

**MAR 30 2008**

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 MUR 5966 ) CASE CLOSURE UNDER THE  
 NEW HAMPSHIRE REPUBLICAN ) ENFORCEMENT PRIORITY SYSTEM  
 STATE COMMITTEE )  
 )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that involve de minimis activity and are deemed inappropriate for review by the Alternative Dispute Resolution Office are forwarded to the Commission with a recommendation for dismissal as an exercise of its prosecutorial discretion.

In this case, the complainant alleges that the New Hampshire Republican State Committee ("NHRSC") and Robert Scott, in his official capacity as treasurer, provided copies of its voter file to federal candidates without charge. The complainant alleges that this activity resulted in unreported in-kind contributions to federal candidates in violation of 2 U.S.C. § 434(b)(4) and contributions in excess of the \$5,000 limitation in violation of 2 U.S.C. § 441a(a)(2), because of the fair market value of such information. The complainant further alleges that the NHRSC made expenditures for voter identification, as defined at 2 U.S.C. § 431(20)(A)(ii) and 11 C.F.R. § 100.24(a)(4), directly from non-federal accounts during a time when these activities were required to be paid exclusively with federal funds or a combination of federal and Levin funds. Specifically, the complaint identifies a payment of \$436.50 from NHRSC to the New Hampshire Secretary of State on September 29, 2006, five weeks before the November 2006 elections. Finally, the complaint contends that because the

1 NHRSC did not report any payments for the development of its voter file, the NHRSC may  
2 have received an in-kind contribution from an undisclosed source.

3 In its response, the NHRSC denies that it provided any copies of the voter file to any  
4 federal candidate during the 2008 election cycle. An affidavit submitted by Fergus Cullen,  
5 the Chairman of the NHRSC, states that, "to date, at no time during the 2008 election cycle  
6 has the NHRSC entered into any exchange agreement, sold, leased, or otherwise provided  
7 any federal candidate with a New Hampshire voter file." As to the second allegation  
8 concerning NHRSC expenditures for voter identification, the response admits that the  
9 NHRSC may have inadvertently purchased a voter file from the New Hampshire Secretary of  
10 State on September 29, 2006 with non-federal funds. In order to correct the oversight, the  
11 NHRSC reimbursed its state account in the amount of \$436.50 and filed an amended report  
12 with the Commission.

13 It appears that the total amount at issue in this matter is \$436.50. Accordingly, in  
14 light of the de minimis nature of the allegations presented in MUR 5966, and in furtherance  
15 of the Commission's priorities and resources, relative to other matters pending on the  
16 Enforcement docket, the Office of General Counsel believes that the Commission should  
17 exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S.  
18 821 (1985). Additionally, this Office recommends that the NHRSC be admonished for its  
19 conduct in this matter.

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**RECOMMENDATION**

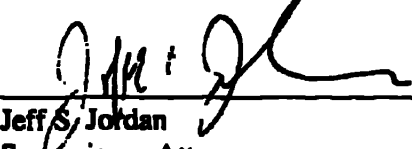
The Office of General Counsel recommends that the Commission dismiss MUR 5966, admonish the New Hampshire Republican State Committee, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters.

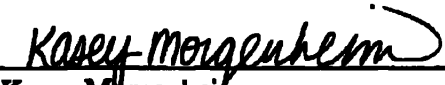
3/20/08  
Date

BY:

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General Counsel

  
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Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
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Attorney

Attachment:  
Narrative in MUR 5966

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4 **MUR 5966**

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6 **Complainant:** New Hampshire Democratic Party

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8 **Respondent:** New Hampshire Republican State Committee and  
9 Robert Scott, as treasurer

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11 **Allegations:** The complainant alleges that the New Hampshire Republican State  
12 Committee ("NHRSC") provided copies of its voter file to federal candidates without  
13 charge. The complainant alleges that this activity resulted in unreported in-kind  
14 contributions to federal candidates in violation of 2 U.S.C. § 434(b)(4) and contributions  
15 in excess of the \$5,000 limitation in violation of 2 U.S.C. § 441a(a)(2), because of the  
16 fair market value of such information. The complainant further alleges that the NHRSC  
17 made expenditures for voter identification, as defined at 2 U.S.C. § 431(20)(A)(ii) and  
18 11 C.F.R. § 100.24(a)(4), directly from non-federal accounts during a time when these  
19 activities were required to be paid exclusively with federal funds or a combination of  
20 federal and Levin funds. Specifically, the complaint identifies a payment of \$436.50  
21 from NHRSC to the New Hampshire Secretary of State on September 29, 2006, five  
22 weeks before the November 2006 elections. Finally, the complaint contends that because  
23 the NHRSC did not report any payments for the development of its voter file, the  
24 NHRSC may have received an in-kind contribution from an undisclosed source.

25  
26 **Response:** In its response, the NHRSC denies that it provided any copies of the voter  
27 file to any federal candidate during the 2008 election cycle. An affidavit submitted by  
28 Fergus Cullen, the Chairman of the NHRSC, states that, "to date, at no time during the  
29 2008 election cycle has the NHRSC entered into any exchange agreement, sold, leased,  
30 or otherwise provided any federal candidate with a New Hampshire voter file." As to the  
31 second allegation, concerning NHRSC expenditures for voter identification, the response  
32 admits that the NHRSC may have inadvertently purchased a voter file from the New  
33 Hampshire Secretary of State on September 29, 2006 with non-federal funds. In order to  
34 correct the oversight, the NHRSC reimbursed its state account in the amount of \$436.50  
35 and filed an amended report with the Commission.

36  
37 **General Counsel's Note:** It appears that the total amount at issue in this matter is  
38 \$436.50. [REDACTED] this Office believes that  
39 in light of the de minimis nature of the allegations presented the Commission should  
40 exercise its prosecutorial discretion and dismiss this matter and send an admonishment to  
41 the NHRSC.

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43 **Date complaint filed:** January 22, 2008

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45 **Date response filed:** March 6, 2008

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