



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

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MAR 31 2017

RE: MUR 7226
Michael Fleck

Dear Mr. Lauer:

On March 21, 2017, the Federal Election Commission found that there is reason to believe that your client, Michael Fleck, knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and 30114(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the Office of the General Counsel's within 15 days of your receipt of this notification. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation. *See* 52 U.S.C. § 30109(a)(4).

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 you are interested in pursuing pre-probable cause conciliation, you should make such a request by letter to the Office of the General Counsel. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend

that pre-probable cause conciliation not be entered into in order to complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been delivered to the respondent. Requests for extensions of time are not routinely granted. Requests must be made in writing at least five days prior to the due date of the response and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. 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/em/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 (12)(A) unless you notify the Commission in writing that you wish the investigation 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. If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1604 or ddillenseger@fec.gov.

On behalf of the Commission,



Steven T. Walther
Chairman

Enclosure
Factual and Legal Analysis

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).

FEDERAL ELECTION COMMISSION**FACTUAL AND LEGAL ANALYSIS****RESPONDENT:** Michael Fleck**MUR:** 7226**I. INTRODUCTION**

This matter was generated based on information ascertained by the Federal Election Commission (the “Commission”) in the normal course of carrying out its supervisory responsibilities.¹ The Reports Analysis Division referred Pawlowski2016.com and Lisa Pawlowski in her official capacity as treasurer (the “Committee”), the authorized committee for Edwin Pawlowski’s senate campaign, to the Office of General Counsel (“OGC”) for “unauthorized activity” in connection with the Committee’s 2015 October Quarterly Report, which disclosed a \$76,500 disbursement with the notation “Purpose(s) unknown; documentation unavailable.”² The Committee later amended the report and explained that Michael Fleck, the Committee’s former campaign manager, had written a \$76,500 check to H Street Consulting LLC (“H Street”), his consulting company, without authorization and had converted campaign funds to personal use. Fleck was also notified of the referral and denies any conversion and states that the Committee owed him and H Street the money for his services.

Meanwhile, Fleck has pled guilty to one count of conspiracy to commit extortion and bribery offenses in connection with a scheme to trade campaign contributions — apparently to Pawlowski, the current mayor of Allentown, Pennsylvania — in exchange for city contracts and

¹ See 52 U.S.C. § 30109(a)(2).

² Reports Analysis Division (“RAD”), Referral of Pawlowski2016.com, 16L-10 (June 6, 2016) (“Referral”), incorporated herein by reference.

1 services.³ Further, there is information that Pawlowski is under investigation regarding this
2 scheme.

3 Based on the referral, response, and publicly available information, the Commission finds
4 reason to believe that Michael Fleck knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3)
5 and 30114(b) by converting Committee funds to personal use and commingling those funds with
6 his personal funds.

7 **II. FACTUAL BACKGROUND**

8 The Committee is the authorized committee of Pawlowski, the current mayor of
9 Allentown, Pennsylvania, who was a candidate for the U.S. Senate from Pennsylvania during the
10 2016 election cycle.⁴ His wife, Lisa Pawlowski, is the Committee's treasurer. Pawlowski has
11 been Allentown's mayor since 2006.

12 Fleck, the Committee's former campaign manager, is the principal and co-owner of
13 H Street, an Allentown-based consulting firm.⁵ Fleck pled guilty to federal criminal violations
14 arising out of a scheme to trade Allentown city contracts and services in exchange for campaign
15 contributions to "Public Official No. 3," who news reports have identified as Pawlowski.⁶ Fleck
16 and others who have pled guilty in connection with the scheme have implicated Public Official
17 No. 3 as the person who orchestrated it.⁷ These individuals are scheduled to be sentenced in late

³ Government's Guilty Plea Mem., *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Apr. 26, 2016) ("Fleck Plea"). Fleck also pled guilty to a separate count of tax evasion, which is apparently unrelated to the scheme. *Id.* at 7-8.

⁴ Pawlowski withdrew his candidacy in 2015.

⁵ Fleck Plea at 4.

⁶ See Emily Opilo and Scott Kraus, *Allentown mayor Ed Pawlowski Implicated in FBI Probe*, *The Morning Call* (Sept. 10, 2015).

⁷ Fleck Plea 4-6 and *see infra* note 8.

1 May or early June 2017.⁸ The federal corruption investigation appears to be ongoing, although
2 Pawlowski has not been charged to date.⁹ Pawlowski suspended his campaign in July 2015.¹⁰

3 The Committee's 2015 October Quarterly Report disclosed a \$76,500 disbursement to
4 H Street made on July 2, 2015, with the notation "Purpose(s) unknown; documentation
5 unavailable."¹¹ On December 21, 2015, RAD sent the Committee a Request for Additional
6 Information ("RFAI") asking it to clarify the disbursement's purpose.¹² On January 22, 2016,
7 the Committee filed an Amended 2015 October Quarterly Report, which included this
8 explanation: "Payment never authorized by treasurer of committee; purpose(s) known only to
9 payee's CEO who is estranged from committee and whereabouts unknown."¹³ In a cover letter
10 to the report, the Committee further noted that on or about July 2, 2015, H Street stopped doing
11 business and abandoned its offices.¹⁴

12 On May 26, 2016, the Committee filed a Miscellaneous Text form, which reiterated that
13 the payment was unauthorized, identified Fleck as H Street's CEO and co-owner and the

⁸ See *United States v. Wiles*, No. 2:15-cr-00561 (E.D. Pa. Oct. 19, 2016) (sentencing, Jun. 13, 2017); Order, *United States v. Fleck*, No. 5:16-cr-00171 (E.D. Pa. Oct. 19, 2016) (sentencing, Jun. 13, 2017); Order, *United States v. Koval*, No. 2:16-cr-00009 (E.D. Pa. Oct. 19, 2016) (sentencing, May 31, 2017); Order, *United States v. Strathearn*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, Jun. 1, 2017); Order, *United States v. McTish*, No. 5:16-cr-00179 (E.D. Pa. Oct. 19, 2016) (sentencing, May 31, 2017); Order, *United States v. Haddad*, No. 5:15-cr-00414 (E.D. Pa. Oct. 19, 2016) (sentencing, Jun. 1, 2017).

⁹ On July 2, 2015, the FBI raided Allentown City Hall, seizing documents and serving subpoenas. Pawlowski's two campaign accounts have been frozen pursuant to federal civil forfeiture relating to a separate investigation. See Peter Hall, *Judge Rejects Pawlowski's Request to Release Seized Bank Accounts*, *The Morning Call* (Sept. 29, 2016).

¹⁰ See, e.g., Emily Opilo, Scott Kraus and Matt Assad, *Allentown Mayor Ed Pawlowski's Consultant Recorded Conversations in FBI Probe, Sources Say*, *The Morning Call* (July 13, 2015), <http://www.mcall.com/news/nationworld/pennsylvania/>.

¹¹ See Pawlowski2016.com, October Quarterly Rpt. at 31 (Oct. 15, 2015).

¹² See Request for Additional Information, Pawlowski2016.com (Dec. 21, 2015).

¹³ See Pawlowski2016.com, Amended October Quarterly Rpt., Memo Text (Jan. 22, 2016).

¹⁴ Letter from Committee Treasurer to RAD (Jan. 22, 2016).

1 Committee's former campaign manager, and stated that Fleck had left the Allentown area
2 without providing contact information.¹⁵ The Committee explained that Fleck, who had check-
3 signing authority on the campaign account, had written "April thru August [2015] consulting,
4 rent and travel" on the check's memo line.¹⁶ However, the Committee stated that it had no
5 documents from H Street regarding the payment, and that the Committee did not have a contract
6 with H Street or Fleck regarding compensation for campaign consulting services, office rent, or
7 travel reimbursement procedures.¹⁷ The Committee also stated that on the first business day
8 after it learned that the unauthorized check had cleared the Committee's bank account, the
9 treasurer closed the account, as well as other Committee accounts to which Fleck had access.¹⁸
10 The Committee and its treasurer concluded that Fleck had unlawfully converted campaign funds
11 to personal use.¹⁹ On June 6, 2016, RAD referred this matter to OGC and Fleck was notified.²⁰

12 Fleck's counsel submitted an email to OGC asking for additional time to file a formal
13 response,²¹ and stating that Fleck no longer lived near Allentown and is difficult to reach. In that
14 same email, counsel asserted that Fleck "categorically denies that he converted campaign funds
15 from the Pawlowski campaign" and that "payment was for obligations owed and due, and for

¹⁵ Pawlowski2016.com, Miscellaneous Text form (May 26, 2016).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See Referral.*

²¹ Fleck did not file a formal response.

1 monies earned by the recipient.”²² Counsel notes that the FBI, IRS and/or DOJ possess most of
2 Fleck’s personal and business records.²³

3 **III. LEGAL ANALYSIS**

4 The Act prohibits any person from converting contributions to a federal candidate to
5 personal use,²⁴ and requires that all funds of a political committee “be segregated from, and may
6 not be commingled with, the personal funds of any individual.”²⁵ The Act prescribes additional
7 monetary penalties for violations that are knowing and willful.²⁶ A violation of the Act is
8 knowing and willful if the “acts were committed with full knowledge of all the relevant facts and
9 a recognition that the action is prohibited by law.”²⁷ This does not require proving knowledge of
10 the specific statute or regulation the respondent allegedly violated.²⁸ Rather, it is sufficient to
11 demonstrate that a respondent “acted voluntarily and was aware that his conduct was

²² See Fleck Resp.

²³ *Id.*

²⁴ *Id.* § 30114(b)(1). A contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of federal office. *Id.* § 30114(b)(2).

²⁵ *Id.* § 30102(b)(3).

²⁶ See 52 U.S.C. § 30109(a)(5)(B), (d).

²⁷ 122 Cong. Rec. 12,197, 12,199 (May 3, 1976).

²⁸ *United States v. Danielczyk*, 917 F. Supp. 2d 573, 578 (E.D. Va. Jan. 9, 2013) (quoting *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish a violation is willful, government needs to show only that defendant acted with knowledge that conduct was unlawful, not knowledge of specific statutory provision violated)).

1 unlawful.”²⁹ This awareness may be shown through circumstantial evidence from which the
2 respondent’s unlawful intent reasonably may be inferred.³⁰

3 Fleck denies that he converted campaign funds from the Pawlowski campaign, claiming
4 that the \$76,500 payment was for campaign services and expenses.³¹ However, Fleck has not
5 provided documents to support his claim — although this may be due to the fact that other
6 federal agencies have Fleck’s records. But it is undisputed that Fleck deposited the \$76,500 in
7 Committee funds into an account that he controlled. And while we do not know what Fleck has
8 done with these funds, according to his criminal plea agreement, Fleck has previously “made
9 cash withdrawals of company funds in order to knowingly pay certain expenses with company
10 funds.”³² It is notable that Fleck made the disbursement the same day the FBI raided
11 Pawlowski’s offices. Accordingly, the available information supports a reasonable inference that
12 Fleck may have converted the Committee’s funds to personal use.³³ In so doing, he may have
13 commingled the “funds of a political committee . . . with [] the personal funds of any individual”
14 in violation of the Act.³⁴

²⁹ *Id.* (citing jury instructions in *United States v. Edwards*, No. 11-61 (M.D.N.C. 2012), *United States v. Acevedo Vila*, No. 08-36 (D.P.R. 2009), *United States v. Fieger*, No. 07-20414 (E.D. Mich. 2008), and *United States v. Alford*, No. 05-69 (N.D. Fla. 2005)).

³⁰ *Cf. United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir. 1989)). *Hopkins* involved a conduit contributions scheme, and the issue before the Fifth Circuit concerned the sufficiency of the evidence supporting the defendants’ convictions for conspiracy and false statements under 18 U.S.C. §§ 371 and 1001.

³¹ *See* Email from Counsel for Fleck to CELA (Sept. 7, 2016).

³² According to the Plea Agreement, Fleck made those withdrawals from his company account between April 2012 and October 6, 2014. Fleck Plea at 7-8.

³³ 52 U.S.C. § 30114.

³⁴ 52 U.S.C. § 30102(b)(3); *see* MUR 6526 (Cora Carper) (finding reason to believe that Respondent violated section 432(b)(3) (now 52 U.S.C. § 30102(b)(3)) where she deposited cash into personal accounts after cashing committee checks that she had issued to herself without authorization).

1 There is also information that Fleck acted knowingly and willfully in misappropriating
2 Committee funds. The Committee has stated that the disbursement was not authorized by the
3 treasurer. Fleck's short response says only that the disbursement represented money he was due,
4 not that he informed the Committee he was making it. Consequently, Fleck's conduct suggests
5 that he sought to conceal his withdrawal of committee funds. Therefore, the Commission finds
6 reason to believe that Fleck knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and
7 30114(b) by converting funds to personal use and commingling Committee funds with his
8 personal funds.