



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 13 2011

Douglas Ayer, Treasurer
Bruning for Attorney General
P.O. Box 83527
Lincoln, NE 68508

RE: MUR 6432
Bruning for Attorney General

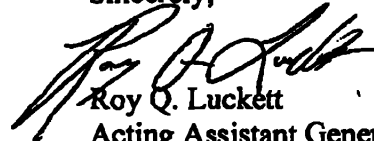
Dear Mr. Ayer:

On November 15, 2010, the Federal Election Commission notified Bruning for Attorney General ("Committee") and you, as treasurer, of a complaint alleging a violation of the Federal Election Campaign Act of 1971, as amended. The Commission re-notified you and the Committee of the complaint on November 30, 2010, due to a typographical error in the case number. On June 7, 2011, the Commission found, on the basis of the complaint and information provided in responses to the complaint, that there is no reason to believe the Committee violated 2 U.S.C. § 441e. 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 Dawn Odrowski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Roy Q. Lockett
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Bruning for Attorney General **MURS:** 6401 and 6432

I. INTRODUCTION

This matter was generated by complaints filed with the Federal Election Commission by the Nebraska Democratic Party and Bold Nebraska alleging a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Bruning for Attorney General ("the Bruning Committee").

II. FACTUAL AND LEGAL ANALYSIS**A. Facts**

The complaints in these matters allege that the Bruning Committee accepted a \$2,500 prohibited foreign national donation from TransCanada Corporation ("TransCanada"), a Canadian corporation, or one of its foreign subsidiaries that the Committee reported as received from "TransCanada Keystone Pipeline LP." TransCanada Keystone Pipeline, GP, LLC ("Keystone"), is a limited liability company registered in Delaware and headquartered in Texas with operations in Omaha, Nebraska. Keystone is the general partner in TransCanada Keystone Pipeline, LP ("Keystone LP"), a Delaware limited partnership. Keystone jointly owns and controls Keystone LP with a limited partner, TransCanada Keystone Pipeline, LLC, another Delaware limited liability company. Keystone and its limited partner are, in turn, subsidiaries of a Delaware corporation, TransCanada Oil Pipelines, Inc. All four entities are ultimately wholly-owned by TransCanada. TransCanada is an energy infrastructure company that, among other things, develops and operates natural gas and oil pipelines in North America. Keystone LP is apparently responsible for constructing and operating the U.S. portion of an oil pipeline that

1 transports crude oil from Alberta, Canada, to U.S. markets. See TransCanada March 14, 2008,
2 press release available at www.transcanada.com/3036.html.

3 As general partner, Keystone directs all of the activities of Keystone LP, and Keystone
4 employees approved and directed Keystone LP to make the donations at issue to the state
5 committees in this matter. According to Keystone, sometime before December 11, 2009, Beth
6 Jensen, its Director of Government Relations and a U.S. citizen, reviewed with outside counsel
7 the permissibility and attendant reporting requirements, under state law, of making donations to
8 Nebraska state candidates. Subsequently, Jensen approved donations of \$2,500 each to the
9 Bruning Committee and another state candidate committee. Jensen sent an email on
10 December 11, 2009, instructing TransCanada's Accounts Payable staff to issue checks from
11 Keystone operating funds to the two state campaigns. The Accounts Payable center, located in
12 Calgary, Alberta, processed the checks. The Accounts Payable center issued the checks on a
13 Keystone-controlled "U.S. funds Citibank account" in the name of Keystone LP and sent them to
14 Jensen. Jensen then forwarded the checks to Kissel E&S Associates, an Omaha, Nebraska-based
15 outside consulting firm engaged by Keystone in its government relations efforts. Kissel
16 representatives hand-delivered the checks to the candidate committees, apparently in January
17 2010.

18 A copy of the Bruning Committee's donation check shows that it was drawn on an
19 account of "TransCanada Keystone Pipeline, LP, 450 1st Street S.W., Calgary Alberta 502 5H1."
20 A printed notation on the check face underneath the amount reads "U.S. FUNDS, TransCanada
21 Keystone Pipeline, LP." The check also indicates the bank where the account was maintained is
22 Citibank, N.A., at an address in New York City.

As required under Nebraska law, on February 2, 2010, Jensen filed with the Nebraska Accountability and Disclosure Commission ("NADC") a Form B-7, "Report of Political Contributions of a Corporation, Union or Other Association," for the Bruning Committee donation. In that form, Keystone asserts that Jensen erroneously identified TransCanada Corporation as the donor. The form lists another Omaha, Nebraska, address where Keystone operates locally. The Form B-7 has since been amended to show Keystone LP as the donor.

The Bruning Committee's initial disclosure report shows that it incompletely reported the donation at issue.¹ It reported receiving a \$2,500 donation from TransCanada Keystone Pipeline LP but listed no address whatsoever. *See* MUR 6401 Complaint Amendment, Bruning Committee NADC Form B-1, Schedule B, page 11 of 12; MUR 6432 Complaint, Ex. 2.

The Bruning Committee states that the NADC contacted it on September 30, 2010, about the possibility that the Keystone LP donation may not have been from a U.S. corporation. Bruning Committee Response at 1-2.² That same day, the Committee issued a refund check to "TransCanada Keystone Pipeline, LP." *Id.*, Ex. 3. The Committee states that it refunded the donation "out of an abundance of caution" despite information provided by Keystone indicating the donation was from a U.S. corporation. *Id.* at 1-2.

B. Analysis

The Act prohibits a person, in pertinent part, from knowingly accepting or receiving a donation made in connection with a Federal, State, or local election from a foreign national. *See* 2 U.S.C. § 441e(a)(2); 11 C.F.R. § 110.20(g).

¹ It appears that only the most current version of the state disclosure report is available on the NADC's website since the report for the period in question now available on-line has been amended. The NADC website states that the website database is based on the paper records filed with the NADC and that the paper records constitute the official records. *See* NADC website at <http://nadc.nol.org/ccdb/search.cgi>.

² The reference to the Bruning Committee Response is to its response in MUR 6401. The Committee responded to the complaint in MUR 6432 by referencing its earlier MUR 6401 response.

1 The Act and Commission regulations define “foreign national” to include “foreign
2 principals,” as defined in 22 U.S.C. § 611(b), and an individual who is not a citizen or national of
3 the United States and who is not a permanent resident. 2 U.S.C. § 441e(b). A “foreign
4 principal” includes “a partnership, association, corporation, organization, or other combination of
5 persons organized under the laws of or having its principal place of business in a foreign
6 country.” 2 U.S.C. § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

7 In past advisory opinions, the Commission has permitted a U.S. subsidiary of a foreign
8 national corporation to make donations and disbursements in connection with state and local
9 elections when: (1) the donations and disbursements derive entirely from funds generated by the
10 subsidiary and not from funds provided by the foreign parent; and (2) when all decisions
11 concerning the donations and disbursements are made by U.S. citizens or permanent residents,
12 except for setting the overall budget for donations. *See* Advisory Opinions 2006-15
13 (TransCanada)(wholly-owned domestic subsidiaries of a foreign corporation that receive no
14 subsidies from their foreign parent or other foreign national may make donations to state and
15 local candidates as long as no foreign national participates in the decision-making, except for
16 setting overall budget amounts, and they use funds generated by their domestic operations
17 maintained in U.S. bank accounts); 1992-15 (Nansay Hawaii)(wholly-owned subsidiary of a
18 foreign corporation that received some subsidies from its foreign parent may make donations in
19 connection with state and local elections where it currently had substantial net earnings
20 generated by its domestic operations placed in segregated accounts that received no subsidies,
21 and provided that, in the future, it could demonstrate through a reasonable accounting method
22 that it had sufficient funds in its accounts to make donations, other than funds given or provided
23 by its foreign national parent).

1 Keystone has stated that the donation to the Bruning Committee was made with U.S.
2 operating funds from an account maintained in a U.S. financial institution. It has also pointed
3 out that the donation check was drawn on a New York Citibank, N.A. bank account and bears the
4 notation "U.S. Funds" on the check face. It has also explained that the Canadian address on the
5 check is that of TransCanada's Accounts Payable center, an office that merely processes
6 payments authorized by operating units of TransCanada, including Keystone. Finally, Keystone
7 has stated that Keystone LP received no subsidies from foreign nationals and generated
8 substantial net earnings from which it funded the donations. There is no information indicating
9 that the donation was derived from non-U.S. funds.

10 With respect to the status of those involved in making the donation, Keystone identifies
11 only Beth Jensen, a U.S. citizen, and describes her role as approving and directing the
12 disbursement of the donation. Keystone maintains, however, that no foreign individual or entity
13 "participate[d] in the decision making process regarding the making of the contribution[]" and
14 none directed or controlled the donation. Consequently, it may be that Ms. Jensen was the sole
15 decision-maker involved in making the donation or that Keystone decided not to specifically
16 identify other non-foreign nationals who were involved in the decision-making process. In any
17 case, the Commission possesses no information that any non-U.S. citizen or non-permanent
18 resident was involved in the decision to make the donation.

19 The Bruning Committee promptly refunded the donation when NADC notified it of a
20 potential problem with the donation despite statements from TransCanada representatives that
21 the donation was permissible. Bruning Committee Response at 2, Ex. 3 (refund check). It
22 contends that any potential violation was inadvertent and requests that the Commission dismiss it
23 from the matters.

**Factual and Legal Analysis
Bruning for Attorney General**

1 Based on the available information, it appears that the donation to the Bruning
2 Committee was made using funds generated by a domestic subsidiary that received no subsidies
3 from a foreign national, and that no foreign national was involved in the decision to make the
4 donation. Therefore, the Commission has determined to find no reason to believe that Bruning
5 for Attorney General violated 2 U.S.C. § 441e by accepting a foreign national donation.

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