



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 18 2016

Jed Whittaker

Anchorage, AK 99503

RE: MUR 7032

Dear Mr. Whittaker:

On November 15, 2016, the Federal Election Commission reviewed the allegations in your complaint dated March 17, 2016, and found that on the basis of the information provided in your complaint, there is no reason to believe that Lisa Murkowski, Lisa Murkowski for US Senate and Catherine Straub in her official capacity as treasurer violated the Federal Election Campaign Act of 1971, as amended. 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 findings, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

11002444001001

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

1
2
3 RESPONDENTS: Lisa Murkowski MUR 7032
4 Lisa Murkowski for US Senate
5 Catherine Straub, as treasurer
6

7 **I. INTRODUCTION**
8

9 This matter was generated by a Complaint filed by Jed Whittaker (“Complainant”) on
10 March 23, 2016, alleging violations of the Federal Election Campaign Act of 1971, as amended
11 (the “Act”), and Commission regulations by Respondents Lisa Murkowski, Lisa Murkowski for
12 US Senate and Catherine Straub in her official capacity as treasurer (collectively, “the
13 Committee”). It was scored as a relatively low-rated matter under the Enforcement Priority
14 System, a system by which the Commission uses formal scoring criteria as a basis to allocate its
15 resources and decide which matters to pursue.

16 **II. FACTUAL AND LEGAL ANALYSIS**

17 **A. Factual Background**

18 The Complaint alleges that the Committee violated the Act or Commission regulations by
19 using official Senate funds to pay for Murkowski and six other senators to travel to Bethel,
20 Alaska, on a military aircraft.¹ Compl. at 1. According to the Complaint, on February 16, 2016,
21 Murkowski and her Senate colleagues traveled to Bethel, purportedly to conduct a field hearing
22 for the Senate Energy and Natural Resources Committee. *Id.* The Complaint alleges, however,
23 that the true reason Murkowski arranged the trip and military transport was “because [she was]
24 running for re-election.” *Id.* The Complaint asserts that the Senate committee could have, and

¹ The Complainant concludes that Murkowski flew on a military transport based on photographs appearing in *Alaska Dispatch News* and on Murkowski’s website. Compl. at 1.

1 would have otherwise, gathered the desired information through an inexpensive teleconference.

2 *Id.* Therefore, the Complaint concludes, the trip was a misuse of taxpayer money and the

3 Committee should reimburse the Treasury for the cost of the military transport. *Id.*

4 The Committee acknowledges that the Bethel field hearing and use of a military transport

5 occurred, but asserts that the trip was for official Senate business and involved no campaign

6 activity. *Resp.* at 1-3. The Committee argues that the Complaint is vague and conclusory and

7 fails to cite any specific campaign activity that took place during the trip. *Id.* at 1-2. The

8 Committee also argues that the Complaint does not allege a violation of the Act or Commission

9 regulations. *Id.* at 3. Instead, the Committee believes the Complaint is focused on the alleged

10 improper use of federal funds. *Id.* at 2.

11 In support, the Committee attached three news articles to its Response about the February

12 15, 2016² Senate field hearing and submitted an affidavit from Stephen Wackowski,

13 Murkowski's campaign manager. *See id.*, Attach. A-C; Stephen Wackowski Aff. (Apr. 18,

14 2016). The news articles state that Murkowski, five other senators, and the Energy Secretary

15 conducted the hearing in Bethel and nearby towns to study the cost of energy in remote areas of

16 Alaska and to discuss alternative energy sources. *Resp.*, Attach. A-C. None of the articles

17 reference campaigns or campaign-related activities.³ *See id.* In the affidavit, Wackowski states

18 that the Bethel trip was official Senate business and was not paid for or planned by the

² The articles reveal that the correct date of the hearing was February 15, not February 16. *Resp.*, Attach. A-C.

³ One of the attached articles appears to be the *Alaska Dispatch News* article and corresponding photograph referenced by the Complaint. *See Resp.*, Attach. C.

1 Committee. Wackowski Aff. at 1-2. Wackowski further attests that no campaigning occurred
2 during the trip. *Id.*

3 **B. Legal Analysis**

4 The Act defines the term “contribution” to mean (1) “any gift, subscription, loan,
5 advance, or deposit of money or anything of value *made by any person* for the purpose of
6 influencing any election for Federal office;” or (2) “the payment *by any person* of compensation
7 for the personal services of another person which are rendered to a political committee without
8 charge for any purpose.” 52 U.S.C. § 30101(8)(A) (emphasis added). The Act excludes the
9 federal government from the definition of “person.” *Id.* § 30101(11).

10 The Response, backed up by contemporaneous news reports, describes the Bethel trip as
11 an official field hearing of the Senate Energy and Natural Resources Committee, attended by a
12 bipartisan group of Senators and the Secretary of Energy. Respondents specifically deny and
13 rebut with a sworn affidavit the allegation that Murkowski engaged in campaign-related activity
14 on this trip. Moreover, because the federal government is not a “person” within the meaning of
15 the Act, the Commission has recognized that it cannot make an illegal contribution to a
16 candidate. *See* Factual & Legal Analysis at 3 & n.6, MURs 6862 & 6874 (Landrieu) (“[N]o
17 provision of the Act or Commission regulations governs the use or misuse of official government
18 funds for campaign-related travel.”). Therefore, the Committee could not have accepted an
19 illegal contribution from the federal government under the Act or Commission regulations by
20 using official Senate funds to fly her there.

21 The Commission’s requirement that candidate committees disclose expenses for
22 campaign-related travel “paid for . . . from a source other than a political committee,” does not

1002404440001

1 apply “to the extent that a candidate pays for travel expenses using funds authorized and
2 appropriated by the Federal Government.” 11 C.F.R. § 106.3(b); Interpretation of Allocation of
3 Candidate Travel Expenses, 67 Fed. Reg. 5,445 (Feb. 6, 2002). Accordingly, the Committee did
4 not violate the Act by failing to disclose the cost of the military transport on its disclosure
5 reports. The Commission therefore finds no reason to believe that the Committee violated the
6 Act or Commission regulations.

11240444001