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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

MUR 6483)

LOYOLA ENTERPRISES, INC.)

BENITO BEN LOYOLA, JR.)

LOYOLA FOR CONGRESS)

KAREN F. MARCUS,)

AS TREASURER)

CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

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 or, when the allegations are speculative and are sufficiently refuted by the responses, to make no reason to believe findings. For the reasons set forth below, the Office of General Counsel recommends that the Commission make no reason to believe findings in MUR 6483.

In this matter, the Complainant, Edward C. Maulbeck, asserts that Respondents Loyola Enterprises, Inc. ("Loyola Enterprises"), Benito Ben Loyola, Jr. ("Loyola"), and Loyola for Congress ("the Committee"), and Karen F. Marcus, in her official capacity as treasurer, made or accepted

1 an in-kind corporate contribution through the use of corporate facilities in connection with a
2 federal election, and the contribution was not disclosed to the Commission.

3 Loyola, a principal of Loyola Enterprises, was a candidate for Virginia's 2nd
4 Congressional District during the 2010 Republican primary election. On April 24, 2010, the
5 Complainant witnessed a uniformed Loyola Enterprises employee using one of the company's
6 vans to put up 4' x 8' Loyola for Congress signs. The Complainant, one of Loyola's primary
7 election opponents, took pictures of the employee's activities and later determined that the
8 Committee did not disclose the alleged in-kind corporate contribution. The complaint included
9 photographs of the employee placing one of the signs at ground level with the Loyola Enterprises
10 van nearby.¹

11 In response, the Respondents point out that April 24th was a Saturday and that the Loyola
12 Enterprises employee, Adrian Peraza, volunteered to put up the Loyola for Congress signs on his
13 personal time. Moreover, the Respondents explain that Mr. Peraza pays Loyola Enterprises for
14 his personal use of the company's van. Respondents provided a copy of a portion of Loyola
15 Enterprises' Payroll Journal reflecting Peraza's payroll deductions, and the Payroll Journal
16 reflects a \$30 "personal use vehicle charge per pay period."

17 The Act and the Commission's regulations prohibit a corporation from making a
18 contribution in connection with an election. See 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2. The
19 Commission's regulations, however, permit an employee to make occasional, isolated, or
20 incidental use of a corporation's facilities for the employee's own individual volunteer activity in

¹ The Complainant also speculates that the Committee operated out of Loyola Enterprises' corporate offices because he did not find disbursements for rent on the Committee's disclosure reports. The Complainant acknowledges, however, that he did not have any facts or information to support this allegation and the Respondents did not specifically address this allegation.

1 connection with an election. 11 C.F.R. § 114.9(a); *see* 11 C.F.R. § 100.74 (the value of services
2 a volunteer provides without compensation is not a contribution). "Occasional, isolated, or
3 incidental use" means an amount of activity by the employee during any particular work period
4 which does not prevent the employee from completing the normal amount of work which that
5 employee usually does during such period. 11 C.F.R. § 114.9(a)(1)(i). Under the Commission's
6 safe harbor, activity that does not exceed one hour per work week or four hours per month is
7 considered as "occasional, isolated, or incidental use" of a corporation's facilities regardless of
8 whether the activity is undertaken during or after normal working hours. 11 C.F.R.
9 § 114.9(a)(2)(i).

10 The information provided by the parties shows that Mr. Peraza put up the Loyola for
11 Congress signs during his personal time using a van he rented from Loyola Enterprises.
12 According to the response, "Mr. Peraza pays Loyola Enterprises every month for use of the
13 company van for his own personal use." It appears that Mr. Peraza's use of the company van in
14 this instance was consistent with past practice and would not, therefore, constitute a prohibited
15 in-kind contribution under 2 U.S.C. § 441b.

16 Based on the foregoing reasons, the Office of General Counsel recommends that the
17 Commission find no reason to believe that Loyola Enterprises, Inc., Benito Ben Loyola, Jr., and
18 Loyola for Congress and Karen F. Marcus, in her official capacity as treasurer, violated the
19 Federal Election Campaign Act of 1971, as amended, and Commission regulations.

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RECOMMENDATIONS


1. Find no reason to believe that Loyola Enterprises, Inc., Benito Ben Loyola, Jr., and Loyola for Congress and Karen F. Marcus, in her official capacity as treasurer, violated the Federal Election Campaign Act of 1971, as amended, and Commission regulations.
2. Close the file and send the appropriate letters.


Anthony Herman
General Counsel


Date

1/3/12

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