



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Electronic Mail & First Class Mail

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DEC 20 2017

Neil Reiff, Esq.
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1090 Vermont Avenue, N.W.
Suite 750
Washington, D.C. 20005

RE: MUR 7068
James Mowrer
Mowrer for Iowa and Dennis Skinner in his
official capacity as treasurer

Dear Mr. Reiff:

On May 24, 2016, the Federal Election Commission (the "Commission") notified your clients, James Mowrer and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer, of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, your clients' response, and publicly available information, the Commission on December 12, 2017, found reason to believe that James Mowrer and Mowrer for Iowa and Dennis Skinner in his official capacity as treasurer violated 52 U.S.C. § 30114(b)(1), a provision of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

Please note that you 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.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Christine Gallagher, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹


This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

1-1-2011 10:10:00 AM

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** James Mowrer MUR: 7068
4 Mowrer for Iowa and Dennis Skinner in his
5 official capacity as treasurer
6

7
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

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	

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	
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

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
16

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 December
8 5, 2014, salary payments of \$2,500 each covered periods that were post-general election, *i.e.*, the
9 November 15 payment covered November 1 through 15, and the December 5 payment covered
10 November 16 through November 30.²² Therefore, part of the November 15 payment and the
11 entire December 5 payment were impermissible. The portion of salary payment covering
12 November 1 through 4 was permissible and equals \$666.68 ($\$2,500 \div 15 \text{ days} = \166.67 per day)
13 ($\$166.67 \times 4 \text{ days} = \666.68). Deducting that portion from the November and December
14 payments, the impermissible amount of salary payments equals \$4,333.32 ($[\$2,500 - \$666.68 =$
15 $\$1,833.32] + [\$2,500] = \$4,333.32$).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 (Kalyn 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 \$6,042.50 of the reimbursements occurred before the primary
5 election filing deadline while "Mowrer was not eligible to be placed on payroll," and were thus
6 not permissible. They assert, however, that the reimbursement from the Committee on
7 September 7, 2014, in the amount of \$1,420.15, was permissible.²⁸ Respondents state that the
8 September 2014 reimbursement was made in good faith because the Committee offered health
9 insurance reimbursements as a benefit to all staff.²⁹ Respondents further assert that all the health
10 insurance premium reimbursements were proper because the total compensation for salary and
11 healthcare reimbursements actually paid during Mowrer's candidacy did not exceed the
12 maximum amount 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 The Commission has not
15 previously considered the application of the Act's personal use prohibition to payments to a
16 candidate to reimburse health insurance premiums. Respondents argue that Mowrer's
17 compensation (*i.e.*, salary *plus* health insurance benefits) met those conditions. But, the term
18 "salary" in 11 C.F.R. § 113.1(g)(1)(i)(I) is not as extensive as the term "compensation," which

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).

1 the Commission has construed, in other contexts, to include both salary and benefits.³² The
2 candidate salary provision at section 113.1(g)(1)(i)(I) is included in a list of *per se* “personal
3 uses” of campaign funds that separately includes several other categories of payments
4 traditionally included among a broader employment “compensation” umbrella: funeral,
5 cremation, or burial expenses;³³ tuition payments;³⁴ sporting event, concert, theater, or other
6 entertainment tickets;³⁵ country or health club dues or fees,³⁶ and vacations.³⁷ Moreover, other
7 categories of payments traditionally included among a broader employment “compensation”
8 umbrella – such as meal, travel, and vehicle expenses – are addressed not in the enumerated list
9 of *per se* “personal uses,” but on a case-by-case basis to determine whether the use of campaign
10 funds fulfills a commitment, obligation, or expense that would exist irrespective of the

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).

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); I.R.S., *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”).

1 candidate's campaign.³⁸ Given the enumeration of so many employment fringe benefits under
2 both separate paragraphs at section 113.1(g)(1)(i) and the case-by-case provision at section
3 113.1(g)(1)(ii), the salary provision at section 113.1(g)(1)(i)(I) cannot fairly be read to also
4 permit a candidate committee's payments for the candidate's fringe benefit of health insurance.³⁹
5 Because the Committee's payments to reimburse Mowrer's health insurance premiums are of a
6 character of those fringe benefit payments to the candidate that the Commission has determined
7 are personal use,⁴⁰ and because the use of campaign funds for these payments fulfills a
8 commitment, obligation, or expense that would exist irrespective of the candidate's campaign,
9 the payments are a conversion of campaign funds to personal use.

10 Accordingly, the Commission finds that the entire \$7,462.65, the Committee paid to
11 Mowrer to reimburse his health insurance premiums, including the \$1,420.15 that was made
12 within the permissible timeframe for salary payments, appears to be personal use of campaign
13 funds.

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).

³⁹ See I.R.S., *Fringe Benefit Guide* at 4-7, 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").

1. **C. Conclusion**

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

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