



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MAY 01 2017

RE: MUR 7235
Utah Republican Party and Abram
Young in his official capacity as
treasurer

Dear Mr. Sanderson:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that the Utah Republican Party and Abram Young in his official capacity as treasurer (the "Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On June 9, 2016 and January 26, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On April 20, 2017, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30104(b)(8), 30116(f), 30118(a), and 11 C.F.R. § 106.7(d) in connection with the Commission's audit of the Committee's 2012 election cycle activity and a Reports Analysis Division referral of 2014 election cycle activity, identifying prohibited and excessive contributions as well as reporting violations. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's findings.

Please note that the Committee has 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.

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 you 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 the Committee violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Nicholas Bamman, the attorney assigned to this matter, at (202) 694-1628 or (800) 424-9530, or nbamman@fec.gov, 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 60 days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is 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/em/respondent_guide.pdf.

In the meantime, 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. 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

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

1. Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS: Utah Republican Party and**
6 **Abram Young in his official capacity**
7 **as treasurer**

MUR 7235

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9 **I. INTRODUCTION**

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11 This matter was generated by a Commission audit of the Utah Republican Party
12 (“Committee”) covering the period of January 1, 2011, through December 31, 2012, and
13 additional information ascertained by the Commission in the normal course of carrying out its
14 supervisory responsibilities regarding the Committee’s activity in the 2014 election cycle that
15 was referred from the Commission’s Reports Analysis Division to the Office of General Counsel
16 (the “RAD Referral”).

17 On January 6, 2017, the Commission approved the Final Audit Report regarding the 2012
18 cycle activity, and the Audit Division referred five findings to OGC for possible enforcement
19 action: 1) receipt of prohibited contributions; 2) receipt of excessive contributions;
20 3) misstatement of financial activity; 4) recordkeeping for employees; and 5) reporting of debts
21 and obligations. OGC notified the Committee of the referral, but the Committee did not file a
22 response.

23 The RAD Referral addressed various potential violations, including prohibited and
24 excessive contributions. The Committee responded to the RAD Referral, stating that its poor
25 financial position and high personnel turnover rate “have led to previous challenges with its
26 report preparation and other tasks.”¹ The Committee does not contest the merits of the alleged
27 violations; rather, it contends that all of RAD’s requests for additional information “that led to

¹ Utah Republican Party Resp. at 1.

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1 this referral, have, in fact, all been resolved to the full satisfaction of the Party's [RAD]
2 analyst."²

3 For the reasons that follow, the Commission finds reason to believe that the Committee
4 knowingly accepted prohibited contributions in violation of 52 U.S.C. § 30118(a), knowingly
5 accepted excessive contributions in violation of 52 U.S.C. § 30116(f), and made reporting errors
6 in violation of 52 U.S.C. §§ 30104(b)(8), 11 C.F.R. §§ 104.3(d), and 106.7(d)(1).

7 II. FACTUAL AND LEGAL ANALYSIS

8 A. Audit Report (2012 Cycle Activity)

9 The Commission finds reason to believe as to four of the five findings referred to OGC.
10 The first two concern impermissible contributions and the last two concern reporting violations.³
11 The Committee did not file a response to the Audit Referral.

12 1. Prohibited Contributions

13 Corporations are prohibited from contributing to federal political committees (other than
14 independent-expenditure-only committees and hybrid committees), and political committees may
15 not knowingly accept prohibited corporate contributions.⁴ The Commission found that the
16 Committee received \$23,600 in corporate contributions that it untimely transferred to a non-
17 federal account.⁵

² *Id.*

³ The Audit Division also referred a finding regarding misstatement of financial activity in 2011, but this activity is beyond the statute of limitations. *See* 28 U.S.C. § 2462; Final Audit Report at Finding 3.

⁴ 52 U.S.C. § 30118(a); Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)); *Carey v. FEC*, 791 F.Supp.2d 121 (D.D.C. 2011).

⁵ Final Audit Report at Finding 1.

1 **2. Excessive Contributions**

2 The contribution limit to State party committees is \$10,000 per year.⁶ No committee may
3 knowingly accept more than the contribution limit.⁷ The Commission found that the Committee
4 received \$42,925 in excessive contributions that it untimely transferred to a non-federal account.⁸

5 **3. Recordkeeping for Employees**

6 Commission regulations provide that State, district, and local party committees must
7 maintain monthly employee payroll logs. Salaries, wages, and fringe benefits “[paid] to State,
8 district, or local party committee employees who spend 25 percent or less of their compensated
9 time in a given month on Federal election activity or on activity in connection with a Federal
10 election” may be allocated as administrative costs; *i.e.*, may be paid with a combination of funds
11 from the committee’s federal and non-federal accounts.⁹ Commission regulations also provide
12 that when allocating salary, wages, and fringe benefit payments, political party committees are
13 required to “keep a monthly log of the percentage of time each employee spends in connection
14 with a Federal election.”¹⁰ As set forth in the Final Audit Report, the Commission found that the
15 Committee failed to maintain monthly payroll logs totaling \$270,738 for 2011 and 2012.¹¹

⁶ 52 U.S.C. § 30116(a)(1)(D); 11 C.F.R. § 110.1(c)(5).

⁷ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

⁸ Final Audit Report at Finding 2; *see also* 11 C.F.R. § 103.3(b)(3).

⁹ 11 C.F.R. §§ 106.7(c)(1), (d)(1)(i), (d)(2).

¹⁰ 11 C.F.R. § 106.7(d)(1).

¹¹ Final Audit Report at Finding 4. Payroll amounts are stated net of taxes and fringe benefits. The Committee submitted an affidavit in response to the audit that stated that the identified employees did not spend more than 25 percent of their time on activities in connection with a federal election. The Commission found that the affidavit did not resolve the issue because it did not document the time the employee spent on activities in connection with a federal election. Nor was it maintained prior to audit notification. The Committee represented that it planned to maintain employee payroll logs in the future.

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1 **4. Reporting of Debts and Obligations**

2 Political committees must disclose the amount and nature of outstanding debts and
3 obligations until those debts are extinguished.¹² Debts of \$500 or less must be reported no later
4 than 60 days after the obligation is incurred, while debts of more than \$500 must be reported as
5 of the date the obligation is incurred.¹³ The Audit Division concluded that the Committee failed
6 to disclose debts and obligations to five vendors and one staff member totaling \$205,323.¹⁴ In
7 response, the Committee amended its reports to disclose debts totaling \$101,711, but maintained
8 that \$94,132 of the \$205,323 did not need to be disclosed.¹⁵ The Commission, however, agreed
9 with the Audit Division and found that the Committee failed to disclose debts and obligations of
10 \$205,323.

¹² 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

¹³ 11 C.F.R. § 104.11(b).

¹⁴ Final Audit Report at Finding 5.

¹⁵ The Committee argued that the debts and obligations of one staff member totaling \$94,132 were not required to be disclosed because the staff member submitted the request for reimbursement late and, therefore, the Committee had no knowledge of the debts as they were incurred. Once the staff member submitted a request for reimbursement, the Committee asserts it typically reimbursed the staff member within one week. The Commission found that the Committee had provided insufficient documentation to corroborate its assertions.

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1 The Committee's four violations are clear, and it acknowledged them. Accordingly, the
2 Commission finds reason to believe that the Committee knowingly accepted corporate
3 contributions in violation of 52 U.S.C. § 30118(a), knowingly accepted excessive contributions
4 in violation of 52 U.S.C. § 30116(f), failed to maintain monthly employee payroll logs in
5 violation of 11 C.F.R. § 106.7(d)(1), and failed to report debts and obligations as identified in the
6 Final Audit Report in violation of 52 U.S.C. § 30104(b)(8).

7 **B. RAD Referral (2014 Cycle Activity)**

8 The RAD Referral contains many potential violations including prohibited and excessive
9 contributions. The Committee, in its response to the referral to OGC, does not dispute the
10 violations.

11 RAD identified two prohibited corporate contributions totaling \$6,000.¹⁶ Although the
12 Committee indicated in an amended disclosure report that it would transfer the funds to a non-
13 federal account and report the transfer "in the next regularly scheduled FEC report,"¹⁷ the
14 Committee has not submitted information indicating that it has done so.

15 RAD also identified two excessive contributions of \$15,000 and \$11,000, the first of
16 which was reduced by \$5,000 due to a same-day transfer to a non-federal account.¹⁸ In response
17 to RAD's Requests for Additional Information ("RFAs"), the Committee untimely refunded the

¹⁶ RAD Referral at 1; *see also* 52 U.S.C. § 30118(a).

¹⁷ *See* Utah Republican Party Amended October Monthly Report at 8 (May 14, 2015).

¹⁸ *See* Utah Republican Party February 2014 Report at 6, 11 (Feb. 20, 2014); RFAI – February Monthly at 1 (Apr. 17, 2014); Utah Republican Party Amended October 2014 Monthly Report at 13 (May 14, 2015); RAD Referral at 1-2; *see also* 52 U.S.C. §§ 30116(a)(1)(D), (f); 11 C.F.R. § 110.9.

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1 remaining excessive \$10,000 and alerted RAD that it had timely reattributed and transferred the
2 other excessive \$11,000 to a non-federal account.¹⁹

3 The Commission finds reason to believe that the Committee violated 52 U.S.C.
4 §§ 30118(a) and 30116(f) by knowingly accepting the two corporate contributions and the
5 \$10,000 excessive contribution. In light of the Committee's timely corrective action with respect
6 to the other excessive contribution and its adequate response to the majority of RAD's RFAIs,
7 the Commission makes no further reason to believe findings in connection with the RAD
8 Referral.

¹⁹ RAD Referral at 1-2 and documents attached thereto.