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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

CELA
SENSITIVE

PRE-MUR: 511

DATE ACTIVATED: January 20, 2010

EXPIRATION OF SOL:

December 31, 2009 (earliest)

December 2, 2015 (latest)

SOURCE:

Sua Sponte

RESPONDENT:

Robert Aderholt for Congress and
Jeff Mobley, in his official capacity as
treasurer.

RELEVANT STATUTES:

2 U.S.C. § 434(b)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

On December 21, 2010, Robert Aderholt for Congress and Jeff Mobley, in his official capacity as treasurer, (the "Committee") the principal campaign committee of U.S. Representative Robert Aderholt, filed a *sua sponte* submission ("Sua Sponte") disclosing unexplained discrepancies between the amount of the cash on hand ("COH") that the Committee disclosed in its reports to the Commission and its bank account balances from 2004 through 2009. According to the Sua Sponte, Committee staff discovered this discrepancy in late 2009, after replacing its bookkeeper. Sua Sponte at 1. The Committee subsequently determined that the discrepancy between its actual COH and its disclosed COH grew from approximately \$3,800 at the close of 2004 to \$98,000 in September 2007. *Id.* After some fluctuation, the final discrepancy at the end of 2009 was approximately \$56,000. *Id.*

1 Because the Committee's disclosure reports to the Commission inaccurately stated the
2 Committee's cash on hand to a substantial degree, we recommend that the Commission find
3 reason to believe that Robert Aderholt for Congress and Jeff Mobley, in his official capacity as
4 treasurer, violated 2 U.S.C. § 434(b).

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6
7 Accordingly, this matter requires additional investigation.¹

8 **II. FACTUAL AND LEGAL ANALYSIS**

9 The Act requires committees to disclose their COH in each report filed with the
10 Commission. See 2 U.S.C. § 434(b)(1). The Committee's *Sua Sponte* and additional
11 information from the Committee establishes that the Committee disclosed an inaccurate amount
12 of COH to the Commission in its disclosure reports filed from December 31, 2004, through
13 December 2, 2010.

14 The Committee first contacted the Commission's Reports Analysis Division ("RAD") on
15 May 18, 2010, to disclose the issue and their ongoing internal review. After several more phone
16 contacts on this issue in June of 2010, the Committee's new bookkeeper and Committee counsel
17 met with RAD on December 9, 2010. See *Sua Sponte* at 2 and 4. Following advice provided by
18 RAD at the meeting, the Committee filed an amended 2010 post general report to reflect its

¹ This report has been circulated to the Commission within 30 days of activation, pursuant to Commission Directive 68, because the activity at issue includes activity that is more than four years old. Although some of the activity has already been lost to the statute of limitations, the available information indicates that a significant component of the potential violations occurred between June 30, 2006, and September 30, 2006, when the Committee's disclosed COH discrepancy rose from \$77,314.56 to \$152,463.33. On February 11, 2011, we provided the Committee with a draft agreement to toll the statute of limitations for a period of six months. On February 16, 2011, the Committee agreed to toll the statute of limitations for an initial period of 90 days. The Commission's *Sua Sponte* Policy states that it will consider a committee's willingness to toll the statute of limitations when evaluating the committee's cooperativeness in determining the appropriate *sua sponte* discount applicable to the committee. See 72 Fed. Reg. 16695, 16697 (April 5, 2007).

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1 actual cash balance. The Committee's original 2010 post general report, filed on December 2,
2 2010, disclosed a COH of \$147,176.28 at the end of the reporting period. The Committee's
3 amended 2010 post general report, filed on December 21, 2010, disclosed a COH of \$94,793.89,
4 which corrected a \$52,382.39 discrepancy.

5 Thus, the Committee filed disclosure reports which did not accurately disclose the
6 Committee's cash on hand. Accordingly, we recommend that the Commission find reason to
7 believe that Robert Aderholt for Congress and Jeff Mobley, in his official capacity as treasurer,
8 violated 2 U.S.C. § 434(b).

9 **III. INVESTIGATION**

10 This matter requires an investigation because the scope of the Committee's violations, or
11 those of any other person, are unclear due to the Committee's limited internal review. We have
12 already ascertained that the extent of the Committee's mis-disclosed cash on hand is
13 approximately 50% greater than the greatest amount indicated in the Sua Sponte. Specifically,
14 the Sua Sponte indicates that the mis-disclosed COH grew to \$98,000 in September 2007. Sua
15 Sponte at 1. However, on February 8, 2011, the Committee submitted a chart summarizing its
16 mis-disclosures. See Attachment 1. This chart indicates that the Committee discovered that the
17 total amount of its mis-disclosed COH reached a maximum of \$152,463.33 on October 15, 2006,
18 when the Committee filed its 2006 October Quarterly report disclosing \$385,707.90 cash on
19 hand when the actual total was \$233,244.57. *Id.* The chart appears to omit quarterly data for
20 2008 and 2009. In a follow-up letter to the Committee, we have asked, among other things, that
21 they explain this discrepancy. Additionally, the Committee's internal review of cash on hand
22 discrepancies appears to have been limited to quarterly reporting and did not include any of the
23 Committee's other reports, such as pre-general and post-general election reports.

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1 We have begun working cooperatively with the Committee to further develop the
2 available information, but the Committee has limited information, and additional information
3 will be necessary to fully assess the activity in this matter. The Committee stated in the Sua
4 Sponte that it is "simply unable to reconstruct events and account for the disparate figures[.]"
5 Sua Sponte at 2, that it "does not have access to complete itemized bank statements and other
6 records beyond 2007[.]" Sua Sponte at 3, and that it believes that the discrepancies are
7 "unexplainable." *Id.* Notwithstanding the Committee's statement that it did not have access to
8 bank records before 2007, the Committee also disclosed in its Sua Sponte that "Certain bank
9 records are apparently on microfilm or other records maintained by [the Committee's] various
10 banks, but we have not accessed these." *Id.* at 2, note 2. Counsel also indicated that the
11 Committee's bookkeeping records from the time period at issue have been stored, providing
12 another potential source of information regarding the discrepancies in the Committee's
13 disclosure reports.

14 In response to our February 11, 2011 follow-up letter, the Committee provided certain
15 bank records on February 17, 2011. The records are for the period from March 1, 2006, to
16 December 31, 2006, including records of the Committee account that was responsible for the
17 increase in the cash on hand discrepancy from \$77,314.56 to \$152,463.33 at the close of the third
18 quarter of 2006.² Counsel indicated at the time of this production that he identified over \$40,000

² Counsel stated on February 17, 2011, that the discrepancy may be explained by either late-clearing checks or the bank statement period ending on September 26, 2006, whereas the Commission's reporting period ended on September 30, 2006. Counsel also stated that those records indicate that the Committee failed to disclose two disbursements, a \$38,500 transfer and a \$4,915 media buy. We will review the records and determine if these factors explain the \$152,463.33 discrepancy.

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1 in undisclosed disbursements. We are currently reviewing the records and will work with the
2 Committee to obtain additional relevant bank records.

3 Furthermore, the Committee indicated that its bookkeeping and FEC reporting during the
4 time of the disclosure discrepancies was handled by its former bookkeeper, Nancy Mize, but that
5 Mrs. Mize has not cooperated with the Committee since its discovery of the discrepancies. Sua
6 Sponte at 2. During our phone call with counsel for the Committee on February 8, 2011, the
7 Committee confirmed that it had not spoken with Mrs. Mize about the discrepancies, and that
8 counsel had not tried to contact her. Moreover, Committee counsel did not know who else at the
9 Committee handled the Committee's funds, who else besides Mrs. Mize had authority to bank on
10 behalf of the Committee, or the duties performed by the Committee's treasurer.

11 One explanation for an authorized committee disclosing a greater amount of cash on hand
12 than the amount in its accounts is the undisclosed personal use of its funds in violation of
13 2 U.S.C. § 439a(b)(1). Although the Committee stated in the Sua Sponte that it had "no reason
14 to believe that Mrs. Mize in any way misappropriated campaign funds[,]" the Committee has not
15 identified all persons who handled the Committee's funds or who had the authority to access its
16 bank accounts, did not question Mrs. Mize about the discrepancies, and did not attempt to
17 compare all of the available bank records with the Committee's disclosure reports to ascertain
18 the cause of the discrepancies or the responsible party or parties. Accordingly, it is both
19 premature to suggest that Mrs. Mize may have misappropriated funds and premature to conclude
20 that she has not.

21 Another potential explanation for the sizable discrepancies in the Committee's COH
22 would be the failure to account for and disclose legitimate large disbursements. During the
23 February 8, 2011, teleconference, Committee counsel indicated that they had considered but

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1 ruled out this possibility because they assumed that the Committee's only potentially large
2 disbursements would be media buys and that the Committee did not make large media buys
3 during the period in question. However, our review of the Committee's disclosure reports during
4 the period at issue revealed significant bank loans and transfers. As noted above, the Committee
5 submitted bank records from a portion of 2006 at our request and disclosed that their review of
6 those records indicated that the Committee failed to disclose two disbursements, a \$38,500
7 transfer and a \$4,915 media buy. We will work with the Committee to obtain additional relevant
8 records and identify undisclosed transactions that may explain its COH discrepancies.

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20 **IV. RECOMMENDATIONS**

- 21 1. Open a MUR.
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23 2. Find reason to believe that Robert Aderholt for Congress and Jeff Mobley, in his
24 official capacity as treasurer, violated 2 U.S.C. § 434(b).
3. Approve the attached Factual and Legal Analysis.

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4. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas, deposition subpoenas and orders.

5. Approve the appropriate letter.

Christopher Hughey
Acting General Counsel

February 22, 2011
Date

BY:

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