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FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

Pre-MUR 494
DATE RECEIVED: January 4, 2010
DATE ACTIVATED: March 11, 2010

SOLs EXPIRED PRIOR TO RECEIPT:
August 25, 2003-March 31, 2009
SOLs NOT EXPIRED AT RECEIPT:
June 16, 2011-July 1, 2014

MUR 6249
DATE RECEIVED: January 25, 2010
DATE ACTIVATED: March 11, 2010

SOLs EXPIRED PRIOR TO RECEIPT:
August 25, 2003-March 31, 2009
SOLs NOT EXPIRED AT RECEIPT:
June 16, 2011-July 1, 2014

SOURCE/COMPLAINANT: Kansas City University of Medicine and
Biosciences, and Howard D. Weaver, D.O.,
Chairman of the Board of Trustees

RESPONDENT: Karen L. Pletz

RELEVANT STATUTES: 2 U.S.C. § 441b(a)
2 U.S.C. § 441f

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Kansas City University of Medicine and Biosciences ("the University") filed both a *sua*
sponte submission and a complaint against its former President and CEO, Karen L. Pletz, to
report that the University appears to have been the true source of funds used for at least \$15,700

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1 in federal contributions that were attributed to Ms. Pletz between 1999 and 2009.¹ The
2 University provided Ms. Pletz with an annual leadership stipend to reimburse her for both state
3 and federal contributions she would make to further the University's interests. While Ms. Pletz
4 acknowledges receiving the annual stipend and making federal contributions, she asserts that all
5 of her political contributions were made of her own free will, with her own money, and not on
6 behalf of the University.

7 As discussed below, we recommend the Commission find reason to believe that Karen L.
8 Pletz violated 2 U.S.C. §§ 441b(a) and 441f by using corporate funds to make contributions in
9 the name of another. Additionally, we recommend the Commission find reason to believe that
10 Kansas City University of Medicine and Biosciences violated 2 U.S.C. §§ 441b(a) and 441f. We
11 further recommend the Commission take no action at this time with respect to the following
12 recipient committees: Talent for Senate, Hulshof for Congress, Kay for Congress, Missourians
13 for Bond, Friends of Bennie Thompson, and Nodler for Congress. Finally, we recommend the
14 Commission authorize the use of compulsory process to assist in an investigation into whether
15 Ms. Pletz acted in a knowing and willful manner and whether there were other federal
16 contributions made in the name of another.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. Factual Background**

19 Kansas City University of Medicine and Biosciences is an incorporated, non-profit
20 osteopathic medical school in Kansas City, Missouri. Karen Pletz, who is an attorney, was the
21 University's President and CEO from 1995 to 2009.

¹ Only \$6,200 of these contributions remains within the five-year statute of limitations. The next date upon which contributions will fall outside the statute of limitations is June 16, 2011 – when \$1,000 will expire – and the last date is July 7, 2014.

1 On September 26, 1999, Ms. Pletz wrote a memorandum to Dr. Jack Weaver, then
2 Chairman of the Board of Trustees (now deceased), suggesting that the University provide her
3 with additional compensation so as to reimburse her for expenses such as political contributions.
4 Complaint at 2. The memorandum first clearly acknowledges that the University is a non-profit
5 corporation prohibited from making political contributions, and then recommends that the
6 University provide Ms. Pletz with a \$42,000 lump-sum payment and a \$42,000 increase to her
7 salary for the next year to personally make the political contributions. Complaint Exhibit A ¶¶ 2-
8 4. Ms. Pletz states that, "This will enable [me] to participate in a meaningful way, beginning
9 now, in an important election year, and will also offset the additional tax involved, so that [I] am
10 not penalized personally for work-related efforts." *Id.* at ¶ 4. Ms. Pletz further recommends that
11 her additional compensation be characterized as a "housing allowance," so that it will be added
12 to her compensation as a separate benefit component, taxable to her, but enabling her to use the
13 funds for the political requirements of her job. *Id.* at ¶ 5.

14 Minutes of a September 27, 1999 meeting of the University's Compensation and Benefits
15 Committee and an October 8, 1999 Executive Committee meeting reflect approval of a lump-
16 sum retroactive adjustment to Ms. Pletz's salary and an increase in her annual salary, both in the
17 amount of \$42,000.² Complaint Exhibit B at 2 and Exhibit C at 2-4. Neither set of minutes
18 include any specific reference to the September 26, 1999 memorandum or any specific

² The University's internal investigation has raised questions about the accuracy and authenticity of Executive Committee meeting minutes. Although the University is still examining records prior to 2006, it believes that Ms. Pletz forged several of the Executive Committee meeting minutes between 2006 and 2008 in which her leadership stipend was purportedly approved, and the meetings did not actually occur. Complaint at 3-4. Instead, Ms. Pletz directed her secretary, Connie Boyd, to type the minutes, then transposed Dr. Howard Weaver's signature and forwarded them to the University's CFO, Mr. Richard Hoffins, to receive the stipend. Telephone Conversation with Outside Counsel to Kansas City University of Medicine and Biosciences (April 15, 2010). Although the minutes may have been forged, Ms. Pletz still received the stipend they purported to approve. See Complaint Exhibits H and I; see also Response at 4. Counsel have made no determination as to the authenticity of meeting minutes prior to 2006.

discussion of the reason for the salary adjustments, except that Ms. Platz's compensation should recognize her special efforts and responsibilities as both a Chief Executive and a community leader. *Id.* Finally, an October 8, 1999 Personnel Action Form signed by Dr. Jack Weaver and subsequent Earnings Statements for Ms. Platz confirm that Ms. Platz received the funds. Complaint Exhibits E, F, and G.

The funds paid to Ms. Platz in order to make political contributions took the form of a salary increase in 1999 and a "leadership stipend" from 2002 through 2009. Although Ms. Platz received \$42,000 in 1999, her annual leadership stipend grew to \$195,000 by the time her employment was terminated in 2009. Complaint at 3 and Response Exhibit 8.

From 1998 through 2009, Ms. Platz made the following \$15,700 in federal political contributions, \$6,200 of which is still within the statute of limitations.

Table 1. Federal Contributions by Karen Platz

Date	Recipient	Contribution
8/25/1998	Missourians for Bond	\$1,000
12/3/1999	Carnahan for Senate	\$1,000
7/24/2000	Greg Masi for Congress	\$500
10/17/2000	Missouri 2000	\$1,000
10/17/2000	Carnahan for Senate	\$1,000
2/23/2004	Missourians for Bond	\$2,000
2/23/2004	Missourians for Bond	\$2,000
3/31/2004	Weaver for Congress	\$1,000
6/16/2006	Talent for Senate	\$1,000
9/11/2006	Hulshof for Congress	\$250
6/28/2007	Kay for Congress	\$2,300
6/30/2007	Missourians for Bond	\$1,150
11/9/2007	Friends of Bennie Thompson	\$500
3/31/2008	Kay for Congress	\$500
7/1/2009	Nodler for Congress	\$500

In an October 28, 2009 text message to Dr. Howard Weaver, the new Chairman of the Board (and the son of the former Chairman), Ms. Platz requested that her stipend be processed, explaining that the stipends are authorized as income to her – "as they must be to be legal" – and

1 must not be directed by the institution. Complaint Exhibit I. She further explains that the
2 stipends are "used each year to garner support in the legislature" and that "[w]e are at a critical
3 juncture re sponsors of the bill and pro tem and chair commitments." *Id.* According to the
4 complaint, prior to the October 2009 text message, Dr. Howard Weaver was not aware that Ms.
5 Pletz's leadership stipend may have been used to make political contributions.³ Complaint at 4.

6 Ms. Pletz's November 2009 Report of the President intimates that she used her leadership
7 stipend for political contributions each year it was received, through 2009:

8 I devote the stipend portion of my compensation each year to
9 strategic support of legislative leadership in higher
10 education/medical education/health policy. This initiative is a
11 strong example of the effectiveness of KCUMB's community
12 investment and of the leadership stipend. As a 501C3
13 organization, the institution cannot lawfully make or direct
14 political contributions to individual candidates or legislators.
15 However, I have always believed that I had a personal
16 responsibility to support legislative leadership in higher education,
17 medical education, and health policy. Legislation incorporating
18 standards to ensure continuing high quality in Missouri's medical
19 education will be introduced early in this session, largely as a
20 result of KCUMB's leadership.

21
22 Complaint Exhibit H at 6. The University asserts that the current Board of Trustees was not
23 aware of the leadership stipend or how Ms. Pletz may have used it until the November 2009
24 Report of the President. *Id.* As discussed above, see fn 2 *supra*, according to the University's
25 counsel, the University believes that, for at least part of this period, Ms. Pletz forged the minutes
26 of the Executive Committee meetings during which her yearly stipend was purportedly approved
27 and forwarded those minutes directly to the CFO, without informing the Board of Trustees.⁴

³We have been advised by University counsel EHR, upon commencing an internal investigation, the Board of Trustees put greater restrictions on Ms. Pletz's access to University funds, including a requirement that all disbursements be approved by the Board of Trustees.

⁴Ms. Pletz's November 2009 Report of the President was the first she had ever circulated to the Board, and it was not published until the investigation was already underway. Complaint Exhibit H at 1. Furthermore, although the University counsel have not yet interviewed past members of the Board of Trustees, there is currently no evidence to

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B. University Submission and Pletz Response

In September and October 2009, the University's Board of Trustees received confidential correspondence about a number of issues regarding Ms. Pletz's compensation and business expenses. Complaint at 1. The University retained outside counsel and appointed a Special Committee of the Board of Trustees to conduct an internal investigation. Complaint at 1 and Telephone Conversation with University Counsel.

By December 2009, the University's internal investigation uncovered documents indicating that the University had paid Ms. Pletz stipends to reimburse her for both state and federal contributions she would make to further the University's interests. *Id.* The Special Committee presented an interim report regarding these documents and other issues relating to Ms. Pletz to the Board of Trustees on December 18, 2009. Although the investigation is ongoing, the Board decided to terminate Ms. Pletz's employment and report these campaign finance violations to the Commission. Complaint at 1, 4 and Telephone Conversation with University Counsel.

Ms. Pletz acknowledges receiving the leadership stipends and making federal contributions, but challenges the complaint on four grounds.

- The complaint does not meet the filing requirements set forth in 2 U.S.C. § 437g(a)(1) in that its signatory, Dr. Howard Weaver, swore only that he executed the complaint, and not to the contents of the complaint. Response at 1-2.
- Ms. Pletz also denies the connection between her leadership stipend and contribution amounts. While she received approximately \$1,128,000 in the form of leadership stipends over a ten-year period, she made only \$15,700 in federal political contributions. Response at 5. In some years, she received the stipend but did not make any federal contributions; in another year, she made federal contributions but did not receive a stipend. *Id.*

suggest that anyone other than Dr. Jack Weaver received the September 26, 1999 memorandum. Complaint at 2, 3 and Telephone Conversation with University Counsel.

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Subsequent to the filing of the complaint and response, on March 22, 2010, the University and Ms. Plotz filed suits against one another in Missouri Circuit Court, in which the University claimed breach of fiduciary duty, fraud, breach of contract, and unjust enrichment, and Ms. Plotz claimed wrongful termination.⁸

C. Legal Analysis

Under the Federal Election Campaign Act of 1971, as amended ("the Act"), corporations are prohibited from making contributions from their general treasury funds in connection with any election of any candidate for federal office. 2 U.S.C. § 441b(a). A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any corporate contribution. *Id.* Furthermore, it is unlawful for any officer or director of any corporation to consent to any contribution by the corporation. *Id.*

The Act also prohibits a person from making a contribution in the name of another person, knowingly permitting his name to be used to effect such a contribution, or knowingly accepting a contribution made by one person in the name of another. 2 U.S.C. § 441f. The Commission's regulations further prohibit knowingly helping or assisting any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(1)(iii). Those regulations specifically explain that attributing a contribution to one person, when another person is the actual source of

⁸ The University's suit contends that the September 26, 1999 memorandum was a false representation and a pretext for her to obtain additional compensation. Petition ¶ 24, *Kansas City University of Medicine and Biosciences v. Karen L. Plotz*, No. 1016-CV08485 (Mo. Cir. Ct. filed March 22, 2010).

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1 the funds used for the contribution, is an example of making a contribution in the name of
2 another.⁹ See 11 C.F.R. § 110.4(b)(2)(ii).

3 The Act addresses violations of law that are knowing and willful. See 2 U.S.C.
4 §§ 437g(a)(5)(B) and 437g(d). The knowing and willful standard requires knowledge that one is
5 violating the law. *Federal Election Commission v. John a Dramesi for Congress Committee*,
6 640 F. Supp. 985, 987 (D. N.J. 1986). A knowing and willful violation may be established by
7 "proof that the defendant acted deliberately and with knowledge that the representation was
8 false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Evidence does not have to
9 show that the defendant had a specific knowledge of the regulations; an inference of a knowing
10 and willful act may be drawn from the defendant's scheme to disguise the source of funds used
11 in illegal activities. *Id.* at 213-15.

12 1. Complaint Sufficiency

13 The Act requires that a complaint be signed and sworn to by the person filing the
14 complaint. 2 U.S.C. § 437g(a)(1). Commission regulations provide that the contents of the
15 complaint shall be sworn to. 11 C.F.R. § 111.4(b)(2). The Commission website specifically
16 instructs potential filers that the notary public's certificate must say "...signed and sworn to
17 before me..." or words that connote the complaint was affirmed by the complainant.¹⁰ In this
18 matter, the complaint's notary certificate states, "On this day...before me personally appeared
19 Howard D. Weaver, D.O., duly sworn to be the person described herein and who executed the

⁹ On June 14, 2010, the United States Court of Appeals ruled that § 441f prohibits the reimbursement of conduit contributions, reversing a 2009 district court opinion and affirming the validity of Commission regulations codified at 11 C.F.R. § 110.4(b)(2)(ii). See *United States v. O'Donnell*, __ F.3d __, 2010 WL 2352842 (9th Cir. June 14, 2010).

¹⁰ "Filing a Complaint Brochure," Federal Election Commission, <http://www.fec.gov/pages/brochures/complain.shtml> (last visited April 22, 2010).

1 foregoing instrument, and acknowledged that he executed the same as his free act and deed."
2 Complaint at 5. The notary certificate meets the requirements set forth in the Act and follows the
3 instructions on the Commission's website. Accordingly, the filing is not deficient.

4 2. Karen L. Pletz

5 Based on the information provided in the University's submissions and Ms. Pletz's
6 response, it appears that Ms. Pletz violated 2 U.S.C. §§ 441b(a) and 441f. In her September 26,
7 1999 memorandum, Ms. Pletz requested that the University provide funds to offset political
8 expenses such as federal political contributions. Further, between 1999 and 2009, the University
9 provided her with a yearly stipend specifically to be used for political contributions. The
10 University's *sua sponte* submission suggests that without the representation as to the need to
11 make political contributions to further the University's interests, Ms. Pletz would not have
12 received the leadership stipend.

13 a. Contributions in the Name of Another

14 Although Ms. Pletz claims that she did not make the contributions on behalf of the
15 University, the University provided Ms. Pletz with funds in response to her representation that
16 she would use them to make contributions in the University's interest, and Ms. Pletz then
17 proceeded to make contributions. Indeed, the University's internal investigation concluded that
18 the stipend was used to make contributions. Further, Ms. Pletz's Report of the President actually
19 states that, due to her contributions, certain legislation would be introduced "largely as a result of
20 KCUMB's leadership." Thus, Ms. Pletz made federal contributions with the stipend, making the
21 University the true source of contributions.¹¹

¹¹ While the University's civil suit contends that Ms. Pletz requested all or part of the stipend as a false pretext for additional compensation, this is not inconsistent with the conclusion that Ms. Pletz used the stipend to make contributions for the University. The two purposes are not mutually exclusive: Ms. Pletz could have used a portion of the stipend for political contributions and converted the other portion to her personal use.

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1 Although the known amount in violation is only \$15,700 (of which only \$6,200 remains
2 within the statute of limitations), this matter involves two of the most egregious violations of the
3 Act – corporate contributions and contributions in the name of another. It is also possible that
4 the investigation will reveal more corporate contributions, whether they were funded directly by
5 the University or reimbursed by Ms. Pletz out of her stipend. We therefore recommend the
6 Commission find reason to believe that Karen L. Pletz violated 2 U.S.C. §§ 441b(a) and 441f.

7 b. Knowing and Willful

8 The information presented raises the question of whether Ms. Pletz's violation of the Act
9 was knowing and willful. First, it appears that Ms. Pletz had knowledge of the legal prohibition
10 on corporate contributions. In both the September 26, 1999 memorandum and the November
11 2009 Report of the President, Ms. Pletz clearly states her awareness that the University cannot
12 legally make contributions to individual candidates due to its corporate status, and proposes that
13 the University circumvent this restriction by giving her a stipend to make the contributions.

14 Second, Ms. Pletz's recommendation that her 1999 salary increase be falsely labeled as a
15 "housing allowance" suggests an attempt to conceal the nature of the funds and knowledge that
16 the scheme was illegal. Further, the allegation that Ms. Pletz forged Executive Committee
17 minutes further supports a scheme of concealment. Creating a false record indicates an attempt
18 to conceal the nature of an action and knowledge that the action is illegal. See, e.g., MUR 5398
19 (Lifecare Holdings, Inc.) (Commission found knowing and willful reason to believe against
20 respondents who reimbursed contributions through expense reports, bonus payments, and
21 retroactive salary adjustments).

22 However, Ms. Pletz's response and the language of her October 2009 text message argue
23 her belief that the conduct was legal because the University did not direct her contributions or
24 require her to report back, and she did not use the entire stipend for contributions. Further, Ms.

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Pletz's effort to conceal her actions may have been directed towards limits on executive compensation associated with the University's tax-exempt status instead of concealing the source of the contributions.¹²

As there is information in the record which could be viewed as suggesting that the violations were knowing and willful, an investigation is needed to resolve this issue. Should the proposed investigation uncover evidence that Ms. Pletz knowingly and willfully violated the Act, we will make the appropriate recommendation to pursue knowing and willful at a later date.

3. The University

As the President and CEO of the University, Ms. Pletz had both express and implied authority to direct the University's political activity intended to further the University's interests in education and health issues. Under principles of agency law, a principal, such as the University, is liable for the acts its agents, such as Ms. Pletz, committed within the scope of their authority and employment and motivated, at least in part, to benefit the principal. *See Weeks v. United States*, 245 U.S. 618, 623 (1918); *Rouse Woodstock Inc. v. Surety Federal Savings & Loan Ass'n*, 630 F. Supp. 1004, 1010-11 (N.D.M. 1986). Therefore, we recommend the Commission find reason to believe that Kansas City University of Medicine and Biosciences violated 2 U.S.C. §§ 441b(a) and 441f.

¹² Ms. Pletz notes that her proposed salary increase would be taxable to her, *see* Complaint Exhibit A ¶ 5, indicating that she was not concealing the funds to avoid personal tax liability. Additionally, her use of the term "legal" in the October 2009 text message suggests a skirting of the Act more than the tax code, as the contributions might risk the University's tax-exempt status but would not be considered "illegal" under the Internal Revenue Code. *See* 26 U.S.C. § 501(c)(3); *see also* "The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations," Internal Revenue Service, <http://www.irs.gov/charities/charitable/article/0,,id=163395,00.html> (last visited April 27, 2010). However, it is possible that Ms. Pletz informally used the term "legal" in reference to permissible activity for tax-exempt organizations.

4. Recipient Committees

There is no information to indicate that any of the six recipient committees – Talent for Senate, Hulshof for Congress, May for Congress, Missourians for Bond, Friends of Benaie Thompson, and Nealer for Congress – accepted the contributions from Ms. Pletz with knowledge that the true source of those funds was the University. Therefore, we make no recommendation at this time with respect to these committees.

III. PROPOSED INVESTIGATION

The proposed investigation would focus on obtaining additional information regarding whether Ms. Pletz acted in a knowing and willful manner and whether there were other conduits. It appears that other University officials made federal contributions at the same time as Ms. Pletz, and some officials' employment was terminated at the same time as Ms. Pletz's, suggesting that others may have also been compensated for their contributions. In addition to interviewing or deposing Ms. Pletz, we expect to interview both the current and past Boards of Trustees regarding their knowledge of the stipend and other University officials who may have been involved in the activity.

Therefore, we
recommend that the Commission authorize the use of compulsory process, including the use of
subpoenas, as necessary.

IV. RECOMMENDATIONS

1. Merge Pre-MUR 494 into MUR 6249;
2. Find reason to believe that Karen L. Pietz violated 2 U.S.C. §§ 441b(a) and 441f;
3. Find reason to believe that Kansas City University of Medicine and Biosciences violated 2 U.S.C. §§ 441b(a) and 441f;
4. Take no action at this time with regard to Talent for Senate, Hulshof for Congress, Kay for Congress, Missourians for Bond, Friends of Bennie Thompson, and Nodler for Congress;
5. Approve the Factual and Legal Analyses;
6. Authorize the use of compulsory process as to all respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary;
7. Approve the appropriate letters.



6/22/2010

Date



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