



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**VIA FIRST CLASS MAIL**

DEC 2 2010

Ms. Cleta Mitchell, Esq.  
Foley & Lardner LLP  
3000 K Street, NW Suite 600  
Washington, DC 20007

RE: MUR 6306  
Friends of Sharron Angle and  
Alan Mills as Treasurer and Sharron Angle

Dear Ms. Mitchell:

On June 9, 2010, the Federal Election Commission notified your clients of a complaint filed against Friends of Sharron Angle, Alan Mills, as treasurer and Sharron Angle alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On November 15, 2010 based upon the information contained in the complaint, and information provided by your clients, the Commission decided to dismiss the complaint and closed its file in this matter.

The Commission encourages your clients to review the General Counsel's Report, which sets forth the statutory and regulatory provisions considered by the Commission in this matter. A copy of the dispositive General Counsel's Report is enclosed for their information and future reference. The Commission reminds your clients of the appropriate disbursement requirements for campaign-related travel expenses under 11 C.F.R. § 100.93, and to take steps to ensure that their conduct is in compliance with the Act and Commission regulations. For further information on the Act, please refer to the Commission's website at [www.fec.gov](http://www.fec.gov) or contact the Commission's Public Information Division at (202) 694-1100.

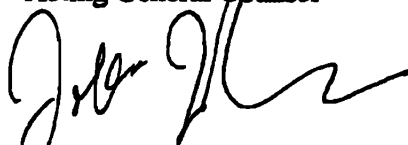
Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

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If you have any questions, please contact Frankie D. Hampton, the paralegal assigned to this matter, at (202) 694-1650.

Sincerely,

Christopher Hughey  
Acting General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", written over the typed name.

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
General Counsel's Report

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
MUR 6306 ) CASE CLOSURE UNDER THE  
 ) ENFORCEMENT PRIORITY SYSTEM  
Friends of Sharron Angle )  
and Alan B. Mills, as Treasurer )  
 )  
Sharron B. Angle )  
 )  
DLR Ventures, LLC )

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**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated [redacted]

[redacted]

[redacted] are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6306 as a low-rated matter.

The complaint in this matter alleges that Sharron E. Angle,<sup>1</sup> and her campaign committee, Friends of Sharron Angle and Alan B. Mills, in his official capacity as Treasurer (collectively "the Committee"), violated 2 U.S.C. § 441b of the Federal Election Campaign Act of 1971, as amended ("Act"), when Ms. Angle and a campaign staffer took trips on a private plane without paying the charter rate for the flights. Citing a news article, the complaint specifically alleges that the Committee violated the Act when the candidate and the Committee used a non-commercial aircraft and failed to

<sup>1</sup> Ms. Angle is the 2010 Republican nominee for a United States Senate seat in Nevada. Angle won the Republican nomination with 40% of the vote in the Nevada primary election held on June 8, 2010. See <http://www.silverstate2010.com>.

1 reimburse the air carrier the charter rate, which was estimated at a minimum of \$7,000.

2 See Laura Myers, *Questions Surround Angle's Trip Aboard Supporter's Plane*,

3 REVIEWJOURNAL.COM, May 28, 2010 (Complaint Attachment A). The complaint also

4 alleges that DLR Ventures, LLC, the entity that owns the plane used by the Committee

5 for the flights, may have violated 2 U.S.C. § 441b by making an in-kind corporate

6 contribution to the Committee.

7 In response, the Committee explains that the flights at issue were taken on

8 March 26 and March 28, 2010, on a plane managed and piloted by Edward Rathje, a

9 friend of the Angle family. The Committee asserts that it was unaware of the

10 requirements governing the costs of such flights, and paid the amount Mr. Rathje

11 requested via an invoice for the pro-rata share of fuel for the flights. According to the

12 Committee, Mr. Rathje advised them that he could not accept payment at charter rates

13 because his plane was not a charter aircraft, and he was concerned about Federal Aviation

14 Administration regulations related to the payment of charter rates.

15 In addition, the Committee states that when it became aware of the requirements

16 of the Act, it immediately paid Mr. Rathje the full costs for a flight on a comparable

17 charter aircraft and duly reported the payments to the Commission. According to the

18 Committee, the comparable charter rate of \$1,358.50 was paid, in addition to the previous

19 payment of \$42.10 for fuel, for a total payment of \$1,400.60 for the flights at issue.

20 Finally, the Committee claims that, unlike the situation that existed at the time of

21 the activity in this matter, it now has a full compliance and legal review system in place.

22 Moreover, all flights subsequent to those at issue have been, and are being, paid at the

23 appropriate rates, and any travel on a private plane has been paid at the full charter rate

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1 for a comparable aircraft and has been properly reported to the Commission. The  
2 Committee urges the Commission to dismiss this matter since "the mistake was  
3 unintentional and de minimis," and has been fully remedied.

4 In response to the complaint, Mr. Rathje, the manager and registered agent of  
5 DLR Ventures, LLC, states that he immediately re-invoiced the Committee at the charter  
6 rate for a comparable aircraft when he learned of the requirements under the Act.  
7 According to Mr. Rathje, "the final correct amount invoiced was \$1,358.50, less  
8 previously paid incorrect invoices."<sup>2</sup> Mr. Rathje further states that the rental cost used in  
9 the corrected invoice was \$190 per hour, as advertised by the Sundance Flying Club in  
10 Palo Alto, California, see <http://www.flysundance.org/>, and asserts that the Sundance  
11 PA32-300 model aircraft, "with 40 more HP, better avionics, and 3 years newer," is a  
12 comparable aircraft. Finally, Mr. Rathje states that DLR Ventures, LLC, is a single-  
13 member, single-manager LLC, which the Internal Revenue Service ("IRS") treats as a  
14 sole proprietorship on his personal IRS Form 1040 Schedule C.

15 The Act defines a "contribution" to include "any gift, subscription, loan, advance,  
16 or deposit of money or anything of value made by any person for the purpose of  
17 influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). When a campaign  
18 traveler uses aircraft for non-commercial travel, other than a government aircraft or a  
19 candidate or family owned aircraft, reimbursement must be provided no later than seven  
20 days after the date the flight began in order to avoid receipt of an in-kind contribution.  
21 11 C.F.R. § 100.93(c). Such in-kind contributions would be prohibited if provided by  
22 certain entities, including corporations, labor organizations, Federal contractors, and

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<sup>2</sup> We presume that Mr. Rathje is referring here to the Committee's previous payment of \$42.10 for fuel costs, for a total payment of \$1,400.60 for the flights at issue.

1 foreign nationals. 2 U.S.C. §§ 441b, 441c, and 441e. If the in-kind contributions are  
2 from permissible sources, they nevertheless would be subject to the contribution limits of  
3 the Act and Commission regulations. See 2 U.S.C. §§ 441a-441k, 11 C.F.R. parts 110,  
4 114, and 115. A Senate candidate, such as Angle, traveling on her own behalf, and any  
5 person traveling on behalf of the candidate, must pay the pro rata share per campaign  
6 traveler of the normal and usual charter fare or rental charge for travel on a comparable  
7 aircraft of comparable size. 11 C.F.R. § 100.93(c)(1). However, when a candidate's  
8 authorized committee pays for the flight, no payment is required from other campaign  
9 travelers on that flight. 11 C.F.R. § 100.93(c)(3).

10 Here, the candidate and a Committee staffer traveled on the noncommercial  
11 aircraft at issue on March 26 and March 28, 2010. Thus, the Committee was required to  
12 pay the normal and usual charter rate for travel on a comparable aircraft no later than  
13 seven days thereafter, or by April 2 and April 4, respectively. The complaint cites a news  
14 article that estimates the charter rate for the flights to be \$7,000. It is noted, however,  
15 that the article's estimate is unsubstantiated by any source reference. In contrast, the  
16 respondents' claim that the charter rate for a comparable flight, which is \$1,358.50, is  
17 based on rates advertised by the Sundance Flying Club for a comparable aircraft. There  
18 is no indication that the rate is not an accurate comparison.

19 The Committee paid the \$1,358.50 charter rate on May 28, 2010 – 56 and 54 days  
20 beyond the required seven-day payment period – and thus apparently failed to comply  
21 with the requirements of 11 C.F.R. § 100.93. This apparent failure to comply with the  
22 Commission's regulations may have given rise to both a prohibited contribution by DLR

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1 Ventures, LLC, as well as the acceptance of a prohibited contribution by the Committee,  
2 depending on the limited liability company's tax status.

3 In general, multi-member limited liability companies may elect to be treated  
4 either as partnerships or as corporations for federal tax purposes, regardless of their status  
5 under state law. On the other hand, LLCs that are owned by one individual, such as DLR  
6 Ventures, LLC, may not elect partnership status, and are usually taxed as sole  
7 proprietorships, unless they opt for corporate tax treatment, see *Explanation and*  
8 *Justification for 11 C.F.R. 110.1(g): Treatment of Limited Liability Companies Under*  
9 *the Federal Election Campaign Act*, 64 Fed. Reg. 37397, 37399 (July 12, 1999). The  
10 Commission has determined that single-member LLCs, unless they elect corporate tax  
11 status, are subject to the contribution limits applicable to their sole members, see  
12 11 C.F.R. § 110.1(g)(4).<sup>3</sup> As noted in the response from DLR Ventures, LLC, it has  
13 elected treatment as a sole proprietorship and, therefore, is not prohibited from making  
14 federally permissible contributions. Accordingly, the potential in-kind contribution that  
15 may have resulted from the Committee's apparent failure to timely pay the charter rate of  
16 \$1,358.50 did not exceed the applicable contribution limit, which, in the 2009-2010  
17 election cycle, was \$2,400 per candidate per election.<sup>4</sup>

<sup>3</sup> To avoid situations where recipient committees might inadvertently accept illegal contributions from LLCs that have elected to be taxed as corporations, the Commission has provided that these companies must inform recipient committees as to whether they are legally allowed to make contributions, see 11 C.F.R. § 110.1(g)(5).

<sup>4</sup> A review of the Committee's disclosure reports reflects that during the 2009-2010 election cycle, neither Mr. Rathje nor DLR Ventures LLC made any contributions to the Committee prior to the activity at issue.

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1 We note that although the Committee did not reimburse the carrier within the  
2 seven days required under the regulation, it did report its reimbursement to the carrier on  
3 its 2010 12-Day Pre-Primary Report, as provided for in 11 C.F.R. § 100.93(i). Given the  
4 fact that the activity at issue seemingly did not result in either a prohibited or excessive  
5 contribution, and the Committee has now paid the charter rate and taken steps to ensure  
6 that it complies with the applicable payment provisions in the future, and in furtherance  
7 of the Commission's priorities and resources, relative to other matters pending on the  
8 Enforcement docket, the Office of General Counsel believes that the Commission should  
9 exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470  
10 U.S. 821 (1985). Additionally, this Office intends on reminding the Committee and its  
11 treasurer, in his official capacity, of the appropriate disbursement requirements for  
12 campaign-related travel expenses under 11 C.F.R. § 100.93.

13 **RECOMMENDATIONS**

14 The Office of General Counsel recommends that the Commission dismiss  
15 MUR 6306, close the file, and approve the appropriate letters. Additionally, this Office  
16 recommends reminding the Friends of Sharon Angle and Alan B. Mills, in his official  
17 capacity as treasurer, of the appropriate disbursement requirements for campaign-related  
18 travel expenses under 11 C.F.R. § 100.93.

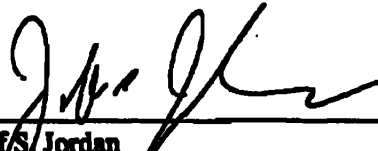
19 Christopher Hughey  
20 Acting General Counsel

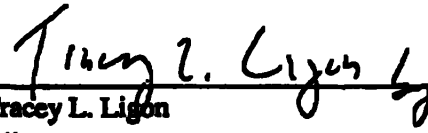

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25 BY:   
26 Gregory R. Baker  
27 Special Counsel  
Complaints Examination  
& Legal Administration



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