



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 24 2011

Scott B. MacKenzie, Treasurer
Republican Member Senate Fund
P.O. Box 96198
Washington, DC 20090

RE: MUR 6337

Dear Mr. MacKenzie:

On August 4, 2010, the Federal Election Commission notified you, in your official capacity as Treasurer of the Republican Member Senate Fund, of a complaint alleging violation of a certain section of the Federal Election Campaign Act of 1971, as amended. On February 16, 2011, the Commission found, on the basis of the information in the complaint, and information provided by respondents, that there is no reason to believe you, in your official capacity as Treasurer of the Republican Member Senate Fund, violated 2 U.S.C. § 441a(a)(2). 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) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Roy Q. Lockett".

Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

11044290748

FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Republican Member Senate Fund and Scott B. MacKenzie, in his official capacity as Treasurer **MUR:** 6337

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by James R. Barry, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by the Republican Member Senate Fund and Scott B. MacKenzie, in his official capacity as Treasurer ("the Fund").

II. FACTUAL AND LEGAL ANALYSIS

The complaint in this matter alleges that the Fund coordinated with the Jay Riemersma for Congress Campaign Committee and John Faber, in his official capacity as Treasurer ("the Committee"), Jay Riemersma's 2010 principal campaign committee for the U.S. House of Representatives for Michigan's Second Congressional District, in spending \$13,636 on radio ads promoting Riemersma's candidacy in July 2010. Thus, the complaint alleges that the Fund made excessive contributions in violation of Sections 441a(a)(2) of the Act. In support of this allegation, the complaint asserts that:

- Riemersma retained Strategic National Campaign Management LLC ("Strategic National"), a consulting company, and the Committee paid the company at least \$54,288.52 from August 28, 2009 – July 14, 2010. Complaint, pp. 1-2.
- John Yob is a principal and the "resident agent" of Strategic National, and is also a campaign consultant and spokesman for the Riemersma campaign. Complaint, p. 2. Charles Yob, John Yob's father, also works for Strategic National. *Id.* The Fund is controlled by Charles Yob and John Yob. *Id.*

11044290749

- In mid-July 2010, the Fund ran radio advertisements promoting Riemersma and attacking two of his opponents (Bill Huizenga and Wayne Kuipers) on approximately 12 radio stations in Michigan. Complaint, pp. 2-3; see attached advertisement script. Also attached to the complaint are agreements between the Fund and Citadel Broadcasting and Clear Channel, to which the Fund paid \$10,600 and \$3,036, respectively. Attached to the Clear Channel agreement is a Political Inquiry form, identifying Chuck Yob as the Chairman of the "Republican Committee Member Fund" (sic). Complaint, p. 2.
- John Yob continues to be involved with the Republican Member Senate Fund PAC while at the same time managing the Riemersma campaign, because: (1) the broadcast agreements were faxed from a machine used by Nevada Republican U.S. Senata candidate Sharron Angle; (2) John Yob and Strategic National also provided campaign services to Sharron Angle; and (3) John Yob may have been in Nevada when the broadcasting agreements were faxed. Complaint, p. 3.

In response, the Fund argues that the complaint is without merit and fails to show any coordination between the Fund and the Committee. In particular, the Fund asserts that:

- The complaint does not provide any information that the Riemersma Campaign either requested the communication or that they assented to its creation by the Fund. The complaint asserts only that a fax was sent from Nevada regarding the advertisement at issue and that John Yob may have been in Nevada at that time to send it. John Yob, however, had not been in Nevada since July 11, 2010, two days before the fax was sent. In addition, the Fund hired Jordan Gehrke to create and run the advertisement, Mr. Gehrke placed the communication at the request of Charles Yob, and Charles Yob did not discuss the communication with anyone involved in the Riemersma campaign.
- Charles Yob was not an agent of the Riemersma Campaign and had no contact with anyone in the Campaign or at Strategic National regarding the ads at issue, nor did he notify anyone at either organization of his intention to purchase such communications. The complaint argues generally that since Charles and John Yob are related, their respective organizations are inherently coordinating their activities. However, Charles Yob and John Yob are two separate individuals and it cannot be inferred from their familial relationship that they are coordinating their activities. Moreover, John Yob resigned from the Fund, and Charles Yob was not involved in Jay Riemersma's campaign in his work for Strategic National.

- The complaint provides no information that the candidate or his campaign committee was materially involved in decisions regarding the communication, as the substance of the ad contains information similar to that publicly available on Riemersma's website.

Fund Response at 3-5.

The Fund attached John Yob's affidavit and also Charles Yob's affidavit to its response. Fund Response, Exhibit 1. John Yob avers, *inter alia*, that he was not in Nevada on July 13, 2010, and did not send the fax mentioned in the complaint; he had no contact with Charles Yob whatsoever regarding the communications at issue, nor to the best of his knowledge, did anyone else associated with the Riemersma campaign; and that he was on the Board of Directors for the Fund until December 2009, when he resigned.

Charles Yob avers, *inter alia*, that he is the President, Secretary, Treasurer and a Director of the Fund; that no one in the Riemersma campaign or at Strategic National contacted him regarding the creation, production, or distribution of any communication; and that he never notified anyone at either Strategic National or at Riemersma for Congress of his intention to purchase the communications at issue. *Id.* He avers that any incidental political or fundraising help he gave to the Riemersma campaign was either on his own time or through the Fund, but that he had no contact at all regarding the communications at issue with either the Riemersma campaign or Strategic National. *Id.* Finally, he avers that while working on his various contract projects for Strategic National, he received no information pertinent to the communications at issue regarding the Riemersma campaign. *Id.*

Under the Act, no multicandidate political committee, such as the Republican Member Senate Fund, may make a contribution, including an in-kind contribution, to a candidate and

his authorized political committee with respect to any election for Federal office, which, in the aggregate, exceeds \$5,000. 2 U.S.C. § 441a(a)(2), *see* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(d)(1). The Act defines in-kind contributions as, *inter alia*, expenditures made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents." 2 U.S.C. § 441a(a)(7)(B)(i). A communication is coordinated with a candidate, an authorized committee, a political party committee, or agent thereof if it meets a three part test: (1) payment by a third-party; (2) satisfaction of one of four "content" standards; and (3) satisfaction of one of six "conduct" standards. *See* 11 C.F.R. § 109.21.

In this matter, the first prong of the coordinated communication test is satisfied because the Republican Member Senate Fund is a third-party payor. *See* 11 C.F.R. § 109.21(a)(1). The complaint alleges that the second prong of this test, the content standard, is satisfied because the ads are public communications that refer to clearly identified candidates for federal office (Jay Riemersma, Bill Huizenga, and Wayne Kuipers), and were apparently broadcast in the clearly identified candidates' jurisdiction within 90 days of the primary election. *See* 11 C.F.R. § 109.21(c) A "public communication," is defined as "a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general political advertising." 11 C.F.R. § 100.26. The response of the Republican Member Senate Fund states that it does not dispute that it paid for the advertisement and that the communication thus satisfies the payment prong. The response further states that there is similarly no dispute that the communication satisfies a content

standard in 11 C.F.R. § 109.21(c) as the communication in question refers to three House candidates and was run within 90 days of the Republican primary for Michigan's Second Congressional District. *See* 11 C.F.R. § 109.21(c)(4)(i).

However, the conduct prong is not satisfied in this matter. The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced, or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the payor employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the payor republished campaign material. *See* 11 C.F.R. § 109.21(d).

The complaint does not allege specific facts indicating that the conduct prong was met in this matter, nor does publicly available information support that conclusion. Instead, the complaint cites the positions held by John Yob and his father Charles Yob, and asserts, "Fundamentally, any expenditure is inherently coordinated where, as here, the same person or people running a candidate's campaign are able through a separate PAC to authorize creation and dissemination of public communications that are intended to benefit the candidate whose

campaign they are running.” Complaint at 4. However, the complaint contains no specific information indicating that any of the conduct standards were satisfied in this matter.

Moreover, the Respondents have specifically denied facts that would give rise to a conclusion that the conduct prong is satisfied pursuant to 11 C.F.R. § 109.21(d), and provided sworn affidavits from John Yob and Charles Yob supporting those denials. Namely, the Respondents have specifically rebutted any implication that the ads at issue were created at the request or suggestion of, with the material involvement of, or after substantial discussions with, the candidate or his agents, thereby negating the existence of conduct at 11 C.F.R. § 109.21(d)(1)-(3). See Fund Response, Exhibit 1, John Patrick Yob Affidavit at ¶ 5, and Charles Yob Affidavit at ¶¶ 7-9.

Available information suggests that the common vendor and former employee or independent contractor standards at 11 C.F.R. § 109.21(d)(4)-(5) are also not satisfied in this matter. Charles Yob avers that he has “not been paid” by Strategic National to do any work for the Riemersma campaign, but that he gave “incidental political or fundraising help” to the campaign on his own, presumably as an independent contractor or volunteer, or through the Fund. Fund Response, Exhibit 1, Charles Yob Affidavit at ¶¶ 5-6. While Charles Yob’s statement suggests that he provided unspecified services to the Riemersma campaign, he also maintains that he had no contact at all regarding the communications at issue with either the Riemersma campaign or Strategic National. *Id.* at ¶ 8. Consistent with this statement, we have no information that Charles Yob received information material to the creation, production, or distribution of the communication at issue during his work for the Riemersma campaign, in whatever capacity, or that he used or conveyed such information to the Fund in

connection with the communication. Further, while John Yob provided consulting services to the Committee through his employment with Strategic National, he avers that he had no contact whatsoever with Charles Yob regarding the communication at issue, and that he resigned from the Fund's Board of Directors in December 2009, approximately seven months before the Fund began running the advertisement. Fund Response, Exhibit 1, John Yob Affidavit at ¶¶ 5-6. In addition, it is possible that Charles Yob and/or the Fund obtained information material to the creation, production, or distribution of the communication from a publicly available source, namely, the Riemersma campaign's website, which contained information similar to the advertisement at issue. See 11 C.F.R. § 109.21(d)(4)(iii) and (d)(5)(ii) (these provisions, known as publicly available source exemptions, provide that the conduct standard is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source). Finally, while the information in the radio ad at issue is similar to information on the candidate's website, it does not appear that the Fund republished in whole, or even in part, any campaign materials.

Given the Respondents' denials, the speculative nature of the complaint, and the absence of any other information suggesting coordination, the conduct prong of the coordinated communications regulations has not been met, thus, there appears to be no resulting violation of the Act. Therefore, the Commission has determined to find no reason to believe that the Republican Member Senate Fund and Scott B. MacKenzie, in his official capacity as Treasurer, violated 2 U.S.C. § 441a(a)(2).