



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC - 5 2008

Brian McMahon

Saratoga Springs, NY 12866

Re: Matter Under Review 6074

Dear Mr. McMahon:

The Federal Election Commission ("Commission"), the regulatory agency that administers and enforces the Federal Election Campaign Act of 1971, as amended ("the Act"), has ascertained information in the normal course of carrying out its supervisory responsibilities indicating that you may have violated the Act. Specifically, it appears that you were reimbursed by Edwards and Kelcey, Inc. for a \$250 federal political contribution that you made to Sweeney for Congress on or around May 17, 2003. Under the Act, corporations are prohibited from making contributions to federal political committees, *see* 2 U.S.C. § 441b, and individuals are prohibited from allowing their names to be used to effect such contributions, *see* 2 U.S.C. § 441f.

On September 11, 2008, the Commission, after considering all the circumstances, determined to dismiss the allegation that you violated 2 U.S.C. § 441f. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which formed a basis for the Commission's determination, is attached for your information.

Nevertheless, you should be aware that apparent violations of 2 U.S.C. § 441f by allowing an individual's name to be used to effect a contribution made by another has resulted in admonishment from the Commission. You should take steps to ensure that this activity does not occur in the future.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "April J. Sands".

April J. Sands
Attorney

Attachment

Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **MUR 6074**

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8 **RESPONDENT:** Jacobs Engineering Group, Inc./Edwards and Kelcey, Inc.

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11 Jacobs Engineering Group, Inc. ("Jacobs") reports that four
12 employees of Edwards and Kelcey, Inc. ("EK"), a corporation it recently acquired, made
13 contributions to various federal political and candidate committees from 2003-2006, which were
14 then reimbursed by EK in violation of the Federal Election Campaign Act of 1971, as amended
15 (the "Act").

16 **I. FACTUAL BACKGROUND**

17 Jacobs Engineering Group, Inc. is a publicly traded corporation that describes itself as a
18 broad-based technical professional consulting firm. In early 2007, Jacobs was engaged in
19 discussions to acquire Edwards and Kelcey, Inc., a privately held engineering services firm. As
20 part of its due diligence, Jacobs discovered that EK had apparently reimbursed employees for
21 federal political contributions in violation of the Act. The transaction to purchase EK by Jacobs
22 was completed on April 11, 2007.

23 Following the discovery of the reimbursed contributions, EK asked its outside
24 accountants, WISS & Company LLP ("WISS") to perform an audit of certain EK records. WISS
25 identified the following six contributions totaling \$1,800 made by four EK employees for which
26 those employees submitted EK Expense Reimbursement Forms requesting reimbursement for the
27 contributions:

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CONTRIBUTOR	JOB TITLE	DATE	AMOUNT	RECIPIENT
Carrino, Dominic B	Engineer	03/21/04	\$300	Pascrell, Jr. for Congress
Carrino, Dominic B	Engineer	05/13/05	\$250	Kennedy for Senate
Carrino, Dominic	Engineer	06/30/04	\$500	DSCC
Fish, David	Consultant	10/26/05	\$250	Gilchrest for Congress
Marshall, Kenneth	Engineer	10/29/06	\$250	Elijah Cummings
McMahon, Brian	Engineer	05/17/03	\$250	Sweeney for Congress
TOTAL			\$1,800.00	

There does not appear to be any evidence that the employees attempted to hide or conceal the reason for the reimbursements.

Given evidence of other political contributions made by EK employees obtainable through the Commission database, we asked Jacobs to determine if forty additional contributions were improperly reimbursed. EK Expense Reimbursement Forms were reviewed for the relevant time periods to determine if reimbursements had been either requested or received. No additional reimbursements were found. Counsel for Jacobs interviewed the EK employees still employed by EK who received the impermissible reimbursements and current EK employees "with any knowledge of the events in question." Counsel also reviewed the WISS audit reports and interviewed the auditor responsible for their preparation. It is Jacob's conclusion that the six EK corporate reimbursements acknowledged "were made through administrative sloppiness, lack off [sic] training, and lack of EK corporate guidelines."

According to its submission, Jacobs has taken steps to ensure that recently acquired EK employees, and other Jacobs employees, are educated in the applicable election laws. For example, each year Jacobs requires its employees, including EK employees, to reaffirm in writing that they understand and will comply with the Jacobs Business Conduct Policy, which

1 includes a section explaining the laws regarding political contributions. This reaffirmation last
2 took place in September 2007. Jacobs also now requires that all employee expense reports be
3 submitted electronically to an audit team that follows written guidelines for reimbursement that
4 include instructions not to reimburse political contributions.

5 Furthermore, the individual who was improperly reimbursed and is still employed by EK
6 has been instructed to reimburse the company for the amount involved. Neither Jacobs nor BK
7 have contacted the political committees to inform them of the impermissible contributions, and
8 we have no information suggesting that the political committees are aware that the received
9 contributions were reimbursed.

10 **II. ANALYSIS**

11 EK appears to have violated 2 U.S.C. §§ 441b(a) and 441f by making impermissible
12 contributions from 2003 to 2006 in the names of others.¹ The Act defines "contribution" as
13 anything of value made by any person for the purpose of influencing any election for federal
14 office. 2 U.S.C. § 431(8)(A)(i). Under the Act, corporations are prohibited from making
15 contributions or expenditures from their general treasury funds in connection with any election
16 of any candidate for federal office and corporate officers are prohibited from consenting to such
17 contributions. 2 U.S.C. § 441b(a). The Act also provides that no person shall make a
18 contribution in the name of another person or knowingly permit his or her name to be used to
19 effect such a contribution, and that no person shall knowingly accept a contribution made by one
20 person in the name of another person. 2 U.S.C. § 441f.

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1 Jacobs acknowledges that the reimbursement by EK of contributions made by employees
2 appears to be a violation of the Act. While the Commission could make reason to believe
3 findings and seek civil penalties from both EK (now a subsidiary of Jacobs) and the four
4 individual contributors, there are reasons not to pursue this matter. It appears that all reimbursed
5 contributions have been disclosed and that Jacobs/EK has engaged in sufficient subsequent
6 remedial measures to ensure this type of activity does not recur. Given the contributors' lack of
7 sophistication with the Act, their lack of an attempt to disguise the contributions and requests for
8 reimbursements, and the amounts involved, the most prudent course of action and the most
9 efficient use of the Commission's resources is for the Commission to exercise its prosecutorial
10 discretion and dismiss this matter with admonishments to Jacobs/EK and the four employees
11 pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

12 The federal political committees that received contributions from EK employees between
13 2003 and 2006 have not been notified of their receipt of impermissible contributions. Under the
14 Act, no person, including a political committee or a candidate, may knowingly accept or receive
15 a corporate contribution. 2 U.S.C. § 441b(a). At this time, there is no information that any of
16 the political committees had any knowledge that the contributions they received from the EK
17 employees were made with corporate funds. Accordingly, we make no findings regarding the
18 recipient committees.