the candidate's name and the office sought by the candidate. If the disbursement was in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. If the disbursement was by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 2 U.S.C. § 432(c) (5) and 11 C.F.R. § 102.9(b).

12. The Committee is required to file reports of receipts and disbursements in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended, ("the Act"). *See* 2 U.S.C. § 434. Each report must disclose: the amount of cash on hand at the beginning and end of the reporting period; the total amount of receipts for the reporting period and for the election cycle; the total amount of disbursements for the reporting period and for the

election cycle; and certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. § 434(b)(1), (2), (3), and (4).

13. The treasurer of a candidate's authorized committee is required to file special notices regarding contributions of \$1,000 or more received after the 20th day, but more than 48 hours, before the date of any election in which the candidate is running ("48-hour notices"). 2 U.S.C. § 434(a)(6) and 11 C.F.R. § 104.5(f).

14. The Committee received contributions totaling \$10,825 from the treasury funds of various corporations and LLCs during the 2004 election cycle. The Committee failed to ascertain the entity status of the LLCs as required by 11 C.F.R. §§ 110.1(g)(5) and 103.3(b).

15. During the 2004 election cycle, the Committee failed to timely resolve excessive contributions totaling \$59,100. Most of these excessive contributions resulted from improper redesignations and/or reattributions. The Committee did not inform the contributors of the redesignations and offer them refunds as required by 11 C.F.R. §§ 103.3(b) and 110.1(b). Subsequently, the Committee has refunded to the donors \$59,100 that was not properly redesignated or reattributed.

16. The Committee used \$6,939 of campaign funds for what appeared to be personal expenses of the Candidate. The Candidate used approximately 69% of the monies identified for his personal use, including payment for Broadway show and football tickets, meals, travel, and vehicle expenses. Kyle Loveless, the campaign manager, used approximately 31% of the monies identified for his personal use, including payments for drug store purchases, a studio tour, lodging, dry cleaning, a haircut, and flowers.

17. The Committee identified unauthorized expenditures made by a campaign worker between October 9, 2003 and November 14, 2003, totaling \$30,504 that were paid with

campaign funds. The campaign worker forged campaign checks totaling \$28,012 to himself and various vendors and made unauthorized campaign credit card charges totaling \$2,492.

18. In the years 2003 and 2004, the Committee misstated its cash on hand, receipts and disbursements on its disclosure reports filed with the Commission pursuant to 2 U.S.C. § 434(b). In 2003, receipts were understated in the amount of \$10,820 and disbursements were understated in the amount of \$32,621. In 2004, receipts were understated in the amount of \$26,102 and disbursements were understated in the amount of \$4,997. The Committee misstated the cash on hand balances throughout 2003 and 2004 because of these errors described above. On December 31, 2004, the cash on hand balance was understated by \$3,036.

19. The Committee failed to file 48-hour notices prior to the general election for 20 contributions totaling \$26,250. These contributions were from 15 individuals and 5 political committees.

V. Istook for Congress and James R. Hale, in his official capacity as treasurer committed the following violations:

- a. accepted \$10,825 in contributions from prohibited sources, in violation of 2 U.S.C. § 441b(a). The Committee will cease and desist from violating 2 U.S.C. § 441b(a);
- b. accepted \$59,100 in contributions in excess of the Act's limitations, in violation of 2 U.S.C. § 441a(f). The Committee will cease and desist from violating 2 U.S.C. § 441a(f);
- c. used \$6,939 of campaign funds to pay for the personal expenses of the Candidate in violation of 2 U.S.C. § 439a(b). The Committee will cease and desist from violating 2 U.S.C. § 439a(b);

- d. failed to keep an account of and report certain disbursements in its disclosure reports regarding the embezzlement by a campaign worker in violation of 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(6)(A) and 11 C.F.R. § 104.3(b). The Committee will cease and desist from violating 2 U.S.C. §§ 432(c)(5), 434(b)(4), 434(b)(6)(A) and 11 C.F.R. § 104.3(b);
- e. misstated its cash on hand, receipts and disbursements in the years 2003 and 2004 in violation of 2 U.S.C. § 434(b). The Committee will cease and desist from violating 2 U.S.C. § 434(b);
- f. failed to file 48-hour notices prior to the general election regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before the election in violation of 2 U.S.C. § 434(a). The Committee will cease and desist from violating 2 U.S.C. § 434(a).

VI. Ernest Istook used campaign funds to pay for expenses determined by the Commission to be personal expenses in violation of 2 U.S.C. § 439a(b). Ernest Istook will cease and desist from violating 2 U.S.C. § 439a(b).

VII. Kyle Loveless used campaign funds to pay for his personal expenses in violation of 2 U.S.C. § 439a(b). Kyle Loveless will cease and desist from violating 2 U.S.C. § 439a(b).

VIII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of fourteen thousand six hundred dollars (\$14,600), pursuant to 2 U.S.C.

§ 437g(a)(5)(A), to be paid as follows:

- a. \$1,800 will be paid from Ernest Istook's personal funds;
- b. \$800 will be paid from Kyle Loveless' personal funds;
- c. \$12,000 will be paid from the funds of Istook for Congress.

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IX. The Committee will notify those contributors who made excessive contributions in this matter that their excessive contribution was cured by a presumptive redesignation, but that the Committee failed to send the contributor the appropriate notice under 11 C.F.R. §§ 103.3(b) and 110.1(b).

X. The Committee will either provide documentation of refund, refund to the contributor, or in the alternative, disgorge to the U.S. Treasury, the remaining \$2,000 in excessive contributions received in violation of 2 U.S.C. § 441a(a)(1)(A).

XI. The Committee will appropriately amend its 2003 and 2004 disclosure reports not already amended to rectify the misstatements it made to cash on hand, receipts and disbursements in violation of 2 U.S.C. § 434(b).

XII. Kyle Loveless will refund to the Committee the remainder of the campaign funds used for his personal expenses, or \$1,135. To date, Mr. Loveless has repaid to the Committee \$1,018 of the \$2,153 of campaign funds used for his personal expenses.

XIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

XIV. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XV. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XVI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY:



Ann Marie Terzaken
Associate General Counsel
for Enforcement

9/24/08
Date

FOR THE RESPONDENTS:

Cleta Mitchell
Cleta Mitchell, Esq.
Counsel for Respondents Istook for Congress
and Ernest Istook

April 23 2008
Date

Kyle Loveless

Date