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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
MUR 6467 ) DISMISSAL AND CASE  
ARTHUR LEE TALLEY ) CLOSURE UNDER THE  
MICHAEL D. WADE ) ENFORCEMENT  
BRYAN K. MEALS, ESQ. ) PRIORITY SYSTEM  
VIRGINIA 3rd DISTRICT REPUBLICAN COMMITTEE )  
AND ARTHUR LEE TALLEY, AS TREASURER )  
BRIAN PLUM )  
REPUBLICAN PARTY OF VIRGINIA AND )  
BRIAN PLUM, AS TREASURER )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation, (2) the apparent impact the alleged violation may have had on the electoral process, (3) the legal complexity of issues raised in the case, (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended ("the Act") and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss certain cases. The Office of General Counsel has scored MUR 6467 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. This Office therefore recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6467.

1 In this matter, complainants Michael J. Buxton and Sean V. Devlin ("complainants")  
2 allege that the following respondents may have filed false statements with the Commission:  
3 Arthur Lee Talley; the Virginia 3rd District Republican Committee and Mr. Talley, in his  
4 official capacity as treasurer ("Committee"); Michael D. Wade and Bryan K. Meals, the  
5 Committee's chairman and legal counsel, respectively; Brian Plum; and the Republican Party  
6 of Virginia, Inc. and Brian Plum, in his official capacity as treasurer ("Republican Party of  
7 Virginia") (collectively, "respondents"). Specifically, the complainants allege that the  
8 respondents filed a Statement of Organization with the Commission, dated October 20, 2010,  
9 that inaccurately included Mr. Talley's name and signature as the Committee's treasurer, and  
10 allege that Mr. Talley's signature might have been forged. Included with the complaint is  
11 what is described as an "opinion letter [prepared by a] handwriting expert," which purportedly  
12 concludes that Mr. Talley did not sign the Statement of Organization.

13 Alternatively, the complainants characterize Mr. Talley's submission of the  
14 Committee's Statement of Organization on October 20, 2010 as "fraudulent" because, they  
15 claim, Mr. Talley was not elected treasurer until December 2, 2010, over forty days later. In  
16 support, the complainants cite to Advisory Opinion 1977-59, which states that financial  
17 disclosure reports must be signed by a committee's treasurer, and may be signed by assistant  
18 treasurers only if they have been officially designated as such in the committee's Statement of  
19 Organization.

20 In addition, the complainants assert that the Committee's 2010 October Quarterly  
21 Report inaccurately reports \$1,800 in expenditures for a July 31, 2010 fundraiser held in  
22 support of congressional candidate Chuck Smith.<sup>1</sup> The expenditures, reported as \$500 for

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<sup>1</sup> Mr. Smith unsuccessfully sought to represent Virginia's 3<sup>rd</sup> Congressional District.

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entertainment and \$1,300 for food on September 14, 2010, are listed as "in-kind" contributions whereas, according to the complainants, the contributions were paid by check and therefore did not constitute in-kind contributions. Finally, the complainants contend that these alleged actions may constitute a violation of 18 U.S.C. § 1001 which, *inter alia*, prohibits the knowing and willful submission of false statements to the U.S. government.

Responses were filed by Messrs Talley, Meals and Plum. As to the forgery charge, Mr. Talley asserts that there was no forgery and that he signed every document submitted to the Commission. Mr. Talley acknowledges, however, that he was not elected to be the Committee's treasurer until December 2, 2010, over a month after he signed and submitted the Statement of Organization. He explains that, prior to October 20, 2010, the Committee was not registered with the Commission, even though the Committee had "passed the threshold of expenditures requiring us to be registered," presumably referring to the \$1,800 expended on behalf of the Chuck Smith campaign. According to Mr. Talley, as the term of the previous treasurer had expired in September 2010, leaving the office unfilled, he assumed the responsibility of filing the Committee's Statement of Organization. Mr. Talley further states that, after having been elected treasurer, he had the Committee's books reviewed and audited and thereafter filed the Committee's 2010 October Quarterly Report, Post-General Election Report, and Year-End Report on January 29, 2011. Finally, with respect to expenses incurred in connection with the Chuck Smith fundraiser, Mr. Talley asserts that the Committee correctly reported the \$1,800 in expenses associated with the July 31, 2010 fundraiser as in-kind contributions.

In their respective responses, Mr. Meals states that he provided information to Committee Chairman Michael D. Wade about forming a political committee, including the

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1 requirement that political committees must have treasurers, and Mr. Plum asserts that the  
2 complaint alleges only minimal involvement as to himself, relating to a review of the  
3 Committee's financial records.

4         Given that the Committee admittedly expended \$1,800 in connection with the July  
5 31, 2010 fundraiser for congressional candidate Chuck Smith, it appears that it attained  
6 "political committee" status as of that date, pursuant to 2 U.S.C. § 431(4)(C), as a "local  
7 committee of a political party" that made contributions or expenditures in excess of \$1,000  
8 during the calendar year. As such, the Committee should have filed a Statement of  
9 Organization no more than ten days later, or by August 10, 2010, which should have been  
10 signed by its treasurer, *see* 2 U.S.C. §§ 433(a) and 434(a)(1). In addition, although it appears  
11 that the Committee correctly reported its expenses on behalf of the July 31, 2010 Chuck  
12 Smith fundraiser as in-kind contributions on its 2010 October Quarterly Report, the dates  
13 associated with the expenses should have been reflected no later than July 31, 2010. *See*  
14 11 C.F.R. § 110.1(b)(6) ("an in-kind contribution shall be considered to be made on the date  
15 that the goods or services are provided by the contributor").

16         Thus, in light of the limited scope of the reporting violations, further Enforcement  
17 action does not appear to be warranted. Accordingly, under EPS, the Commission has scored  
18 MUR 6467 as a low-rated matter and therefore, in furtherance of the Commission's priorities  
19 as discussed above, the Office of General Counsel believes that the Commission should  
20 exercise its prosecutorial discretion and dismiss this matter. *See Heckler v. Chaney*, 470 U.S.  
21 821 (1985). Additionally, this Office recommends that the Commission remind  
22 the 3<sup>rd</sup> District Republican Committee and Arthur Lee Talley, in his  
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official capacity as treasurer, of the requirements under 11 C.F.R. § 110.1(b)(6) concerning the proper reporting of in-kind contributions.


**RECOMMENDATIONS**


The Office of General Counsel recommends that the Commission dismiss MUR 6467, close the file, and approve the appropriate letters. Additionally, this Office recommends that the Commission remind Arthur Lee Talley and the 3<sup>rd</sup> District Republican Committee and Arthur Lee Talley, in his official capacity as treasurer, of the requirements under 11 C.F.R. § 110.1(b)(6) concerning the proper reporting of in-kind contributions.


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7/25/11  
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