



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Barry McHugh

DEC 24 2012

Dalton Gardens, ID 83815

RE: MUR 6557

Dear Mr. McHugh:

On April 24, 2012, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 18, 2012, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated 2 U.S.C. §§ 433 and 434. 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. 66,132 (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 Kasey Morgenheim, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "KMG", is written over a horizontal line.

Kathleen M. Guith
Deputy Associate General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Barry McHugh

MUR 6557

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission by Thomas P. Hanley, alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), by Barry McHugh. According to the Complaint, the Kootenai County Reagan Republicans ("KCRR"), Jeff Ward (KCRR's treasurer), the Strategy Group, Inc., and four candidates for local office in Kootenai County, Idaho — Keith Hutcheson, Barry McHugh, Todd Tondee, and Dan Green — disseminated a mailer to voters in Kootenai County that endorsed federal and state candidates. The Complaint alleges that the Respondents violated the Act because they spent over \$1,000 for a federal candidate without "filing with" the Commission.

Upon review of the Complaint, Responses, and other available information, it does not appear that Barry McHugh was required to register and report with the Commission as a political committee. Accordingly, the Commission finds no reason to believe that Barry McHugh violated 2 U.S.C. §§ 433 and 434 by failing to register and report with the Commission as a political committee.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Summary

The Complaint alleges that KCRR and the individual Respondents "working together . . . spent over \$1,000 for a federal candidate without filing with the FEC" when they sent a mailer to voters in Kootenai County that endorsed state candidates and a federal candidate. Compl. at 1.

1 The Complaint attaches the mailer at issue, which states that “[the] Kootenai County Regan
2 Republicans wholeheartedly endorse the following conservative common-sense candidates in the
3 May 15 [2012] Republican Primary.” Compl., Ex. 1. The mailer lists 14 candidates for federal,
4 state, and local offices, and for each candidate includes the office sought, a photograph, and a
5 short statement about the candidate. The mailer includes one candidate for federal office,
6 Congressman Raul Labrador, the incumbent candidate for the U.S. House of Representatives
7 from Idaho’s First Congressional District. *Id.* Barry McHugh is listed as an endorsed candidate
8 for Kootenai County Prosecuting Attorney. *Id.*

9 KCRR submitted a Response — signed and sworn to by both Ron Lahr, as KCRR’s
10 president, and Jeff Ward, as KCRR’s treasurer. The KCRR Response identifies Barry McHugh
11 as a candidate for Kootenai County office who had no participation in the mailer other than being
12 listed as an endorsed candidate.

13 Barry McHugh also submitted an individual Response. McHugh, a candidate for
14 Kootenai County Prosecuting Attorney, asserts that he did not have any involvement in
15 designing the mailer and did not contribute funds directly for the production of the mailer,
16 although he may have contributed indirectly by paying a KCRR membership fee and attending a
17 fundraising dinner. McHugh Resp. at 1. He states that he will disclose his share of the cost of
18 the mailer as an in-kind contribution from KCRR. *Id.*

19 **B. Legal Analysis**

20 The Complaint generally alleges that Barry McHugh spent over \$1,000 for a federal
21 candidate without “filing with” the Commission. Compl. at 1. Under the Act, groups that are
22 political committees are required to register with the Commission and publicly report all of their
23 receipts and disbursements. 2 U.S.C. §§ 433, 434. The Act defines a “political committee” as

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1 any committee, association, or other group of persons that receives "contributions" or makes
2 "expenditures" for the purpose of influencing a Federal election which aggregate in excess of
3 \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). The term "contribution" is defined to
4 include "any gift, subscription, loan, advance, or deposit of money or anything of value made by
5 any person for the purpose of influencing any election for Federal office." 2 U.S.C.
6 § 431(8)(A)(i). The term "expenditure" is defined to include "any purchase, payment,
7 distribution, loan, advance, deposit, or gift of money or anything of value, made by any person
8 for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). An
9 organization will not be considered a "political committee" unless its "major purpose is Federal
10 campaign activity (*i.e.*, the nomination or election of a Federal candidate)." Political Committee
11 Status, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007) (Supplemental Explanation and Justification).
12 *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*
13 (*"MCFL"*), 479 U.S. 238, 262 (1986).

14 There is no evidence that Barry McHugh had liability under sections 433 and 434 of the
15 Act. Accordingly, the Commission finds no reason to believe that Barry McHugh violated
16 2 U.S.C. §§ 433 and 434.

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