



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 27 2017

Jeffrey Carson, Treasurer
Evan McMullin for President Committee Inc.
PO Box 41387
Arlington, VA 22204

RE: MUR 7206
Evan McMullin for President Committee
Inc., and Jeffrey Carson in his official
capacity as treasurer

Dear Mr. Carson:

On December 16, 2016, the Federal Election Commission notified you of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On September 18, 2017, the Commission found, on the basis of the information in the complaint and your response, that there is no reason to believe that McMullin for President Committee Inc., and Jeffrey Carson in his official capacity as treasurer violated 52 U.S.C. §§ 30104(b) or 30118(a). 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 *Disclosure of Certain Documents in Enforcement and Other Matters*, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016. The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Nicholas Mueller, the attorney assigned to this matter at (202) 694-1577.

Sincerely,

A handwritten signature in black ink, appearing to read "Jin Lee".

Jin Lee
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

4 **RESPONDENT:** Bonneville International Corporation, d/b/a
5 KSL-TV and KSL 1160
6 Deseret Management Corporation
7 Deseret News Publishing Company
8 McMullin for President Committee, Inc.
9 and Jeffrey Carson in his official
10 capacity as treasurer
11

MUR 7206

12 **I. INTRODUCTION**

13 This matter involves allegations that media entities Bonneville International Corporation,
14 d/b/a KSL-TV and KSL 1160 (“Bonneville”), Deseret Management Corporation (“DMC”), and
15 Deseret News Publishing Company (“Deseret News”) made contributions to or expenditures in
16 support of McMullin for President Committee, Inc. (the “Committee”), the authorized committee
17 of 2016 presidential candidate Evan McMullin, and failed to report them in violation of the
18 Federal Election Campaign Act of 1971, as amended (the “Act”).¹ The Complaint alleges that
19 the contributions or expenditures by Bonneville, DMC, and Deseret News stem from those
20 entities’ efforts to promote the candidacy of McMullin by publishing “fake news” and providing
21 disproportionate coverage of McMullin.² Respondents contend that because the Act’s media
22 exemption applies to the news coverage of McMullin that is at issue, they did not violate the
23 law.³

¹ Compl. at 1 (Dec. 15, 2016).

² *Id.* at 1-2.

³ Bonneville Resp. (Jan. 24, 2017); DMC/Deseret News Resp. at 2 (Jan. 31, 2017); McMullin Resp. at 2 (Feb 10, 2017).

1 As discussed below, the available information indicates that Bonneville, DMC, and
2 Deseret News are legitimate press entities acting within the scope of the media exemption and
3 thus did not make contributions or expenditures, as alleged by the Complaint. Accordingly, the
4 Commission finds no reason to believe that: (1) Bonneville, DMC, and Deseret News made, and
5 the Committee accepted, prohibited contributions in violation of 52 U.S.C. § 30118(a); (2) the
6 Committee failed to report any such contributions in violation of 52 U.S.C. § 30104(b); and (3)
7 that Bonneville, DMC, and Deseret News failed to report independent expenditures in violation
8 of 52 U.S.C. § 30104(c).

9 **II. FACTS**

10 **A. Deseret Management Corporation and Deseret News Publishing Company**

11 DMC is a for-profit corporation and the parent company of Deseret News and Bonneville,
12 which are also respondents in this matter.⁴ Deseret News has published "The Deseret News"
13 since 1850, and it is the oldest continuously published daily paper in Utah.⁵

14 **B. Bonneville International Corporation**

15 Bonneville operates 14 radio stations in Seattle, Phoenix, Denver, and Salt Lake City, as
16 well as an NBC television affiliate (KSL-TV) in Salt Lake City.⁶ Bonneville states that it has
17 operated radio and television stations for more than 40 years, including KSL 1160 radio since

⁴ See DMC/Deseret News Resp. at 1; see also <http://deseretmanagement.com/about-us/>.

⁵ DMC/Deseret News Resp. at 1.

⁶ See Bonneville Resp. at 1; see also <http://bonneville.com/about-bonneville/>.

1 1922 and KSL-TV since 1949.⁷ Both KSL radio and television “are in the business of producing
2 and broadcasting news and other media content.”⁸

3 **C. McMullin for President Committee**

4 The Committee is the authorized committee for Evan McMullin, an independent
5 candidate for president in the 2016 general election.⁹ Evan McMullin was born in Utah, attended
6 college in Utah, and his campaign was headquartered in Utah.¹⁰ McMullin received significantly
7 greater support in Utah than third party candidates, receiving 21.5% of the vote compared to
8 3.5% for Gary Johnson and 0.83% for Jill Stein.¹¹

9 **D. Media Coverage of McMullin**

10 The Complaint alleges that the management of KSL and Deseret News likely directed
11 “non stop” coverage promoting the candidacy of McMullin.¹² The Complaint contends that KSL
12 and Deseret News’ coverage of McMullin was not “bona fide news coverage” but “fake news”¹³
13 to promote their preferred candidate and that the amount of coverage they provided to McMullin
14 was far out of proportion to coverage of other independent and “small party” candidates.¹⁴

7 Bonneville Resp. at 1.

8 *Id.*

9 McMullin for President Committee, Inc., Statement of Organization, (August 15, 2016),
<http://docquery.fec.gov/pdf/110/201608159022245110/201608159022245110.pdf>.

10 McMullin Resp. at 1.

11 *Id.* at 1-2.

12 Compl. at 2.

13 *Id.* at 1. The Complaint uses quotes around the term “fake news,” but does not otherwise define or explain its use of the term. The Complaint does not identify any of Respondents’ particular articles, stories, commentaries, or editorials as “fake news” or otherwise not “bona fide news coverage.”

14 In support of this claim, Complainant states that a search of the KSL and Deseret News websites reveals a dramatically higher number of references to McMullin than to Gary Johnson or Jill Stein. *Id.* at 2. Complainant states that his search of the KSL website returned 19,900 hits for “Evan McMullin,” 1,980 for “Gary Johnson,” and

1 Deseret News states in response that the decision to cover McMullin was an editorial
2 decision based upon the interest of readers, given McMullin's ties to Utah. Citing an unspecified
3 editorial published at the time, Deseret News explained that it focused on McMullin's candidacy
4 "[b]ecause it's more relevant in Utah than perhaps anywhere else, as this BYU graduate tries to
5 accomplish his stated goal of winning Utah while denying enough electoral votes to Trump and
6 Clinton to throw the final decision into the U.S. House."¹⁵ Further, Deseret News notes that
7 while its election coverage included op-ed pieces by Gary Johnson and Evan McMullin, it also
8 offered to publish op-ed pieces by Jill Stein, Donald Trump and Hillary Clinton.¹⁶ Similarly,
9 Bonneville asserts that its election coverage is "unbiased and fair to all candidates" and that it
10 "us[ed] its independent editorial judgment to determine what is newsworthy."¹⁷

11 III. LEGAL ANALYSIS

12 The Act and Commission regulations define the terms "contribution" and "expenditure"
13 to include any gift of money or "anything of value" for the purpose of influencing a federal
14 election.¹⁸ But the Act exempts from the definition of expenditure, "any news story,
15 commentary, or editorial distributed through the facilities of any broadcasting station, newspaper,
16 magazine, or other periodical publication, unless such facilities are owned or controlled by any
17 political party, political committee, or candidate."¹⁹ Commission regulations contain a parallel

2,430 for "Jill Stein." Similarly, Complainant's search of the Deseret News website returned 43,200 hits for "Evan McMullin," 11,100 for "Gary Johnson," and 426 for "Jill Stein." *Id.*

¹⁵ Deseret News Resp. at 2.

¹⁶ *Id.* at 1.

¹⁷ Bonneville Resp. at 1.

¹⁸ 52 U.S.C. § 30101(8)(A), (9)(A); 11 C.F.R. §§ 100.52(a), 100.111(a).

¹⁹ 52 U.S.C. § 30101(9)(B)(i); *see also* 11 C.F.R. § 100.132.

1 exemption to the definition of contribution.²⁰ This exclusion is generally referred to as the “press
2 exemption” or “media exemption.”²¹

3 To determine whether the media exemption applies, the Commission first assesses
4 whether the entity that engaged in the challenged activity is a press entity.²² The Commission
5 then determines the scope of the exemption by considering whether the press entity (1) is owned
6 or controlled by a political party, political committee, or candidate; and (2) is acting within its
7 “legitimate press function” in conducting the activity that is the subject of the complaint.²³ If the
8 exemption applies, the entity’s activities are exempt from the Act’s disclosure, disclaimer, and
9 reporting requirements.²⁴ The Commission has long recognized that an entity otherwise eligible
10 for the exemption “would not lose its eligibility merely because of a lack of objectivity in a news
11 story, commentary, or editorial, even if the news story, commentary, or editorial expressly
12 advocates the election or defeat of a clearly identified candidate for Federal office.”²⁵

13 **A. Press Entity Status**

14 “Neither the Act nor Commission regulations use or define the term ‘press entity.’
15 Therefore, when determining whether the term applies to a particular entity, the Commission has

²⁰ 11 C.F.R. § 100.73.

²¹ Advisory Op. 2010-8 (Citizens United) at 3 (“AO 2010-08”).

²² See, e.g., AO 2010-08; Advisory Op. 2005-16 (Fired Up!) (“AO 2005-16”); Advisory Op. 1996-16 (Bloomberg).

²³ See *Reader’s Digest Ass’n v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981); Advisory Op. 2016-01 (Ethiq).

²⁴ AO 2010-08 at 7.

²⁵ AO 2005-16 at 6; Factual & Legal Analysis at 3, MUR 6579 (ABC News, Inc.) (July 5, 2012); see also AO 2010-08 (“While Citizens United’s films may be designed to further its principal purpose as a non-profit advocacy organization, an entity otherwise eligible for the press exemption does not lose its eligibility merely because of a lack of objectivity in a news story, commentary, or editorial.”).

1 focused on whether the entity in question produces on a regular basis a program that disseminates
2 news stories, commentary, and/or editorials.²⁶ Further, television, radio, and newspapers are the
3 types of press entities considered by Congress when adopting the media exemption.²⁷ As
4 described above, the Deseret News is a newspaper that has been in the business of publishing the
5 news since 1850.²⁸ Similarly, Bonneville has owned and operated television and radio stations
6 for more than 40 years, and KSL-TV and KSL-1160 have been broadcasting multiple news and
7 news commentary shows each day for decades.²⁹ Accordingly, the entities in this matter qualify
8 as press entities.

9 **B. Ownership Criteria and Legitimate Press Function**

10 As the Complainant acknowledges, both Bonneville and Deseret News are not owned by
11 a political party, political committee, or candidate but rather are owned by DMC, which is, in
12 turn, controlled by the Church of Jesus Christ of Latter-day Saints.³⁰ Accordingly, the ownership
13 criteria of the press exemption is met.

14 In determining whether a press entity was acting in its legitimate press function, the
15 Commission has examined whether the entity's materials are available to the general public, and
16 whether the challenged materials are comparable in form to those ordinarily issued by the

²⁶ AO 2010-08 at 5.

²⁷ See H.R. Rep. No. 93-1239 at 4 (1974) (“[The exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.”).

²⁸ Deseret News Resp. at 1.

²⁹ See KSL-TV Local news Programing Schedule, <http://www.ksl.com/?nid=15>; KSL 1160 Radio Schedule, <http://www.ksl.com/?sid=122030&nid=3:12>.

³⁰ See Compl. at 1; Bonneville Resp. at 1; <http://deseretmanagement.com/about-us/>; see also DMC/Deseret News Resp. at 2 (further noting that neither “Deseret Management Corporation, nor the LDS Church [is] a political party, committee or candidate”).

1 entity.³¹ The Deseret News, KSL-TV, and KSL 1160 radio provide news coverage throughout
2 Utah and are all available to the general public.

3 In addition, the coverage of McMullin does not appear to have deviated in form from
4 news that respondents ordinarily provide. The respondent media entities state that they exercised
5 their independent editorial judgment in determining what is newsworthy as they have done in
6 past elections.³² Although the Complaint argues that coverage of McMullin was disproportionate
7 to other independent and third party candidates, the test for the media exemption has not required
8 that a press entity provide equal time to all candidates, unless the media entity is owned or
9 controlled by a political party, committee, or candidate.³³ In fact, as noted above, the
10 Commission has long determined that a press entity does not lose its eligibility for the media
11 exemption even if a news story lacks objectivity or expressly advocates the election or defeat of a
12 federal candidate.³⁴

13 Under these circumstances, it appears that the media exemption applies and, thus, no
14 contribution or expenditure was made by the press entities. Therefore, the Commission finds that
15 there is no reason to believe that: (1) Bonneville, DMC, and Deseret News made, and the
16 Committee accepted, prohibited contributions in violation of 52 U.S.C. § 30118(a); (2) the

³¹ See, e.g., AO 2010-08 at 6 (citing *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 250-51 (1986)); AO 2005-16.

³² Bonneville Resp. at 1; DCM/Deseret News Resp. at 1.

³³ See 11 C.F.R. §§ 100.73 and 100.132 (requiring press entities owned or controlled by a political party, political committee, or candidate to "give reasonably equal coverage to all opposing candidates" in order to qualify for the media exemption but not including that requirement for entities not owned or controlled by such a person or entity.); see also *Miami Herald Pub. Co v. Tornillo*, 418 U.S. 241, 256 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public official -- whether fair or unfair -- constitute the exercise of editorial control and judgment.").

³⁴ See *supra* n. 25.

- 1 Committee failed to report any such contributions in violation of 52 U.S.C. § 30104(b); and (3)
- 2 that Bonneville, DMC, and Deseret News failed to report independent expenditures in violation
- 3 of 52 U.S.C. § 30104(c).

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