

2016 DEC -5 PM 7:31

FEDERAL ELECTION COMMISSION

FIRST GENERAL COUNSEL'S REPORT

MUR 7068
DATE COMPLAINT FILED: May 18, 2016 CEFLA
DATE OF NOTIFICATION: May 24, 2016
LAST RESPONSE RECEIVED: July 18, 2016
DATE ACTIVATED: Sept. 6, 2016

EXPIRATION OF SOL: Oct. 18, 2018 (earliest)
Dec. 5, 2019 (latest)
ELECTION CYCLE: 2014

COMPLAINANT: Adam Burke

RESPONDENTS: Mowrer for Iowa and Dennis Skinner in his
official capacity as treasurer
James Mowrer

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30114(a)(1)
52 U.S.C. § 30114(b)(1)
11 C.F.R. § 113.1(g)(1)(i)(I)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Complainant alleges that James Mowrer, a candidate in the 4th Congressional District of Iowa in 2014, and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer (the "Committee") (collectively, "Respondents"), violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by converting campaign funds to personal use. Specifically, the Complainant alleges that the Committee made impermissible salary payments to Mowrer and impermissibly reimbursed Mowrer's health insurance premiums. Respondents assert that the payments to Mowrer were a permissible use of campaign funds but acknowledge that some of the

1 salary payments and health insurance reimbursements were made outside of the Act's window for
2 such disbursements.

3 As discussed below, the Act and Commission regulations permit committees to use campaign
4 funds to make salary payments to candidates under certain conditions. Under the facts of this case,
5 some of the salary payments were made after Mowrer ceased to be a candidate, and thus constitute
6 *per se* personal use of campaign funds. In addition, because the health insurance premiums are an
7 expense that would exist irrespective of the campaign, those reimbursements constitute personal use
8 of campaign funds.

9 Therefore, we recommend that the Commission find reason to believe that James Mowrer
10 and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer violated 52 U.S.C.
11 § 30114(b)(1) by converting campaign funds to personal use. We also recommend that the
12 Commission approve pre-probable cause conciliation with Respondents.

13 **II. FACTS**

14 James Mowrer filed a Statement of Candidacy on July 1, 2013, designating Mowrer for
15 Iowa as his principal campaign committee for election in Iowa's 4th Congressional District.¹
16 The filing deadline for ballot access in the primary election was March 14, 2014.² Mowrer won
17 the Democratic primary election on June 3, 2014, but lost the general election on November 4,
18 2014.

¹ See FEC Form 2, Statement of Candidacy (July 1, 2013); FEC Form 1, Statement of Organization, Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer (July 1, 2013).

² See 2014 Election Calendar, IOWA SECRETARY OF STATE, <https://sos.iowa.gov/elections/voter-information/primary2014.html>.

- 1 During the 2014 election cycle, the Committee paid Mowrer a salary totaling \$23,500 and
2 reimbursed him for health insurance premiums totaling \$7,462.65, as follows:³

Date	Salary Payments	Health Insurance Premium Reimbursements
October 18, 2013		\$1,381.45
December 13, 2013		\$1,381.45
January 3, 2014		\$1,381.45
February 14, 2014		\$1,898.15
June 2, 2014	\$1,000	
June 18, 2014	\$1,000	
July 2, 2014	\$1,000	
July 18, 2014	\$1,000	
August 1, 2014	\$1,500	
August 18, 2014	\$1,500	
September 3, 2014	\$1,500	
September 7, 2014		\$1,420.15
September 17, 2014	\$2,500	
October 3, 2014	\$2,500	
October 17, 2014	\$2,500	
November 3, 2014	\$2,500	
November 15, 2014	\$2,500	
December 5, 2014	\$2,500	
TOTALS:	\$23,500	\$7,462.65

- 3 On May 16, 2016, Mowrer refunded \$2,028.78 in salary payments to the Committee.⁴

4 **III. LEGAL ANALYSIS**

- 5 Under the Act, a contribution accepted by a candidate may be used by the candidate for
6 otherwise authorized expenditures in connection with the campaign for Federal office of the

³ See Compl. at 1-2 (May 17, 2016); see also Mowrer for Iowa 2013 Amended Year-End Report at 155-56; 2014 Amended April Quarterly Report at 365-66; 2014 Amended July Quarterly Report at 353; 2014 Amended October Quarterly Report at 1,492-94; 2014 Second Amended 12-Day Pre-General Report at 347; 2014 30-Day Post-General Report at 724-25; 2014 Amended Year-End Report at 21.

⁴ See Mowrer for Iowa 2016 Amended 12-Day Pre-Primary Election Report at 194. Mowrer made his refund two days before the Complaint was filed.

1 candidate.⁵ However, a contribution shall not be converted by any person to personal use.⁶
2 "Personal use" means any use of funds in a campaign account of a present or former candidate to
3 fulfill a commitment, obligation, or expense of any person that would exist irrespective of the
4 candidate's campaign or duties as a Federal officeholder.⁷

5 **A. Salary Payments**

6 The Act and the Commission's regulation enumerate certain expenses that are considered
7 *per se* "personal use" and thus prohibited, including salary payments to a candidate that do not
8 meet specified criteria.⁸ A candidate's principal campaign committee may pay a salary to the
9 candidate that will not constitute personal use of campaign funds so long as it does not exceed
10 the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the
11 candidate seeks or the earned income that the candidate received during the year prior to
12 becoming a candidate.⁹ Any earned income that a candidate receives from salaries or wages
13 from any other source, however, shall count against the minimum salary paid to a federal
14 officeholder holding the seat sought by the candidate.¹⁰ Moreover, the committee shall not pay
15 salary to a candidate before the filing deadline for access to the primary election ballot for the
16 Federal office that the candidate seeks, as determined by state law.¹¹ During the time period in
17 which a principal campaign committee may pay a salary to a candidate, such payment must be

⁵ 52 U.S.C. § 30114(a)(1).

⁶ 52 U.S.C. § 30114(b)(1).

⁷ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

⁸ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(I).

⁹ 11 C.F.R. § 113.1(g)(1)(i)(I).

¹⁰ *Id.*

¹¹ *Id.*

1 computed on a pro-rata basis.¹² If the candidate wins the primary election, his or her principal
2 campaign committee may pay him or her a salary from campaign funds through the date of the
3 general election.¹³ The payment of salary to candidates that do not meet these conditions is
4 considered *per se* personal use.¹⁴

5 The Complaint alleges that the Committee's salary payments to Mowrer on
6 November 15, 2014, and on December 5, 2014, each in the amount of \$2,500, were
7 impermissible because they were paid after he lost the general election and was no longer a
8 candidate.¹⁵

9 Respondents acknowledge that some of Mowrer's salary payments were paid for the
10 period beyond the general election date but assert that the regulations are not clear as to whether
11 the pay periods must fall within the regulations' window or whether the window is used merely
12 for calculating the permissible salary amount.¹⁶ Respondents assert that the aggregate salary
13 payments to Mowrer did not exceed the permissible amount.¹⁷ According to Respondents,
14 Mowrer's wages equaled \$56,027 in 2013, the year prior to his becoming a candidate,¹⁸ and this

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; *see also* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; Final Rule, 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002) ("2002 Personal Use E&J").

¹⁵ Compl. at 2.

¹⁶ Resp. at 2-3.

¹⁷ Resp. at 1.

¹⁸ Although Mowrer filed his Statement of Candidacy on July 1, 2013, Respondents present Mowrer's 2013 wages as the relevant pre-candidacy salary.

1 amount is less than the minimum salary paid to a member of Congress.¹⁹ Thus, Respondents
2 assert, the \$23,500 in aggregate salary payments were permissible as they were less than the
3 permitted maximum amount.²⁰

4 The controlling factor here, however, is that some of the salary payments covered the
5 period after Mowrer ceased to be a candidate, and were thus impermissible. The applicable
6 regulation states: "If the candidate wins the primary election, his or her principal campaign
7 committee may pay him or her a salary from campaign funds through the date of the general
8 election..."²¹ The Respondents' own information indicates that the November 15 and
9 December 5, 2014, salary payments of \$2,500 each covered periods that were post-general
10 election, *i.e.*, the November 15 payment covered November 1 through 15, and the December 5
11 payment covered November 16 through November 30.²² Therefore, part of the November 15
12 payment and the entire December 5 payments were impermissible. The portion of salary
13 payment covering November 1 through 4 was permissible and equals \$666.68 ($\$2,500 \div 15 \text{ days}$
14 $= \$166.67 \text{ per day}$) ($\$166.67 \times 4 \text{ days} = \666.68). Deducting that portion from the November
15 and December payments, the impermissible amount of salary payments equals \$4,333.32
16 ($[\$2,500 - \$666.68 = \$1,833.32] + [\$2,500] = \$4,333.32$).²³

¹⁹ Resp. at 2. In 2014, the compensation for most U.S. Representatives was \$174,000. See Brudnick, Ida, Salaries of Members of Congress: Recent Actions and Historic Tables, CONGRESSIONAL RESEARCH SERVICE, Feb. 23, 2016, <http://library.clerk.house.gov/reference-files/114_20150106_Salary.pdf>

²⁰ Resp. at 2.

²¹ 11 C.F.R. § 113.1(g)(1)(i)(I). Although Respondents are correct that the \$23,500 total salary payments paid to Mowrer does not exceed the maximum allowable based on his prior employment, none of that amount may be paid covering a period after he ceased to be a candidate. See *id.*

²² Resp. at 2.

²³ Respondents also assert that the Commission's regulation is unclear as to the method for calculating permissible pro-rata salary amounts, citing the Statement of Reasons in the Alternative Dispute Resolution matter of ADR 196, 198, 200, 213 (LeSueur for Congress '04). See Statement of Reasons, Chairman Thomas, Cmm'rs.

1 In addition, Respondents distinguish between the gross versus net salary paid to Mowrer,
2 asserting that the "small excess net payments" made in November and December 2014 warrant
3 dismissal of this matter.²⁴ Based on past Enforcement precedent, the relevant amount in
4 determining salary payments is the gross salary paid to Mowrer. In MUR 5787 (Kaly Free), the
5 Commission entered into a conciliation agreement with the candidate and committee for
6 converting campaign funds to personal use in the form of excessive salary payments to the
7 candidate. The excessive payments were calculated based on the gross salary of a member of
8 Congress in 2004 (Free's income exceeded this amount).²⁵ Moreover, the Commission's
9 explanation and justification of the personal use regulation supports the use of gross salary as the
10 appropriate measure, stating that "[a]ny tax payments required by the Internal Revenue Service,
11 or state and/or local governments, are the responsibility of the candidate."²⁶

12 Therefore, the Committee and Mowrer converted campaign funds to personal use when
13 the Committee paid Mowrer \$4,333.32 in salary payments covering the period after the
14 November 4, 2014, general election when he was no longer a candidate. As noted, on May 16,
15 2016, Mowrer refunded \$2,028.78 in salary payments to the Committee. The Response states
16 that this amount is what the Committee believed it paid to Mowrer after the general election but
17 does not explain how it calculated this amount.²⁷

Mason, Smith, Weintraub ADR 196, 198, 200, 213 (LeSueur for Congress '04) (Aug. 18, 2005) at 2 ("...the regulations do not present clear direction to the regulated community on the issue of computing pro-rata salary to a candidate..."). The instant matter, however, does not turn on the permissible pro-rata salary amount paid to Mowrer. As noted, the entire \$23,500 salary payment appears to be of permissible size, but a portion of it was paid to cover a period after the general election.

²⁴ Resp. at 3.

²⁵ See MUR 5787, Second Gen. Counsel's Rpt. at 3 (July 19, 2007).

²⁶ 2002 Personal Use E&J at 76,972.

²⁷ See Resp. at 2.

1 **B. Disbursements for Health Insurance Premiums**

2
3 “Personal use” is not limited to the items enumerated in the Act and Commission’s
4 regulation.²⁸ The Commission determines on a case-by-case basis whether other uses of
5 campaign funds fulfill a commitment, obligation, or expense that would exist irrespective of the
6 candidate’s campaign or duties as a federal officeholder, and are therefore personal use.²⁹

7 The Committee reimbursed Mowrer’s health insurance premiums totaling \$7,462.65.
8 The Respondents acknowledge that the reimbursements during 2013, the year before the
9 election, were impermissible. Respondents assert that the reimbursement from the Committee on
10 September 7, 2014, in the amount of \$1,420.15, was permissible.³⁰ Respondents state that the
11 September 2014 reimbursement was made in good faith because the Committee offered health
12 insurance reimbursements to all staff.³¹ Respondents assert that the health insurance premium
13 reimbursement was proper because the actual compensation paid during his candidacy did not
14 exceed the maximum amount permitted.³²

15 All of the reimbursements to Mowrer for health insurance premiums appear to be an
16 expense that would exist irrespective of the candidate’s campaign.³³ The applicable regulation
17 allows for salary payments under specific conditions and does not make any provision for

²⁸ 11 C.F.R. § 113.1(g)(1)(i).

²⁹ See 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(ii); see also Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995).

³⁰ Resp. at 3.

³¹ *Id.*

³² *Id.*

³³ See 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(ii).

1 payment of benefits in addition to salary.³⁴ Accordingly, the entire \$7,462.65 the Committee
2 paid to Mowrer to reimburse his health insurance premiums appears to be personal use of
3 campaign funds.

4 **C. Conclusion**

5 Based on the foregoing, we recommend that the Commission find reason to believe that
6 James Mowrer and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer
7 violated 52 U.S.C. § 30114(b)(1) for the personal use of campaign funds.

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³⁴ See 11 C.F.R. § 113.1(g)(1)(i)(I).

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V. RECOMMENDATIONS

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1. Find reason to believe that James Mowrer violated 52 U.S.C. § 30114(b)(1).

6

2. Find reason to believe that Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer violated 52 U.S.C. § 30114(b)(1).

7

8

3. Enter into conciliation with James Mowrer and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer prior to a finding of probable cause to believe.

9

10

4. Approve the attached Factual and Legal Analysis.

11

5. Approve the attached proposed conciliation agreement.

6. Approve the appropriate letter.

Lisa J. Stevenson
Acting General Counsel

Dec. 5, 2016

Date

By: Kathleen M. Guith by MA
Kathleen M. Guith
Acting Associate General Counsel

Mark Allen
Mark Allen
Assistant General Counsel

Christine C. Gallagher by MA
Christine C. Gallagher
Attorney

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** James Mowrer
4 Mowrer for Iowa and Dennis Skinner in his
5 official capacity as treasurer
6
7

MUR: 7068

8 **I. INTRODUCTION**
9

10 This matter was generated by a complaint filed with the Federal Election Commission.

11 See 52 U.S.C. § 30109(a)(1). This matter concerns the personal use of campaign funds by James
12 Mowrer, a candidate for U.S. Congress in Iowa in 2014, which were paid to him as salary after
13 his lost the general election and as reimbursements for health insurance premiums by his 2014
14 authorized committee, Mowrer for Iowa. For the reasons set forth below, the Commission finds
15 reason to believe that James Mowrer and Mowrer for Iowa and Dennis Skinner in his official
16 capacity as treasurer violated 52 U.S.C. § 30114(b)(1).

17 **II. FACTS**

18 Complainant alleges that James Mowrer, a candidate in the 4th Congressional District of
19 Iowa in 2014, and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer
20 (the "Committee") (collectively, "Respondents"), violated the Federal Election Campaign Act of
21 1971, as amended (the "Act"), by converting campaign funds to personal use. Specifically, the
22 Complainant alleges that the Committee made impermissible salary payments to Mowrer and
23 impermissibly reimbursed Mowrer's health insurance premiums. Respondents assert that the
24 payments to Mowrer were a permissible use of campaign funds but acknowledge that some of the
25 salary payments and health insurance reimbursements were made outside of the Act's window for
26 such disbursements.

1 As discussed below, the Act and Commission regulations permit committees to use campaign
2 funds to make salary payments to candidates under certain conditions. Under the facts of this case,
3 some of the salary payments were made after Mowrer ceased to be a candidate, and thus constitute
4 *per se* personal use of campaign funds. In addition, because the health insurance premiums are an
5 expense that would exist irrespective of the campaign, those reimbursements constitute personal use
6 of campaign funds.

7 James Mowrer filed a Statement of Candidacy on July 1, 2013, designating Mowrer for
8 Iowa as his principal campaign committee for election in Iowa's 4th Congressional District.¹
9 The filing deadline for ballot access in the primary election was March 14, 2014.² Mowrer won
10 the Democratic primary election on June 3, 2014, but lost the general election on November 4,
11 2014.

12 During the 2014 election cycle, the Committee paid Mowrer a salary totaling \$23,500 and
13 reimbursed him for health insurance premiums totaling \$7,462.65, as follows:³

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February 14, 2014		\$1,898.15
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¹ See FEC Form 2, Statement of Candidacy (July 1, 2013); FEC Form 1, Statement of Organization, Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer (July 1, 2013).

² See 2014 Election Calendar, IOWA SECRETARY OF STATE, <https://sos.iowa.gov/elections/voter-information/primary2014.html>.

³ See Compl. at 1-2 (May 17, 2016); see also Mowrer for Iowa 2013 Amended Year-End Report at 155-56; 2014 Amended April Quarterly Report at 365-66; 2014 Amended July Quarterly Report at 353; 2014 Amended October Quarterly Report at 1,492-94; 2014 Second Amended 12-Day Pre-General Report at 347; 2014 30-Day Post-General Report at 724-25; 2014 Amended Year-End Report at 21.

June 18, 2014	\$1,000	
July 2, 2014	\$1,000	
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September 17, 2014	\$2,500	
October 3, 2014	\$2,500	
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November 3, 2014	\$2,500	
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December 5, 2014	\$2,500	
TOTALS:	\$23,500	\$7,462.65

1 On May 16, 2016, Mowrer refunded \$2,028.78 in salary payments to the Committee.⁴

2 **III. LEGAL ANALYSIS**

3 Under the Act, a contribution accepted by a candidate may be used by the candidate for

4 otherwise authorized expenditures in connection with the campaign for Federal office of the

5 candidate.⁵ However, a contribution shall not be converted by any person to personal use.⁶

6 “Personal use” means any use of funds in a campaign account of a present or former candidate to

7 fulfill a commitment, obligation, or expense of any person that would exist irrespective of the

8 candidate’s campaign or duties as a Federal officeholder.⁷

⁴ See Mowrer for Iowa 2016 Amended 12-Day Pre-Primary Election Report at 194. Mowrer made his refund two days before the Complaint was filed.

⁵ 52 U.S.C. § 30114(a)(1).

⁶ 52 U.S.C. § 30114(b)(1).

⁷ 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g).

1 **A. Salary Payments**

2 The Act and the Commission's regulation enumerate certain expenses that are considered
3 *per se* "personal use" and thus prohibited, including salary payments to a candidate that do not
4 meet specified criteria.⁸ A candidate's principal campaign committee may pay a salary to the
5 candidate that will not constitute personal use of campaign funds so long as it does not exceed
6 the lesser of the minimum salary paid to a Federal officeholder holding the Federal office that the
7 candidate seeks or the earned income that the candidate received during the year prior to
8 becoming a candidate.⁹ Any earned income that a candidate receives from salaries or wages
9 from any other source, however, shall count against the minimum salary paid to a federal
10 officeholder holding the seat sought by the candidate.¹⁰ Moreover, the committee shall not pay
11 salary to a candidate before the filing deadline for access to the primary election ballot for the
12 Federal office that the candidate seeks, as determined by state law.¹¹ During the time period in
13 which a principal campaign committee may pay a salary to a candidate, such payment must be
14 computed on a pro-rata basis.¹² If the candidate wins the primary election, his or her principal
15 campaign committee may pay him or her a salary from campaign funds through the date of the

8 52 U.S.C. § 30114(b)(2); 11 C.F.R. § 113.1(g)(1)(i)(I).

9 11 C.F.R. § 113.1(g)(1)(i)(I).

10 *Id.*

11 *Id.*

12 *Id.*

1 general election.¹³ The payment of salary to candidates that do not meet these conditions is
2 considered *per se* personal use.¹⁴

3 The Complaint alleges that the Committee's salary payments to Mowrer on
4 November 15, 2014, and on December 5, 2014, each in the amount of \$2,500, were
5 impermissible because they were paid after he lost the general election and was no longer a
6 candidate.¹⁵

7 Respondents acknowledge that some of Mowrer's salary payments were paid for the
8 period beyond the general election date but assert that the regulations are not clear as to whether
9 the pay periods must fall within the regulations' window or whether the window is used merely
10 for calculating the permissible salary amount.¹⁶ Respondents assert that the aggregate salary
11 payments to Mowrer did not exceed the permissible amount.¹⁷ According to Respondents,
12 Mowrer's wages equaled \$56,027 in 2013, the year prior to his becoming a candidate,¹⁸ and this
13 amount is less than the minimum salary paid to a member of Congress.¹⁹ Thus, Respondents

¹³ *Id.*

¹⁴ *Id.*; see also Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds; Final Rule, 67 Fed. Reg. 76,962, 76,972 (Dec. 13, 2002) ("2002 Personal Use E&J").

¹⁵ Compl. at 2.

¹⁶ Resp. at 2-3.

¹⁷ Resp. at 1.

¹⁸ Although Mowrer filed his Statement of Candidacy on July 1, 2013, Respondents present Mowrer's 2013 wages as the relevant pre-candidacy salary.

¹⁹ Resp. at 2. In 2014, the compensation for most U.S. Representatives was \$174,000. See Brudnick, Ida, Salaries of Members of Congress: Recent Actions and Historic Tables, CONGRESSIONAL RESEARCH SERVICE, Feb. 23, 2016, <http://library.clerk.house.gov/reference-files/114_20150106_Salary.pdf>

1 assert, the \$23,500 in aggregate salary payments were permissible as they were less than the
2 permitted maximum amount.²⁰

3 The controlling factor here, however, is that some of the salary payments covered the
4 period after Mowrer ceased to be a candidate, and were thus impermissible. The applicable
5 regulation states: "If the candidate wins the primary election, his or her principal campaign
6 committee may pay him or her a salary from campaign funds through the date of the general
7 election..."²¹ The Respondents' own information indicates that the November 15 and
8 December 5, 2014, salary payments of \$2,500 each covered periods that were post-general
9 election, *i.e.*, the November 15 payment covered November 1 through 15, and the December 5
10 payment covered November 16 through November 30.²² Therefore, part of the November 15
11 payment and the entire December 5 payment were impermissible. The portion of salary payment
12 covering November 1 through 4 was permissible and equals \$666.68 ($\$2,500 \div 15 \text{ days} =$
13 $\$166.67 \text{ per day}$) ($\$166.67 \times 4 \text{ days} = \666.68). Deducting that portion from the November and
14 December payments, the impermissible amount of salary payments equals \$4,333.32 ($[\$2,500 -$
15 $\$666.68 = \$1,833.32] + [\$2,500] = \$4,333.32$).²³

²⁰ Resp. at 2.

²¹ 11 C.F.R. § 113.1(g)(1)(i)(I). Although Respondents are correct that the \$23,500 total salary payments paid to Mowrer does not exceed the maximum allowable based on his prior employment, none of that amount may be paid covering a period after he ceased to be a candidate. *See id.*

²² Resp. at 2.

²³ Respondents also assert that the Commission's regulation is unclear as to the method for calculating permissible pro-rata salary amounts, citing the Statement of Reasons in the Alternative Dispute Resolution matter of ADR 196, 198, 200, 213 (LeSueur for Congress '04). *See* Statement of Reasons, Chairman Thomas, Cmm'rs. Mason, Smith, Weintraub ADR 196, 198, 200, 213 (LeSueur for Congress '04) (Aug. 18, 2005) at 2 ("...the regulations do not present clear direction to the regulated community on the issue of computing pro-rata salary to a candidate..."). The instant matter, however, does not turn on the permissible pro-rata salary amount paid to Mowrer. As noted, the entire \$23,500 salary payment appears to be of permissible size, but a portion of it was paid to cover a period after the general election.

1 In addition, Respondents distinguish between the gross versus net salary paid to Mowrer,
2 asserting that the “small excess net payments” made in November and December 2014 warrant
3 dismissal of this matter.²⁴ Based on past Enforcement precedent, the relevant amount in
4 determining salary payments is the gross salary paid to Mowrer. In MUR 5787 (Kalyne Free), the
5 Commission entered into a conciliation agreement with the candidate and committee for
6 converting campaign funds to personal use in the form of excessive salary payments to the
7 candidate. The excessive payments were calculated based on the gross salary of a member of
8 Congress in 2004 (Free’s income exceeded this amount).²⁵ Moreover, the Commission’s
9 explanation and justification of the personal use regulation supports the use of gross salary as the
10 appropriate measure, stating that “[a]ny tax payments required by the Internal Revenue Service,
11 or state and/or local governments, are the responsibility of the candidate.”²⁶

12 Therefore, the Committee and Mowrer converted campaign funds to personal use when
13 the Committee paid Mowrer \$4,333.32 in salary payments covering the period after the
14 November 4, 2014, general election when he was no longer a candidate. As noted, on May 16,
15 2016, Mowrer refunded \$2,028.78 in salary payments to the Committee. The Response states
16 that this amount is what the Committee believed it paid to Mowrer after the general election but
17 does not explain how it calculated this amount.²⁷

²⁴ Resp. at 3.

²⁵ See MUR 5787, Second Gen. Counsel’s Rpt. at 3 (July 19, 2007).

²⁶ 2002 Personal Use E&J at 76,972.

²⁷ See Resp. at 2.

1 **B. Disbursements for Health Insurance Premiums**

2
3 The Committee reimbursed Mowrer's health insurance premiums totaling \$7,462.65.
4 The Respondents acknowledge that the reimbursements during 2013 and early 2014 occurred
5 before the primary election filing deadline while "Mowrer was not eligible to be placed on
6 payroll," but assert that the reimbursement from the Committee on September 7, 2014, in the
7 amount of \$1,420.15, was permissible.²⁸ Respondents state that the September 2014
8 reimbursement was made in good faith because the Committee offered health insurance
9 reimbursements as a benefit to all staff.²⁹ Respondents further assert that all the health insurance
10 premium reimbursements were proper because the total compensation for salary and healthcare
11 reimbursements actually paid during Mowrer's candidacy did not exceed the maximum amount
12 of permitted "compensation."³⁰

13 As discussed above, Commission regulations define as *per se* "personal use" any salary
14 payments to candidates that do not meet certain conditions.³¹ Respondents argue that Mowrer's
15 compensation (*i.e.*, salary plus health insurance benefits) met those conditions. But, the term
16 "salary" in 11 C.F.R. § 113.1(g)(1)(i)(I) is not as extensive as the term "compensation," which
17 the Commission has construed, in other contexts, to include both salary and benefits.³² The

²⁸ Resp. at 3.

²⁹ *Id.* (noting that "most staff members elected not to receive reimbursements" for health insurance).

³⁰ *Id.*

³¹ 11 C.F.R. § 113.1(g)(1)(i)(I).

³² *See, e.g.*, 11 C.F.R. § 113.1(g)(6)(iii) (referring to third party payment of candidate "compensation"); Advisory Op. 2014-15 (Bratt) (allowing employer payment of fringe benefits including health insurance while candidate is on leave of absence, consistent with compliance with regulatory conditions); Advisory Op. 2014-14 (Trammel) (same).

1 candidate salary provision at section 113.1(g)(1)(i)(I) is included in a list of *per se* “personal
2 uses” of campaign funds that separately includes several other categories of payments
3 traditionally included among a broader employment “compensation” umbrella: funeral,
4 cremation, or burial expenses;³³ tuition payments;³⁴ sporting event, concert, theater, or other
5 entertainment tickets;³⁵ country or health club dues or fees;³⁶ and vacations.³⁷ Moreover, other
6 categories of payments traditionally included among a broader employment “compensation”
7 umbrella – such as meal, travel, and vehicle expenses – are addressed not in the enumerated list
8 of *per se* “personal uses,” but on a case-by-case basis to determine whether the use of campaign
9 funds fulfills a commitment, obligation, or expense that would exist irrespective of the
10 candidate’s campaign.³⁸ Given the enumeration of so many employment fringe benefits under

³³ 11 C.F.R. § 113.1(g)(1)(i)(B) (prohibiting such payments unless made for a candidate, or a campaign employee or volunteer who dies in the course of campaign activity); *see also* 2002 Personal Use E&J, 67 Fed. Reg. at 76,971 (explaining the allowance for campaign payment of funeral expenses for campaign staff because those staffers, unlike officeholders’ staffers, “generally do not receive any fringe benefits” to specifically cover these costs); I.R.S., *Employer’s Tax Guide to Fringe Benefits*, Pub. 15-B at 8 (2017), available at <https://www.irs.gov/pub/irs-pdf/p15b.pdf> (“Fringe Benefit Guide”) (addressing tax treatment of insurance payable upon death benefit).

³⁴ 11 C.F.R. § 113.1(g)(1)(i)(D) (prohibiting such payments unless associated with training campaign staff); *see also* I.R.S., *Fringe Benefit Guide* at 9 (addressing tax treatment of educational assistance benefit).

³⁵ 11 C.F.R. § 113.1(g)(1)(i)(F) (prohibiting such payments unless part of a specific campaign activity); *see also* I.R.S., *Fringe Benefit Guide* at 9 (addressing tax treatment of tickets for theater and sporting events benefits).

³⁶ 11 C.F.R. § 113.1(g)(1)(i)(G) (prohibiting such payments unless for costs of campaign fundraising event); *see also* I.R.S., *Fringe Benefit Guide* at 8 (addressing tax treatment of club membership benefits), *Small Business and Self Employed: Employee Benefits*, <https://www.irs.gov/businesses/small-businesses-self-employed/employee-benefits> (last visited Oct. 12, 2017) (“Employee Benefits”) (noting that “[f]ringe benefits include . . . memberships in country clubs or other social clubs”).

³⁷ 11 C.F.R. § 113.1(g)(1)(i)(J) (prohibiting such payments); *see also* I.R.S., *Employee Benefits* (noting that “[f]ringe benefits include . . . vacations”).

³⁸ *See* 52 U.S.C. § 30114(b)(2); 11 C.F.R. §§ 113.1(g)(1)(ii)(A), (C), and (D); *see also* Personal Use of Campaign Funds, 60 Fed. Reg. 7,862, 7,867 (Feb. 9, 1995); I.R.S., *Fringe Benefit Guide* at 6, 15 (addressing tax treatment of meals, vehicles, and lodging benefits).

1 both separate paragraphs at section 113.1(g)(1)(i) and the case-by-case provision at section
2 113.1(g)(1)(ii), the salary provision at section 113.1(g)(1)(i)(I) cannot fairly be read to also
3 permit a candidate committee's payments for the candidate's fringe benefit of health insurance.³⁹
4 Because the Committee's payments to reimburse Mowrer's health insurance premiums are of a
5 character of those fringe benefit payments to the candidate that the Commission has determined
6 are personal use,⁴⁰ and because the use of campaign funds for these payments fulfills a
7 commitment, obligation, or expense that would exist irrespective of the candidate's campaign,
8 the payments are a conversion of campaign funds to personal use.

9 Accordingly, the entire \$7,462.65 the Committee paid to Mowrer to reimburse his health
10 insurance premiums appears to be personal use of campaign funds.

11 C. Conclusion

12 Therefore, there is reason to believe that James Mowrer and Mowrer for Iowa and Dennis
13 Skinner in his official capacity as treasurer violated 52 U.S.C. § 30114(b)(1).

³⁹ See I.R.S., *Fringe Benefit Guide* at 47, 14 (addressing tax treatment of different types of health care benefits, including insurance) *see also* Ida A. Brudnick, Congressional Research Service, *Congressional Salaries and Allowances*, In Brief at 3 (2016), available at <https://www.senate.gov/CRSpubs/9c14ec69-c4e4-4bd8-8953-f73daa1640e4.pdf> (addressing benefits including health insurance costs as separate from congressional salary).

⁴⁰ Campaign fund payments for salary and benefits for candidates are more restricted under the personal use provisions than campaign fund payments for similar salary or benefits paid to campaign staff. *Compare, e.g.*, 11 C.F.R. § 113.1(g)(1)(i)(H) (allowing fair market value salary payments to member of candidate's family providing *bona fide* campaign services) with 11 C.F.R. § 113.1(g)(1)(i)(I) (presuming candidate's *bona fide* service to campaign, but restricting salary paid); *and see* 2002 Personal Use E&J, 67 FR at 76,972 (explaining that the "ceiling on permissible candidate salaries from campaign funds is intended to prevent possible abuse").