

FEDERAL ELECTION COMMISSION
999 E Street, N W
Washington, D C 20463

FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL 08-08
DATE REFERRED April 29, 2008
DATE ACTIVATED May 8, 2008

STATUTE OF LIMITATIONS 8/8/11 -
12/31/11

SOURCE

INTERNALLY GENERATED

RESPONDENTS

Derrick Shepherd Campaign Committee and
Derrick Shepherd, in his official capacity as
treasurer

RELEVANT STATUTES

2 U S C § 432(d)
2 U S C § 434(b)(2)
2 U S C § 434(b)(3)
2 U S C § 434(b)(6)(A)
2 U S C § 441a(a)(1)(A)
2 U S C § 441a(f)
2 U S C § 441b(a)
11 C F R §104 3(a)
11 C F R §104 14(b)(1)

INTERNAL REPORTS CHECKED

Audit Documents
Disclosure Reports

FEDERAL AGENCIES CHECKED

I. INTRODUCTION

This matter was generated by a Commission audit pursuant to 2 U S C § 438(b) of the
Derrick Shepherd Campaign Committee ("the Committee"), the authorized committee of Derrick
Shepherd, a 2006 candidate for the House of Representatives in Louisiana's 2nd Congressional
District The audit covered the period August 3, 2006 through December 31, 2006

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1 The Audit Division submitted the Final Audit Report ("FAR") to the Commission on
2 April 28, 2008, and it is currently awaiting Commission approval. Attachment 1 Findings 1 thru 7
3 were referred to this Office on April 29, 2008. Based on the information set forth in the FAR, in
4 addition to information contained in a federal indictment against the candidate, Derrick Shepherd,
5 see http://www.usdoj.gov/usao/lae/press/2008/downloads/indictment_derrick_shepherd.pdf
6 ("Shepherd Indictment"), we recommend the Commission open a MUR on the following
7 violations:

- 8 • The Committee failed to properly maintain records related to \$154,125 in loans
9 from Derrick Shepherd in violation of 2 U S C § 432(d) and 11 C F R §
10 104 14(b)(1) (see Finding 1, Attachment 1 at pp 8-9)
- 11 • The Committee accepted prohibited contributions in violation of
12 2 U S C § 441b(a) (see Finding 2, Attachment 1 at pp 9-12, see also Shepherd
13 Indictment at 32)
- 14 • The Committee accepted excessive contributions in violation of 2 U S C § 441a(f)
15 (see Finding 3, Attachment 1 at pp 12-14, see also Shepherd Indictment at 32)
- 16 • The Committee overstated its reported receipts and cash on hand by \$54,740 in
17 violation of 2 U S C § 434(b)(2) and 11 C F R § 104 3(a), and understated its
18 disbursements by \$20,000 in violation of 2 U S C § 434(b)(3) and 11 C F R
19 § 104 3(b) (see Finding 4, Attachment 1 at pp 14-16, see also Shepherd Indictment
20 at 32)
- 21 • The Committee failed to adequately disclose the name and address of contributors on
22 the date of receipt for 38 contributions totaling \$46,150 in violation of 2 U S C
23 § 434(b)(3)(A) (see Finding 5, Attachment 1 at pp 16-17)
- 24 • The Committee did not file 48-hour notices for 15 contributions totaling \$94,100 in
25 violation of 2 U S C § 434(b)(6)(A) (see Finding 6, Attachment 1 at p 17)
- 26 • The Committee failed to adequately disclose the occupation and/or name of
27 employer for 44 contributions totaling \$55,350 in violation of 2 U S C § 434(b)(3)
28 and 11 C F R § 104 3(a)(4) (see Finding 7, Attachment 1 at pp 18-19)

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1 **II. ANALYSIS**

2 During the course of the audit, the Committee failed to cooperate in providing information
3 to the Commission. In addition to failing to respond to the Interim Audit Report, the Committee
4 failed to respond to multiple requests for information concerning the source of the candidate loans
5 at issue in Finding 1.¹ The Committee's lack of cooperation may be related to a criminal
6 investigation that resulted in the April 10, 2008 indictment of Derrick Shepherd on federal mail
7 fraud and wire fraud charges in connection with a money laundering scheme that is alleged to have
8 taken place after the primary election in late 2006. See [http://www.usdoj.gov/usdo/ao/pdffiles/2008/
9 downloads/indictment_derrick_shepherd.pdf](http://www.usdoj.gov/usdo/ao/pdffiles/2008/downloads/indictment_derrick_shepherd.pdf). Mr. Shepherd's criminal trial is currently scheduled
10 for October 2008.

11 The indictment alleges that Shepherd assisted the owners of an unlicensed construction
12 bond firm to conduct business by depositing premium payments on their behalf into his law firm
13 account, claiming them as legal fees. The bond firm and its owners had been banned by court order
14 from selling insurance in Louisiana due to past fraud, and because its bank accounts had been
15 seized by state regulators, could not make premium deposits on its own. Notwithstanding the
16 measures taken by regulators, the unlicensed bond firm continued to sell construction bond
17 coverage, collected premiums that were deposited into Shepherd's accounts, but never actually
18 provided any bonds, defrauding the construction firms. As part of the alleged scheme, Shepherd
19 kept approximately half of the premium payments that he deposited into his law firm account, and
20 paid the balance to the owners of the unlicensed bond firm.

¹ On January 10, 2008, this Office submitted a memorandum to the Commission on behalf of the Audit Division seeking approval for subpoenas to obtain information as to the source of the candidate loans. However, the Commission did not authorize the subpoenas, in part because of the lack of a quorum and because it was believed a letter to the candidate seeking the information, and warning that the Commission could make an adverse inference as to the source of the funds, might result in noncompliance. Nevertheless, the candidate's letter and other communications were not answered and did not resolve the concerns.

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1 The indictment charges that \$20,000 of the funds Shepherd derived from the scheme were
2 used to make a payment for "campaign expenses" on or around December 21, 2006. In
3 conversations with the criminal prosecutors, we have determined that the "campaign expenses"
4 referenced in the indictment were paid by Shepherd out of his law firm's account (Shepherd and
5 Associates, LLC) to Buisson Creative Strategies, a vendor to the Committee. Although the
6 Committee disclosed payments to Buisson Creative Strategies for \$1,761.30 on September 21,
7 2006 for "campaign management/PR" and paid Greg Buisson \$9,854.10 for the same purpose
8 on August 18, 2008, the Committee reported no other payments to Buisson, including any
9 disbursement for \$20,000 made on or around December 21, 2006. Although the disbursement fell
10 within the time frame covered by the audit, because the disbursement was unreported and a review
11 of the law firm's records was not part of the audit, the Audit Division was unable to pursue further
12 information about this disbursement in connection with its efforts to investigate the Committee's
13 compliance with the limitations, prohibitions and disclosure requirements of the Act.

14 Nevertheless, based on the information from the indictment it appears that the Committee
15 received but did not report an in-kind contribution from Shepherd and Associates, LLC that may be
16 prohibited and, if not prohibited, is excessive. See Attachment 1 at 9 (discussing application of
17 limits and prohibitions to LLC contributions). Therefore, the receipt of the contribution from an
18 LLC and the failure to report the contribution provides an additional basis upon which we
19 recommend that the Commission find reason to believe the Committee has violated 2 U.S.C. §
20 441b(a) or, alternatively, 2 U.S.C. § 441a(f) by accepting prohibited or excessive contributions, and
21 violated 2 U.S.C. § 434(b)(2) by failing to report the in-kind contribution. See Final Audit Report
22 Findings 2-4.

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1 **III. PROPOSED DISCOVERY**

2 Because the Committee was unresponsive to requests for information during the audit, we
3 believe that an investigation is necessary to establish the source of funds for the candidate loans at
4 issue, as well as information regarding the contributions from LLCs and the possible in-kind
5 contribution from Shepherd's law firm. In light of the committee's lack of cooperation during the
6 audit, we anticipate serving formal discovery, including document subpoenas to the Committee,
7 and possibly the candidate, the candidate's law firm, and banks at which the candidate maintained
8 accounts. In addition, interviews or depositions of Committee personnel may be necessary.
9 Accordingly, this Office requests that the Commission authorize the use of compulsory process to
10 all respondents and witnesses in this matter, including the issuance of appropriate interrogatories,
11 document subpoenas, and deposition subpoenas, as necessary.

12 **IV. RECOMMENDATIONS**

- 13 1 Open a MUR
- 14 2 Find reason to believe that Derrick Shepherd Campaign Committee and Derrick
15 Shepherd, in his official capacity as treasurer, violated 2 U S C § 432(d) and 11 C F R
16 § 104 14(b)(1)
- 17 3 Find reason to believe that Derrick Shepherd Campaign Committee and Derrick
18 Shepherd, in his official capacity as treasurer, violated 2 U S C § 441b(a)
- 19 4 Find reason to believe that Derrick Shepherd Campaign Committee and Derrick
20 Shepherd, in his official capacity as treasurer violated 2 U S C § 441a(f)
- 21 5 Find reason to believe that Derrick Shepherd Campaign Committee and Derrick
22 Shepherd, in his official capacity as treasurer, violated 2 U S C § 434(b) and 11 C F R
23 § 104 3
- 24 6 Approve the attached Factual and Legal Analysis

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- 1 7 Authorize the use of compulsory process against all respondents and witnesses in this
2 matter, including the issuance of appropriate interrogatories, document subpoenas, and
3 deposition subpoenas, as necessary
- 4 8 Approve the appropriate letter

5
6 Thomasena P Duncan
7 General Counsel

8
9
10 7-3-08
11 Date

BY

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