



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAY - 6 2011

Stephen H Sholk, Esq.
Gibbons P.C.
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Newark, NJ 07102-5310

RE: MUR 6468
Empire State Regional Council of
Carpenters
Empire State Regional Council
of Carpenters Political Action
Fund-Federal, William R. Banfield,
Treasurer

Dear Mr. Sholk:

On November 1, 2010, the Federal Election Commission (the "Commission") notified you of the receipt of your submission pertaining to possible violations by your clients, the Empire State Regional Council of Carpenters, the Empire State Regional Council of Carpenters Political Action Fund-Federal and William R. Banfield, in his official capacity as treasurer, of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act").

After reviewing your initial submission, as well as supplements to that submission, the Commission, on April 26, 2011, found reason to believe that the Empire State Regional Council of Carpenters violated 2 U.S.C. § 432(b)(2), a provision of the Act, and 11 C.F.R. § 102.6(c)(4) and 11 C.F.R. § 102.8(b) of the Commission's regulations, and that the Empire State Regional Council of Carpenters Political Action Fund-Federal and William R. Banfield, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(b)(2) and 434(b), provisions of the Act, and 11 C.F.R. § 102.6(c)(1) of the Commission's regulations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. We look forward to your response.

On behalf of the Commission,



Cynthia L. Bauerly
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Empire State Regional Council of Carpenters **MUR 6468**
6 Empire State Regional Council of Carpenters Political Action
7 Fund – Federal, and William R. Banfield, in his official capacity
8 as treasurer
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10 **I. GENERATION OF MATTER**

11 This matter was generated based on a *sua sponte* submission filed by Empire State
12 Regional Council of Carpenters ("Empire State") and the Empire State Regional Council of
13 Carpenters Political Action Fund – Federal, and William R. Banfield, in his official capacity as
14 treasurer ("Federal PAC") notifying the Commission of Empire State's apparent failures to
15 transfer contributions to its separate segregated fund ("SSF"), the Federal PAC, on a timely basis
16 and other recordkeeping and reporting discrepancies in violation of the Federal Election
17 Campaign Act of 1971, as amended, ("the Act"). See 2 U.S.C. § 437g(a)(2).

18 **II. FACTUAL SUMMARY**

19 It appears that, from 2001 onward, Empire State failed to transfer political contributions
20 collected from its members to the bank account of its SSF within the 30-day timeframe mandated
21 by 2 U.S.C. § 432(b)(2). Instead, Empire State maintained these funds for periods exceeding two
22 years in a separate escrow account whose activity it did not report to the Commission. The total
23 amount of escrow account deposits during 2001 – 2010 appears to be \$2,174,348.09.

24 In 2001, the Empire State Regional Council of Carpenters formed from the merger of
25 three separate New York carpenters' unions. See Response to Memorandum at ¶1. At that time,
26 Empire State also organized its Federal and state PACs. Empire State acted as the collecting
27 agent for both the Federal PAC and for its state and local (non-federal) PAC, the Empire State
28 Regional Council of Carpenters Political Action Fund-State ("NYS PAC"). To solicit

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1 contributions from union members, Empire State used a contribution card which stated that "all
2 contributions may be made to either the Federal PAC or the NYS PAC, or may be divided
3 among the two PACs in the discretion of the Treasurers of the PACs." *See Sua Sponte*
4 Submission at p. 1 and Exhibit D. The employers of Empire State members withheld the
5 members' voluntary PAC contributions together with all other union contributions (such as union
6 dues) from the union members' paychecks and sent checks in the amount of the withheld
7 contributions to Empire State's fund office. Employees of Empire State's fund office then
8 deposited these checks into a general account and transferred the contributions allocated for the
9 federal and state PACs from the general account to the PAC escrow account. *See Response to*
10 Memorandum at ¶3. Bank records provided indicate that the transfers from the general fund to
11 the PAC escrow account occurred within very short periods through automatic sweeps from bank
12 account to bank account, but the Commission does not have exact details on how long that
13 transfer process took. Empire State (as the collecting agent) used a single escrow account into
14 which it placed all contributions to its federal and state PACs. *See Response to Memorandum at*
15 ¶2. The bank records provided in response to OGC's request for additional information indicate
16 that Empire State deposited \$2,174,348.09 into the escrow account.¹

17 As discussed in more detail below, all of the collected political contributions placed in
18 the escrow account were available to be used as federal funds. Eventually Empire State
19 transferred the political contributions to the Federal PAC or the NYS PAC in response to specific

¹ As detailed in the Submission and the Response to Memorandum, Empire State and its SSF changed bank accounts during the time period discussed in this Factual and Legal Analysis, due to the consolidation of Empire State with other unions, consolidation in the banking industry, and a wholesale change in Empire State's banking relationship from Bank of America to First Trade Union Bank. As a result, at the end of June 2008 Empire State ceased deposits of contributions into the escrow account at Bank of America and began depositing all contributions into an FTUB escrow account (with linked checking account, which received deposits and then swept those deposits automatically into the escrow account). The Bank of America account continued to accrue interest from 2006 through 2009, when Empire State closed the account and transferred its remaining balance of \$219,000 to the FTUB escrow account on July 10, 2009.

1 requests by the treasurers of the committees for funds. Neither Empire State nor the Federal
2 PAC reported to the Commission the escrow account balance, deposits or withdrawals. Once
3 Empire State deposited the funds into the Federal PAC account, the Federal PAC reported those
4 transfers to the Commission.

5 The errors in Empire State's process came to light as a result of advice from Empire
6 State's accountant, Shultheis & Panatierre, that the escrow account for the PACs might be
7 irregular. *See Response to Memorandum at ¶6.* Empire State then requested an external review
8 by its outside counsel, Cary Kane, which resulted in an April 13, 2010 memo to Empire State
9 leadership outlining errors in the transmittal and reporting process. *See Sua Sponte Submission*
10 *Exhibit I.* Union leadership undertook an investigation as the United Brotherhood of Carpenters
11 and Joiners of America, ("UBC") a larger union with which Empire State is affiliated, prepared
12 to place Empire State under its supervision for administrative failures beginning on April 26,
13 2010. *See Sua Sponte Submission at p. 3.* UBC's counsel then initiated the *sua sponte*
14 submission on behalf of Empire State and the Federal PAC, which was received on August 25,
15 2010. During the change in leadership of the union and the PAC, the Federal PAC failed to
16 timely file its July 2010 Quarterly Report, which was addressed by the Administrative Fines
17 program in AF-2164. The Federal PAC filed an Amended July 2010 Quarterly Report on
18 December 2, 2010, noting numerous corrections to the original late-filed report.

19 The *sua sponte* submission states that when Empire State became aware of the transfer
20 violations, it stopped depositing contributions into the escrow account, and that it has begun
21 depositing all ongoing political contributions collected from its members into the Federal PAC
22 account to ensure compliance with the thirty-day transmittal period under 2 U.S.C.
23 § 432(b)(2)(A) and 11 C.F.R. § 102.8(b). The bank records provided in response to the

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Commission's request for additional information support this representation. Empire State has also prepared and is using a new contribution card which states that all contributions will be made to the Federal PAC. See Exhibit J to the Submission. After receipt of the political contributions, the Federal PAC can, at its discretion, transfer unlimited funds to the NYS PAC under 11 C.F.R. § 102.6(a)(1)(i). Further, as part of its *sua sponte* submission, Empire State requests the Commission's approval of its plan to transfer the remaining funds in the escrow account, (\$524,329.98 as of October 29, 2010), to the NYS PAC account and close the escrow account.

III. LEGAL ANALYSIS

The Act prohibits labor organizations from making contributions in connection with federal elections. 2 U.S.C. § 441b(a). However, labor organizations may establish and administer separate segregated funds for political purposes, solicit contributions to those funds from members and their families, and collect funds on behalf of their SSFs as "collecting agents." 2 U.S.C. §§ 441b(b)(2)(C) and (4)(A)(ii); and 11 C.F.R. § 102.6(b).

Pursuant to 11 C.F.R. § 102.6(b)(1), "[a] collecting agent is an organization or committee that collects and transmits contributions to one or more separate segregated funds to which the collecting agent is related." Collecting agents may transfer unlimited funds "to a separate segregated fund made pursuant to 11 C.F.R. § 102.6." 11 C.F.R. § 110.3(c)(1). Collecting agents that are not otherwise organizations required to register with the Commission as political committees, and that fulfill the requirements of 11 C.F.R. § 102.6(c), are not required to register and report as political committees so long as the collecting agent does not engage in actions such as making contributions or expenditures. 11 C.F.R. § 102.6(b)(2). However, separate segregated

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1 funds that receive contributions collected by collecting agents must report those contributions to
2 the extent required by 2 U.S.C. § 104.3(a). 11 C.F.R. § 102.6(c)(7).

3 Every person, including a collecting agent, who receives a contribution of \$50 or less for
4 a political committee which is not an authorized committee shall forward such contribution to the
5 treasurer of the committee within 30 days of receipt. 2 U.S.C. § 432(b)(2)(A), 11 C.F.R.

6 § 102.8(b)(1) and 11 C.F.R. § 102.6(c)(4). A union, as the collecting agent for its SSF, may
7 receive from members' employers a combined payment including "voluntary contributions to the
8 union's separate segregated fund and union dues or other employee deductions." 11 C.F.R.

9 § 102.6(c)(3). Upon receiving such combined payments, the union must segregate the SSF
10 contributions from the other union funds. To accomplish segregating the contributions, the
11 union, as its SSF's collecting agent, must either set up 1) "a transmittal account to be used solely
12 for the deposit and transmittal of funds collected on behalf of the separate segregated fund," all
13 of which such funds are subject to the Act's prohibitions and limitations; 2) deposit such
14 contributions into the agent's treasury account, keeping separate records, or 3) deposit them into
15 an account used otherwise only "for State and local election activity," again keeping separate
16 records of the contributions received for the SSF. 11 C.F.R. § 102.6(c)(4)(ii).

17 The collecting agent must "retain all records of contribution deposits and transmittals . . .
18 for a period of three years" 11 C.F.R. § 102.6(c)(6). The separate segregated fund for
19 which the collecting agent is collecting funds is responsible for "ensuring that the recordkeeping,
20 reporting, and transmittal requirements" of the regulations are met by the collecting agent.

21 11 C.F.R. § 102.6(c)(1). The Act requires that committees (other than authorized committees of
22 candidates) report, for the reporting period and calendar year, the total amount of all receipts, *see*

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2 U.S.C. § 434(b)(2), the total amount of all disbursements, *see* 2 U.S.C. § 434(b)(4); and the total amount of all transfers to affiliated committees, *see* 2 U.S.C. § 434(b)(4)(C).

1. Timing of Transfers

Empire State, as a labor organization, could properly serve as a collecting agent for its own connected SSF, and the voluntary contributions collected by Empire State were permissible contributions under the Act. 2 U.S.C. §§ 441b(b)(2)(C) and (4)(A)(ii); and 11 C.F.R. § 102.6(b). However, the timing of the ongoing transfers from the escrow account to the Federal PAC violates the Act. As outlined above, 2 U.S.C. § 432(b)(2) requires any recipient to forward contributions under \$50 no later than 30 days after receipt, and 11 C.F.R. § 102.6(c)(4) confirms that this timeframe applies to collecting agents. According to the *sua sponte* submission, Empire State did not transfer any of the amounts collected in the escrow account to the Federal PAC within 30 days of receipt. *See Sua Sponte* Submission at p. 2. The bank records provided, when compared with the Federal PAC's disclosure reports filed with the Commission, indicate that from the date that Empire State deposited contributions into the escrow account, more than two years passed before the Federal PAC reported receiving transfer of any of those contributions.² The Commission therefore finds reason to believe that the Empire State Regional Council of Carpenters violated 2 U.S.C. § 432(b)(2) and 11 C.F.R. §§ 102.6(c)(4) and 102.6(b) by failing to transmit funds from its escrow account within the thirty-day period established by the statute and regulations.

²For example, though the escrow account accumulated \$389,423.19 in new contributions during 2006, and \$301,739.17 in new contributions in 2007, none of that money was transferred to the Federal PAC's account during 2006 or 2007, as reflected in the Federal PAC's bank statements and its FEC disclosure reports. Not until the July 2008 Quarterly Report did the Federal PAC report receipt of funds, disclosing receipt of \$10,000 in un-itemized contributions in that quarter. The Federal PAC reported receiving \$15,000 in un-itemized receipts on its 2009 Mid-Year Report, and an additional \$100,000 in un-itemized receipts on its 2009 Year-End Report.

1 As noted above, pursuant to 11 C.F.R. § 102.6(c)(1), separate segregated funds are
2 responsible for ensuring that their collecting agents comply with the recordkeeping, reporting
3 and transmittal requirements of 11 C.F.R. § 102.6. The Federal PAC did not ensure that Empire
4 State properly forwarded contributions within the required timeframes. *See Sua Sponte*
5 Submission at p. 2. Therefore, there is reason to believe that the Empire State Regional Council
6 of Carpenters PAC-Federal and its treasurer, William R. Banfield, acting in his official capacity,
7 violated 2 U.S.C. § 432(b)(2) and 11 C.F.R. § 102.6(c)(1) by failing to ensure that its collecting
8 agent, Empire State Regional Council of Carpenters, complied with the Act's transmittal
9 requirements with regard to the funds transferred from the escrow account to the Federal PAC.
10 *See* MUR 5229 (SEIU Local 1199) (the Commission found reason to believe against both the
11 collecting agent and the SSF where the union, acting as the collecting agent, failed to timely
12 transfer funds, and the SSF failed to ensure that the collecting agent complied with the law.)

13 2. Reporting Violations

14 Empire State's failure to comply with the 30-day transmittal requirements of 2 U.S.C.
15 § 432(b)(2) and 11 C.F.R. § 102.8(b), as required by 11 C.F.R. § 102.6(c)(4), caused the Federal
16 PAC to under-report its cash-on-hand in violation of 2 U.S.C. § 434(b) from 2001 until the
17 present. Because Empire State made all of the funds collected in the escrow account available
18 for federal use but these amounts were not properly reported to the Commission as cash-on-hand,
19 the funds were thus undetectable by the public. The cumulative failures to report cash-on-hand
20 from 2006 to the present total \$6,400,000 over 16 reporting periods, or \$1,475,468.52 in unique
21 un-reported funds.

22 Although Empire State also made the funds in the escrow account available for state and
23 local use, and eventually transferred some of the funds to the NYS PAC, it failed to differentiate

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1 the funds in the account by intended use. It could have differentiated the funds by either 1)
2 treating all of the receipts as reportable federal receipts and then transferring money as needed to
3 the non-federal account by using the unlimited transfer rule of 11 C.F.R. § 102.6(a)(1)(i) (as was
4 approved in Advisory Opinion 1981-59 (Nat. Assoc. of Realtors)); or 2) specifically soliciting
5 contributions to the non-federal account as such (or at least having the donor designate a specific
6 share of his or her contribution as non-federal) and depositing those funds upon receipt in the
7 non-federal NYS PAC account, at which point they would be unavailable for federal use, even
8 though otherwise within the Act's limitations or prohibitions. Because Empire State failed to
9 differentiate the funds in the escrow account, it should have reported, as part of its cash-on-hand,
10 all funds in the escrow account at the end of each relevant reporting period because the entire
11 contents of the account were available for federal use. Empire State has represented that, as part
12 of its remedial measures in this matter, it has adopted the first course above as its method for
13 differentiating funds going forward. It deposits all contributions to its PACs into the Federal
14 PAC account, reports all receipts to the Commission, and then disburses funds as needed to the
15 NYS PAC under the unlimited transfer rule of 11 C.F.R. § 102.6(a)(1)(i), and reports those
16 disbursements to the Commission.

17 Therefore, there is reason to believe that the Federal PAC violated 2 U.S.C. § 434(b) by
18 failing to report funds available for federal use in the escrow account as cash-on-hand during the
19 periods covered by the 2006 April Quarterly Report through the 2010 April Quarterly Report.

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