



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 07 2010

Arthur Blackwell

Detroit, MI 48202

RE: MUR 6221
Arthur Blackwell

Dear Mr. Blackwell:

On February 17, 2010, the Federal Election Commission ("Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 25, 2010, the Commission found, on the basis of the information in the complaint and other available information, that there is no reason to believe you violated 2 U.S.C. § 441a(a). Accordingly, the Commission closed its file in this matter.

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). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg".

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Arthur Blackwell

MUR: 6221

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by William James Scoggin, *see* 2 U.S.C. § 437g(a)(1), alleging that an individual named Arthur Blackwell made an excessive contribution to Kilpatrick for United States Congress (“Kilpatrick Committee”). Complaint at 2. The complainant cites the Commission’s regulations on earmarked contributions (11 C.F.R. § 110.6) and contributions by individuals to committees supporting the same candidate (11 C.F.R. § 110.1(h)), cites three contributions made by Blackwell (\$5000 to Transfund PAC, the leadership PAC of Representative Carolyn Kilpatrick, and \$500 and \$1000 to the Kilpatrick Committee), and asserts that Blackwell exceeded the individual contribution limit by \$1500.

As discussed in further detail below, there is no information to support the allegation that Blackwell made an excessive contribution to the Kilpatrick Committee. Accordingly, the Commission finds no reason to believe that Blackwell violated 2 U.S.C. § 441a(a).

II. FACTUAL AND LEGAL ANALYSIS

The Federal Election Campaign Act of 1971, as amended (“the Act”) provides that no person shall make contributions to any candidate and his or her authorized political committee with respect to any election for federal office which, in the aggregate, exceed \$2,300 for the 2008 election cycle, or to any other political committee in any calendar year which, in aggregate, exceed \$5,000. 2 U.S.C. § 441a(a)(1)(A) and (C); 11 C.F.R. § 110.1(b) and (d); *Price Index*

1 *Increases for Expenditure and Contribution Limitations*, 72 Fed. Reg. 5294, 5295 (Feb. 5, 2007).
2 Candidates and their committees are prohibited from knowingly accepting any contributions in
3 excess of the Act's limitations. 2 U.S.C. § 441a(f); 11 C.F.R. § 110.9(a).

4 Transfund, the leadership PAC for Representative Carolyn Kilpatrick, has been registered
5 with the Commission since December 16, 2006. *See* Statement of Organization. The Act
6 defines a "leadership PAC" as a political committee that is directly or indirectly established,
7 financed, maintained, or controlled by a candidate for Federal office or an individual holding
8 Federal office, but which is not an authorized committee of the candidate or individual and
9 which is not affiliated with an authorized committee of the candidate or individual. 2 U.S.C.
10 § 434(i)(8)(B). Although associated with a particular candidate, a leadership PAC is not legally
11 affiliated with the candidate's principal campaign committee and is treated as a non-connected
12 committee. *See* 11 C.F.R. § 100.5(g)(4); *Final Rules and Explanation and Justification on*
13 *Leadership PACs*, 68 Fed. Reg. 67013 (Dec. 1, 2003).

14 The complaint alleges, in part, that Arthur Blackwell made an excessive contribution to
15 Kilpatrick's campaign. Specifically, the complaint cites three contributions made by
16 Blackwell—\$5,000 to Transfund PAC on January 26, 2007; \$500 to the Kilpatrick Committee
17 on November 2, 2007; and \$1,000 to the Kilpatrick Committee on June 30, 2008—and asserts
18 that Blackwell exceeded the individual contribution limit by \$1,500. Complaint at 2. The
19 complainant's theory appears to be that the contribution to Transfund PAC was earmarked for
20 Kilpatrick's campaign, 11 C.F.R. § 110.6, or in the alternative, that Blackwell retained control
21 over the contribution to Transfund PAC with the knowledge that a substantial portion of his

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1 contribution would be contributed to or expended on behalf of Kilpatrick's campaign, 11 C.F.R.
2 § 110.1(h)(2)-(3).¹

3 An earmarked contribution counts against the contributor's contribution limit for the
4 recipient candidate. 11 C.F.R. § 110.6(a). Thus, if Blackwell's contribution was earmarked, it
5 would be subject to Blackwell's individual contribution limit of \$2,300 per election to a
6 candidate committee during the 2008 election cycle, and it would not count against his limit for
7 contributing to Transfund. 2 U.S.C. § 441a(a)(1)(A) and 441a(a)(8). However, if Blackwell's
8 contribution was not earmarked, then he was permitted to contribute \$5,000 per calendar year to
9 Transfund, an unauthorized committee, as long as he did not possess actual knowledge that his
10 contribution would be used for Kilpatrick's campaign and he did not retain control of the funds.
11 *See* 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. § 110.1(h)(1)-(3). As discussed below, there is no
12 available information to support the complainant's allegations that Blackwell's contribution to
13 Transfund was either earmarked, or excessive.

14 A contribution is earmarked when there is "a designation, instruction, or encumbrance,
15 whether direct or indirect, express or implied, oral or written, which results in all or any part of a
16 contribution or expenditure being made to, or expended on behalf of, a clearly identified
17 candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b). In the past, the
18 Commission has determined that contributions were earmarked where there was clear
19 documentary evidence demonstrating a designation or instruction by the donor. *See* MURs
20 4831/ 5274 (Nixon) (finding contributions were earmarked where checks contained express
21 designations on memo lines); *see also*, MUR 5732 (Matt Brown for U.S. Senate), MUR 5520

¹ The complaint characterizes all three contributions made by Blackwell as "individual contributions to a single candidate." Complaint at 2.

1 (Republican Party of Louisiana/Tauzin), MUR 5445 (Davis), and MUR 4643 (Democratic Party
2 of New Mexico) (rejecting earmarking allegations where there was no evidence of a clear
3 designation, instruction, or encumbrance by the donor). The Commission has rejected
4 earmarking claims even where the timing of the contributions at issue appeared to be a
5 significant factor, but the contributions lacked a clear designation or instruction. *See* MUR 5445
6 (Davis) and MUR 4643 (Democratic Party of New Mexico).

7 Additionally, the Commission's regulations permit an individual to contribute to a
8 candidate or his or her authorized committee with respect to a particular election and also
9 contribute to a political committee, which has supported, or anticipates supporting, the same
10 candidate in the same election without aggregation, as long as (1) the political committee is not
11 the candidate's principal campaign committee, or other authorized committee or single candidate
12 committee; (2) the contributor does not give with the knowledge that a substantial portion will be
13 contributed to, or expended on behalf of, that candidate for the same election; and (3) the
14 contributor does not retain control over the funds. *See* 11 C.F.R. § 110.1(h)(1)-(3). *See also*
15 *Explanation and Justification of 11 C.F.R. § 110.1(h)*, 52 Fed. Reg. 44,130 (January 9, 1987).

16 In order for a contribution to an unauthorized committee to be aggregated with an
17 individual's contribution limits for a particular candidate, the Commission has required that the
18 contributor have "actual knowledge" of the committee's plans to use his or her contribution to
19 contribute to or expend funds on behalf of the candidate to meet the requirements of section
20 110.1(h)(2). *See* MURs 5732 (Matt Brown for U.S. Senate), 5678 (Liffbrig for Senate), 5445
21 (Davis), and 5019 (Keystone Federal PAC) (although contributors were likely aware that the
22 PAC would contemporaneously contribute to the candidates' committees there was no evidence
23 that the contributors actually knew that a portion of their contributions would be given to

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1 specific candidates). *See also* MUR 5881 (Citizens Club for Growth) (rejecting claim that
2 contributors had actual knowledge based on text of solicitations).

3 There is no information to demonstrate that Blackwell's contribution of January 26,
4 2007, to Transfund was earmarked for the Kilpatrick Committee or that Blackwell actually knew
5 his contribution would be used for a candidate. There is no allegation or available information
6 indicating that Blackwell may have designated his contribution to be used exclusively for the
7 benefit of the Kilpatrick Committee. 11 C.F.R. § 110.6(b). Similarly, there is no information
8 indicating that Blackwell had actual knowledge that his contribution to Transfund would be used
9 for the benefit of the Kilpatrick campaign or that Blackwell retained control over his contribution
10 to Transfund in any way. 11 C.F.R. § 110.1(h)(2)-(3).

11 Based on his past contributions, Blackwell appears to be a long-time supporter of
12 Kilpatrick with contributions going as far back as 1997, but there is no history of any excessive
13 contributions. FEC records show that during the 2008 election cycle, Blackwell contributed a
14 total of \$1,500 to the Kilpatrick Committee (\$500 on November 2, 2007, and \$1,000 on June 30,
15 2008). Although Blackwell might reasonably infer that some portion of his contribution to
16 Kilpatrick's leadership PAC might be used to support Kilpatrick, such an inference alone does
17 not suggest that Blackwell had "actual knowledge" that Transfund would use his contribution to
18 support Kilpatrick. *See, e.g.*, MUR 5968 (John Shadegg's Friends) and MUR 5732 (Matt Brown
19 for U.S. Senate) (stating that although donors solicited by a candidate to contribute to state
20 parties might reasonably infer that their contributions would be used to benefit that candidate,
21 such information was insufficient for finding reason to believe that 11 C.F.R. § 110.1(h) had
22 been violated).

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1 Finally, there are no additional factors that point to the possibility that Blackwell
2 intended his contribution to be used for the Kilpatrick Committee. Since its organization in
3 2006, Transfund has contributed to thirty federal candidates other than Kilpatrick. In fact,
4 Transfund did not make a contribution to the Kilpatrick Committee until July 16, 2008, over one
5 year after the date of Blackwell's January 26, 2007 contribution. These factors do not indicate
6 Blackwell retained any control of his contribution to Transfund, or that he had any knowledge of
7 whether it would be used for the benefit of Kilpatrick.

8 In sum, based on the available information, it does not appear that Arthur Blackwell
9 made an earmarked contribution as defined in 11 C.F.R. § 110.6(b) or made his contribution to
10 Transfund with the requisite knowledge and control, as set forth in section 110.1(h)(2)-(3), to
11 trigger a violation of 2 U.S.C. § 441a(a). Accordingly, the Commission finds no reason to
12 believe that Arthur Blackwell violated 2 U.S.C. § 441a(a).

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