



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

F. Edward Buttrey

JUL - 3 2019

Great Falls, MT 59401

RE: MUR 7293
F. Edward Buttrey

Dear Mr. Buttrey:

On November 6, 2017, the Federal Election Commission (the "Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On June 25, 2019, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that you violated 52 U.S.C. § 30114(b) in connection with the purchase and resale of a recreational vehicle. 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). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ana Peña-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Shonkwiler".

Mark Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3

4 **RESPONDENTS:** Ryan Zinke **MUR: 7293**
5 Lolita C. Zinke
6 Zinke for Congress and Lorna Kuney
7 in her official capacity as treasurer
8 Zinke Victory Fund and Paul Kilgore
9 in his official capacity as treasurer
10 Frank Haughton, Jr.
11 F. Edward Buttrey
12

13 **I. INTRODUCTION**

14 This matter was generated by a complaint filed with the Federal Election Commission
15 (the "Commission") by Brendan M. Fischer and Catherine Hinckley Kelly of the Campaign
16 Legal Center. *See* 52 U.S.C. § 30109(a)(1). The Complaint alleges violations of the reporting,
17 contribution limit, and personal use provisions of the Federal Election Campaign Act of 1971, as
18 amended (the "Act") in connection with activity by Ryan Zinke's congressional campaign while
19 he was a candidate and after he was nominated, and later confirmed, as Secretary of the Interior.
20 The Complaint alleges that Zinke for Congress (the "Committee") reported funds it received
21 from the Zinke Victory Fund ("ZVF"), a joint fundraising committee, three months late, and its
22 disclosure reports failed to itemize individual contributions received via the transfers from ZVF.
23 The Complaint also alleges that the Committee received an excessive contribution from Frank
24 Haughton, Jr., through ZVF. Finally, the Complaint alleges that Zinke violated the personal use
25 prohibition in connection with the purchase and sale of a recreational vehicle ("RV"), and
26 through disbursements the Committee made after Zinke resigned from Congress and was
27 confirmed as Interior Secretary.

1 The Committee and ZVF argue that any reporting violations were inadvertent, and the
2 Committee denies receiving an excessive contribution. The Committee maintains that it bought
3 and sold the RV at fair market value, based on the RV's condition and appraisals it obtained.
4 Finally, the Committee contends that all of the post-election disbursements were proper winding-
5 down expenses, were incurred before the election, or were permissible expenses made in
6 connection with Zinke's officeholder duties.

7 As discussed below, the Commission finds no reason to believe that the Committee filed
8 late reports of transfers from ZVF, or that Haughton made or the Committee accepted an
9 excessive contribution. The Commission further finds no reason to believe that Ryan Zinke, the
10 Committee, Lolita Zinke, or F. Edward Buttrey violated the personal use provisions of the Act in
11 connection with the RV's purchase and sale. Finally, the Commission dismisses, as a matter of
12 prosecutorial discretion, possible reporting violations by ZVF, which has terminated, dismisses
13 reporting violations regarding the Committee's failure to itemize a limited number of individual
14 contributions, and dismisses the personal use allegation concerning the Committee's post-
15 election disbursements.¹

16 **II. FACTS**

17 On November 7, 2016, Ryan Zinke won re-election in Montana's at-large Congressional
18 District.² On December 13, 2016, President Donald Trump nominated Zinke to be Secretary of

¹ *Heckler v. Chaney*, 470 U.S. 821 (1985).

² See *2016 General Election -Results*, Montana Sec. of State,
<http://sos.mt.gov/Portals/142/Elections/archives/2010s/2016/2016GeneralStatewideCanvass.pdf?dt=1517240596928>.

1 the Interior, and on March 1, 2017, Zinke resigned from Congress and was sworn in as Interior
2 Secretary.³

3 ZVF was a joint fundraising committee that included Zinke for Congress, Zinke's
4 principal campaign committee; Supporting Electing American Leaders ("SEAL") PAC; the
5 NRCC; and the Montana Republican State Central Committee ("MRSCC").⁴ On May 9, 2017,
6 before the Complaint was filed, the Commission allowed ZVF to terminate.⁵

7 The Complaint alleges that ZVF transferred joint fundraising proceeds of \$14,921 to the
8 Committee on November 28, 2016, but the Committee did not report the transfer until its 2017
9 April Quarterly Report, listing February 17, 2017, as the date of receipt.⁶ The Complaint also
10 alleges that the Committee failed to itemize individual contributions obtained through ZVF.⁷

11 The Complaint also identifies a possible excessive contribution from Haughton, who
12 contributed \$5,400 to ZVF on December 9, 2016.⁸ The Complaint alleges that ZVF transferred

³ See *Nominations Sent to the Senate*, White House (Jan. 20, 2017), <https://www.whitehouse.gov/presidential-actions/nominations-sent-senate/>; Resignation from House of Representatives (Mar. 1, 2017), 163 CONG. REC. H1400 (daily ed. Mar 1, 2017) (letter from Ryan Zinke), available at <https://www.congress.gov/congressional-record/2017/3/1/house-section/article/H1400-7>; *Press Release, Ryan Zinke Sworn In as 52nd Secretary of the Interior*, U.S. Dept. of Int. (Mar. 1, 2017), <https://www.doi.gov/pressreleases/ryan-zinke-sworn-52nd-secretary-interior>.

⁴ Amended Statement of Organization at 2 (Feb. 24, 2015), Zinke Victory Fund, <http://docquery.fec.gov/pdf/821/15971086821/15971086821.pdf>.

⁵ Reports Analysis Division ("RAD") Termination Approval Ltr. (May 9, 2017), Zinke Victory Fund, <http://docquery.fec.gov/pdf/355/201705090300086355/201705090300086355.pdf>.

⁶ Compl. at 2-4.

⁷ *Id.* at 3-4, 13-14.

⁸ *Id.* at 4.

1 the entire \$5,400 to the Committee, and because it appeared that Haughton had also contributed
2 \$2,700 to the Committee on February 17, 2017, the \$5,400 contribution was excessive.⁹

3 Finally, the Complaint alleges that Zinke and the Committee violated the personal use
4 provisions of the Act in connection with the purchase and sale of an RV, and with regard to
5 miscellaneous disbursements the Committee made after Zinke was nominated as Interior
6 Secretary.¹⁰ The Complaint states that the Committee purchased an RV from Zinke's wife,
7 Lolita Zinke, for \$59,100 on April 6, 2016, and sold the RV to "an old friend of Zinke, Ed
8 Buttrey" for \$25,000 on June 9, 2017.¹¹ The Complaint alleges that the Committee either paid
9 more than fair market value to Ms. Zinke, or sold the RV at below fair market value to Buttrey,
10 and either scenario would constitute personal use.¹² Additionally, the Complaint alleges that
11 various disbursements the Committee made after Zinke was nominated as Interior Secretary may
12 constitute personal use.¹³

13 The Committee and ZVF filed a joint response contending that any reporting violations
14 were inadvertent, and denying the other allegations.¹⁴ These Respondents maintain that the ZVF
15 treasurer's receipt of contribution checks was delayed because checks made out to ZVF and

⁹ *Id.* at 4, 14-15.

¹⁰ *Id.* 4-8, 15-18. The Complaint also alleges Hatch Act violations in connection with Zinke's disbursements for campaign related activity once he was nominated and confirmed as Interior Secretary. However, because the Hatch Act is not within the Commission's jurisdiction, we do not discuss any potential violations of 5 U.S.C. § 7323. *Id.* at 17.

¹¹ *Id.* at 16.

¹² *Id.*

¹³ *Id.* at 17.

1 collected at various campaign events before Election Day had to be mailed from campaign
2 offices in Montana to ZVF's treasurer in Georgia.¹⁵ The response asserts that ZVF actually
3 issued the \$14,921.26 distribution check—which ZVF previously reported as having been
4 disbursed on November 28, 2016—to the Committee on February 14, 2017, and that the
5 Committee received and deposited the check around February 17, 2017.¹⁶ The joint response
6 attributes the Committee's failure to properly itemize contributions to its mistaken selection of
7 the "Contribution Memo" instead of the "Transfer Memo" option in its reporting software.¹⁷ The
8 response included screenshots of its reporting software showing the date of receipt as
9 February 17, 2017, the date it received the joint fundraising proceeds, instead of the date ZVF
10 received each individual contribution.¹⁸

11 ZVF's reports filed with the Commission reflect that ZVF made the transfer cited in the
12 Complaint to three of its participant committees on November 28, 2016, but the Committee and
13 the MRSCC disclosed receiving those transfers in February 2017.¹⁹ SEAL PAC has not

¹⁴ See Zinke for Congress/ZVF Resp. ("Joint Resp.") at 8-9. Ryan and Lolita Zinke did not file responses to the Complaint, but the joint response does address the allegations made against them in their individual capacities. The response also attached a letter from Edward Buttrey responding to the personal allegations against him. *Id.* at Ex. 3.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 10-11, 12-14, Ex. 17, and Ex. 19.

¹⁹ See 2016 30-day Post General at 10 (Dec. 6, 2016), Zinke Victory Fund, <http://docquery.fec.gov/pdf/199/201612069037662199/201612069037662199.pdf>; Original 2017 April Quarterly Rpt. at 7 (Apr. 14, 2017), Zinke for Congress, <http://docquery.fec.gov/pdf/721/201704149052158721/201704149052158721.pdf>; 2017 March Monthly Rpt. at 14 (Mar. 15, 2017), MSRCC, <http://docquery.fec.gov/pdf/602/201703159050838602/201703159050838602.pdf>.

1 disclosed any transfers from ZVF.²⁰ The Committee amended its 2017 April Quarterly report to
2 itemize the individual contributions underlying the ZVF transfer and to show the actual dates of
3 receipt of the contributions, not the date that ZVF transferred the funds.²¹

4 The response also details how ZVF allocated Haughton's \$5,400 contribution. It explains
5 that it designated \$2,700 to Zinke's 2018 primary election and \$2,700 to the 2018 general
6 election, and it asserts that the Committee did not have to refund or redesignate those
7 contributions until it was clear that Zinke would not be a candidate in 2018.²² Respondents argue
8 that the redesignation or refund requirements would not apply until 60 days after the primary
9 election.²³ Haughton's response states that he and his wife made a contribution to ZVF using
10 one \$5,400 check,²⁴ but the Committee explains that because Haughton's contribution was not
11 issued from a joint account, it was all attributed to him.²⁵ On December 4, 2017, the Committee
12 refunded \$2,700 to Haughton.²⁶

²⁰ According to ZVF's reports, it made three transfers of net joint fundraising committee funds to SEAL PAC on March 31, 2015, September 22, 2016, and November 28, 2016, in the amounts of \$4,131.03, \$32,580.87, and \$10,300.87, respectively, but SEAL PAC has not reported receipt of those funds.

²¹ See Amended 2017 April Quarterly Rpt. at 5, 15-23 (Dec. 28, 2017) (including miscellaneous text stating that this amendment "correct[s] clerical errors on memo entry dates for Zinke Victory Fund Contributions"), <http://docquery.fec.gov/pdf/150/201712289090337150/201712289090337150.pdf>.

²² The response notes that due to the joint fundraising agreement's allocation formula the bulk of the contributions included in the February 2017 transfers were properly allocated to the Committee since they consisted mostly of contributions of \$2,700 or less. Joint Resp. at 8-9, Ex. 16 (Joint Fundraising Agreement) (explaining that the allocation formula called for the first \$2,700 contributed to be allocated to the Zinke Primary Election, the next to the Zinke General Election and then after \$5,400 the contributions would be allocated to the SEAL PAC, NRCC and MRSCC). The response includes screenshots of spreadsheets that show the allocation between the participant committees for individual contributions that ZVF received. *Id.* at Exs.

²³ *Id.* at 11, n. 4.

²⁴ Haughton Resp. at 1.

²⁵ Joint Resp. at 11.

²⁶ See 2017 Year-End Rpt. at 8 (Jan. 19, 2018) (noting a refund to Haughton because "no General 2018 for this candidate"), <http://docquery.fec.gov/pdf/251/201801199090471251/201801199090471251.pdf>.

1 Respondents also deny the personal use allegations. The Committee contends that it
2 bought a 2004 Newmar Kountry Star, Model M-3705-Freightliner 300 RV from Ms. Zinke in
3 April 2016 for fair market value.²⁷ The response indicates that the sales price of \$59,100, was
4 based on estimates obtained from two sources.²⁸ Likewise, Respondents contend that the
5 Committee sold the RV to F. Edward Buttrey in June 2017 for a fair market value of \$25,000, a
6 figure that was based on the RV's deteriorating condition, and the costs to repair damage to the
7 RV and remove the Zinke for Congress logo that was wrapped around it.²⁹ Buttrey's response
8 explains that the RV was "in marginal shape, with engine problems, system wide problems, and a
9 custom wrap for the Zinke for Congress campaign that needed to be removed and replaced."³⁰ In
10 support, the response includes invoices listing the specific repairs completed, along with written
11 appraisals stating that "[t]he overall condition of the coach is seen to be marginal and needs
12 extensive reconditioning" and noting the mechanical issues and required repairs.³¹ According to
13 the documents, the RV would be worth \$48,450 if it had a "working engine, working systems,

²⁷ Joint Resp. at 3.

²⁸ The response includes copies of two written estimates for the value of the RV in April 2016: a printout dated April 8, 2016, from the National Automobile Dealers Association (NADA) value guide for \$56,700 and a handwritten estimate from Gardner's RV and Trailer Center for \$59,100. *Id.* at Exs. 1-2. However, the latter estimate referenced a different model number for the RV—model number 3809.

²⁹ *Id.* at 3-4.

³⁰ *Id.* at Ex. 3 (Buttrey Ltr. at 1). In his letter, Buttrey notes that he expected to spend more than \$17,000 for additional repairs, in addition to the \$30,450 in costs he had already spent for the purchase and initial repairs. Buttrey's letter references a different model number for the RV—model number 3706—but according the NADA value guide, this model was similar to the two others referenced in the Joint Response. The NADA printout, dated June 2017 and provided with the response, values model 3706 at a used wholesale amount of \$34,500 and a used retail amount of \$48,450.

³¹ *Id.* It appears the repairs needed included engine problems, broken parts such as the power awning, closet doors, windows, air conditioners, televisions, stereos and speakers, door locks, among others. *Id.* at 4 and Ex. 3.

1 and non-custom wrap,” but even after the engine was repaired, a June 2017 appraisal valued the
2 RV at \$24,000.³²

3 The Committee additionally denies that any of the disbursements it made after the
4 November 2016 election were impermissible, arguing that the disbursements were related to a
5 “valid campaign purpose or to then-Congressman Zinke’s official responsibilities as a Federal
6 officeholder.”³³ The response explains that the Committee’s various disbursements after the
7 election were for campaign-related expenses, including a campaign victory celebration, expenses
8 relating to events that Zinke attended as a member of Congress, and reimbursements to staff.³⁴
9 With regard to “Senate Catering” disbursements of \$2,691.99, made between December 2016
10 and June 2017, and dues and catering expenses of \$2,315.52 paid to the Capitol Hill Club until
11 February 2017, the Respondents state that portions of the expenses related to political and
12 fundraising activities, and the remainder were in connection with Zinke’s duties as a member of
13 Congress or were the Committee’s winding-down costs.³⁵ The Committee explains that it
14 inadvertently reported some disbursements as occurring on the dates it paid its credit card bills,
15 not the dates of the underlying transactions, which were before the general election, and the
16 Committee corrected those entries on its 2016 Year-End and 2017 April Quarterly reports.³⁶

³² *Id.* at Ex. 3 (Buttrey Ltr. at 1 and Craig Painter Appraisal).

³³ *Id.* at 4.

³⁴ *Id.* at 4-8, Exs. 5-7.

³⁵ Respondents explain that the “Senate Catering” expenses were for “one-third of the costs of the longstanding weekly bi-partisan Montana Congressional delegation coffee” that Zinke continued to attend and pay for until his successor was sworn into office in June 2017. *Id.* at 7 and Ex. 9 (attaching invoices listing an event named “Montana Coffee (Senators Tester and Da[i]nes, Congressman Zinke)” and noting a payment history for each member for one-third of the charges). Respondents also explain that the payments to the Capitol Hill Club were for membership dues and “dining expense relating to political and fundraising activities.” *Id.* at 7 and Ex. 8.

³⁶ *Id.* at 8.

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1 **III. LEGAL ANALYSIS**

2 **A. Reporting Violations**

3 The Act requires political committees to file reports of receipts and disbursements in
4 accordance with 52 U.S.C. § 30104.³⁷ These reports must include, *inter alia*, the total amount of
5 all receipts and disbursements, including the appropriate itemizations, where required.³⁸
6 Commission regulations permit the establishment of joint fundraising committees, such as ZVF,
7 that disburse net proceeds to each participant.³⁹ The joint fundraising committee is required to
8 report all disbursements in the reporting period in which they are made.⁴⁰ A committee receiving
9 transfers of receipts from a joint fundraising committee must report the total amount transferred
10 as well as itemize the receipts from the original contributors.⁴¹

11 Based on the information Respondents provided, it appears that the Committee timely
12 reported its receipt of the transfers from ZVF in February 2017. Respondents admit that some
13 contributions to ZVF were made before the November General Election, but explain there were
14 delays in processing receipts and transferring funds to the participating committees because
15 ZVF's treasurer was in Georgia, not Montana. Regardless, the response acknowledges that ZVF
16 transferred net proceeds to its participant committees in February 2017, not on

³⁷ See 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

³⁸ See 52 U.S.C. § 30104(b)(2), (4); 11 C.F.R. § 104.3(a), (b).

³⁹ 11 C.F.R. § 102.17(b)(1). These committees are required to enter into a written agreement with the participating committees that sets forth an allocation formula for the disbursement of the net proceeds (*i.e.*, the distribution of funds raised after all of the joint fundraising committee's expenses have been paid). *Id.* § 102.17(c)(1).

⁴⁰ *Id.* § 102.17(c)(8)(ii).

⁴¹ *Id.* §§ 102.17(c)(8)(i)(B), 104.3(a).

1 November 28, 2016, as ZVF reported.⁴² Therefore, ZVF inaccurately reported the date of the
2 disbursements it made to the participating committees in its reports filed with the Commission.
3 However, the Commission approved ZVF's termination in May 2017, and in light of the
4 Committee's and the MSRCC's accurate reporting of the actual dates of the transfers, the
5 Commission dismisses the allegation as to ZVF as a matter of prosecutorial discretion.⁴³

6 The Committee has acknowledged its failure to properly itemize 17 individual
7 contributions included in the two transfers (\$13,997.65 and \$14,921.26) from ZVF, in violation
8 of section 30104(b). However, because of the amounts in violation and the Committee's
9 correction of the errors on its Amended 2017 April Quarterly Report, the Commission dismisses
10 these violations as a matter of prosecutorial discretion.⁴⁴

11 **B. Excessive Contributions**

12 The Act prohibits contributions to any candidate or committee in excess of the Act's
13 limits, and prohibits political committees from knowingly accepting excessive contributions.⁴⁵
14 In 2016, the individual contribution limit to a federal candidate was \$2,700 per election.⁴⁶ Any
15 contributions that exceed the limits would need to be redesignated, reattributed, or refunded.⁴⁷

⁴² As discussed *supra*, the MRSCC's reports corroborate this information; ZVF had also reported a transfer of joint fundraising proceeds to the MRSCC on November 28, 2016, but the MRSCC reported having received that transfer on February 16, 2017. *Supra* at 5 and note 19.

⁴³ See *Heckler*, 470 U.S. 821; First Gen. Counsel's Rpt. at 7 n. 4, MUR 6790 (Coakley for Senate) (explaining that termination "merely" refers to cessation of a registered political committee's ongoing reporting obligations" and that it has typically been a factor, but not the sole basis, for a dismissal).

⁴⁴ *Heckler*, 470 U.S. 821.

⁴⁵ 52 U.S.C. §§ 30116(a)(1)(A), (B), (D), 30116(f).

⁴⁶ *Id.* § 30116(a)(1)(A), (B), and (D); see *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 Fed. Reg. 5750, 5752 (Feb. 3, 2015).

⁴⁷ 11 C.F.R. § 110.1(b)(3).

1 The Complaint alleges that the Committee accepted an excessive contribution from
2 Haughton when he contributed \$5,400 to ZVF in December 2016 and then appeared to make an
3 additional \$2,700 contribution directly to the Committee in February 2017.⁴⁸ However,
4 Respondents state that the \$5,400 they received through ZVF was all they received from
5 Haughton for the 2016 and 2018 election cycles, and the Committee allocated that amount
6 between the 2018 Primary and General Elections.⁴⁹ In December 2017, the Committee refunded
7 \$2,700 to Haughton because Zinke was not going to be a candidate in the general election.⁵⁰
8 Therefore, Haughton's contribution does not appear to be excessive. Accordingly, the
9 Commission finds no reason to believe that Haughton violated 52 U.S.C. § 30116(a) by making
10 an excessive contribution and no reason to believe that the Committee violated 52 U.S.C.
11 § 30116(f) by accepting an excessive contribution.

⁴⁸ In the case of joint fundraisers, contributions made to a joint fundraising committee must be examined to determine if a contributor previously contributed to one of the participants. 11 C.F.R. § 102.17(c)(4)-(5). Here, however, the facts are reversed. Because Haughton contributed to ZVF first, ZVF would not have been aware of contributions that Haughton may have made to the Committee months later.

⁴⁹ It appears that Complainant may have been confused by the Respondents' reporting. This \$2,700 contribution was half of the \$5,400 Haughton contributed to ZVF, not a separate contribution directly to the Committee. As alluded to above, the Committee's disclosure reports showed a contribution from Haughton on February 17, 2017, because the Committee initially failed to properly itemize the individual contributions it received from ZVF, and instead, listed the receipt date as the date of the joint fundraising transfer from ZVF (*i.e.*, February 17, 2017).

⁵⁰ Although the information does not conclusively indicate when Zinke decided not to run again for Congress in 2018, the Committee refunded Haughton's General Election contribution six months before the 2018 primary, which is scheduled for June 5, 2018. *See* 2018 Election Calendar, MONT. SEC. OF STATE, <http://sos.mt.gov/elections/calendar>; *see also* 11 C.F.R. § 102.9(e)(3) (requiring refund, redesignation, or reattribution of a contribution within 60 days of the date that the committee has actual notice that an individual will not be a candidate for the general election); Advisory Op. 1992-15 (Russo for Congress) at 2 (concluding that redesignation of general election contributions within 60 days of the primary election date, instead of 60 days from the treasurer's receipt of the contributions, is permissible); Advisory Op. 2007-03 (Obama for America) at 3 (stating that "[i]f a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits."); Advisory Op. 2008-04 (Dodd for President) at 4 (concluding that 60-day period for obtaining redesignations and making refunds began to run when the Senator withdrew from presidential race).

1 **C. Personal Use Violations**

2
3 The Act affords federal candidates and their campaign committees wide discretion in the
4 disposition of their campaign funds and provides that contributions accepted by a candidate may
5 be used by the candidate “for otherwise authorized expenditures in connection with the campaign
6 for Federal office of the candidate” and “for ordinary and necessary expenses incurred in
7 connection with duties of the individual as a holder of Federal office.”⁵¹ Nonetheless, campaign
8 funds cannot be converted to “personal use” by “any person.”⁵² Conversion to personal use
9 occurs when funds in a campaign account are used “to fulfill any commitment, obligation, or
10 expense of a person that would exist irrespective of the candidate’s election campaign or
11 individual’s duties as a holder of Federal office.”⁵³

12 The Act and Commission regulations set forth certain uses of campaign funds that
13 constitute conversion to personal use *per se*, including utility payments, noncampaign-related
14 automobile expenses, and dues and fees for health clubs, recreational facilities or other
15 nonpolitical organizations unless they are part of the costs of a specific fundraising event taking
16 place on those premises.⁵⁴ For all other disbursements, the regulation provides that the
17 Commission shall determine on a case-by-case basis whether a given disbursement is personal

⁵¹ 52 U.S.C. § 30114(a)(1)-(2). *See Expenditures; Reports by Political Committees; Personal Use of Campaign Funds*, 60 Fed. Reg. 7862, 7866-67 (Feb. 9, 1995) (“Personal Use E&J”) (explaining that the personal use prohibition is “not so broad as to limit legitimate campaign related or officeholder related activity,” and that “candidates have wide discretion over the use of campaign funds”).

⁵² 52 U.S.C. § 30114(b)(1).

⁵³ *Id.* § 30114(b)(2); 11 C.F.R. § 113.1(g).

⁵⁴ 52 U.S.C. § 30114(b)(2)(A)-(I); 11 C.F.R. § 113.1(g).

1 use by applying the “irrespective test” formulated in the statute.⁵⁵ Meal, travel, and vehicle
2 expenses are examples of disbursements that may be determined to be personal use after applying
3 the irrespective test.⁵⁶ The Commission has stated, however, that “[i]f the candidate can
4 reasonably show that the expenses at issue resulted from campaign or officeholder activities, the
5 Commission will not consider the use to be personal use.”⁵⁷

6 The transfer of campaign assets is not considered personal use as long as the transfer is
7 made at fair market value.⁵⁸ The regulations further state that any depreciation of an asset being
8 sold by a committee would be allocated between the committee and the purchaser “based on the
9 useful life of the asset.”⁵⁹ Winding-down costs are also considered permissible expenses for
10 candidates for a period of six months after leaving office and include office moving expenses,
11 payments to committee staff, charitable donations, transfers to national, state, or local party
12 committees, or other “lawful purpose,” unless such use is considered personal use.⁶⁰

⁵⁵ 11 C.F.R. § 113.1(g)(1)(ii).

⁵⁶ *Id.*

⁵⁷ *See Personal Use E&J at 7863-64.*

⁵⁸ 11 C.F.R. § 113.1(g)(3).

⁵⁹ *Id.*

⁶⁰ *See* 11 C.F.R. § 113.2(a)(2), (b)-(f)(listing permissible non-campaign use of funds); *see also* Advisory Op. 2013- 05 (Gallegly) (concluding that candidate could use campaign funds to pay for temporary storage of officeholder and campaign materials upon retirement from federal office); Advisory Op. 1997-14 (de la Garza) (explaining that the use of campaign funds for shipping costs to send items from former Congressman’s Washington, D.C. office to his home state would be permissible winding down costs). The Commission has explained that the winding down costs provision acts as a safe harbor and “does not preclude a former officeholder who can demonstrate that he or she has incurred ordinary and necessary winding down expenses more than six months after leaving office from using campaign funds to pay those expenses.” *See Personal Use E& J at 7873.*

1 1. Purchase and Sale of the RV

2 The Complaint alleges that either the campaign's purchase of the RV for \$59,100, or its
3 sale a year later for the significantly lower amount of \$25,000, constituted conversion of
4 campaign funds to personal use. Respondents submitted two appraisals, although the one that
5 matched the purchase amount (\$59,100) was for an RV with a different model number. They
6 did, however, also submit an appraisal of \$56,700 for the correct model number, which was only
7 about 5% less than the actual purchase price. Because the difference between the sale and
8 appraisal prices is not substantial, we conclude there is an insufficient factual basis to find a
9 violation in connection with the Committee's purchase of the RV.

10 Respondents also submitted documentation as to the deteriorated condition and resulting
11 depreciation of the RV to support the substantially lower sale price (\$25,000) after the campaign
12 had ended. The documents included invoices for repairs already completed as well as
13 professional appraisals based on a physical inspection of the vehicle. Therefore, the Commission
14 finds no reason to believe that Ryan Zinke, Lolita Zinke, the Committee or F. Edward Buttrey
15 violated 52 U.S.C. § 30114(b) in connection with the campaign's purchase and resale of the RV.

16 2. Disbursements Made by Zinke for Congress

17 The Complaint also alleges that Zinke and his campaign converted funds to personal use
18 when the Committee continued to make disbursements after he was nominated for Interior
19 Secretary in December 2016 and confirmed in March 2017. The available information indicates
20 that those disbursements were made either in connection with Zinke's campaign expenses,
21 Zinke's officeholder duties as a member of Congress, or for winding-down costs.⁶¹ According to

⁶¹ *Supra* at 8.

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1 the response, a number of the disbursements were actually campaign-related expenses incurred
2 before Election Day, but the Committee mistakenly reported them as post-election disbursements
3 because it failed to itemize them properly.⁶² Further, the Committee's post-election expenses
4 also appeared to be permissible campaign expenses or expenses related to officeholder duties;
5 those expenses included the costs of an election-day party, *de minimis* travel and meals for Zinke
6 and his campaign staff, and expenses related to Zinke's officeholder duties as a member of
7 Congress until he resigned and was sworn in as Interior Secretary.⁶³ Additionally, because Zinke
8 was confirmed in March 2017, his campaign was permitted make winding-down disbursements
9 through September 2017.⁶⁴ Indeed, most of the expenses the Committee incurred after March
10 2017 appear to have been for administrative costs, such as bookkeeping, compliance, and legal
11 fees, and a number of *de minimis* disbursements seem to be related to office moving expenses,
12 including payment for storage units, a moving truck rental, and fuel costs.⁶⁵

13 There were also five disbursements totaling \$12,809.15 made between October and
14

⁶² Joint Resp. at 8 and Ex. 5 (explaining that initially the Committee had listed the dates of the payments made to credit cards rather than the date the expense was incurred and providing copies of receipts and relevant portions of credit card statements).

⁶³ *Supra* at 8; Joint Resp. at 5-7, Ex. 5 -9 (describing nature of the various expenses questioned in the Complaint and attaching invoices, spreadsheets, and credit card receipts). The Committee's payments for meals and dues to the Capitol Hill Club, a political organization, also appear to be permissible; according to documentation the Committee provided, those payments were in connection to "Zinke's Federal officeholder status and for Campaign-related fundraising purposes," and they ceased in February 2017, before Zinke was sworn in as Interior Secretary. See Joint Resp. at 7 and Ex. 8; see also 11 C.F.R. § 113.1(g)(1)(i)(G) (listing dues at a "nonpolitical organization" as *per se* personal use); *History*, CAPITOL HILL CLUB WEBSITE, <http://www.capitolhillclub.org/Default.aspx?p=DynamicModule&pageid=345403&ssid=247807&vnf=1> (describing itself as a "national social club for Republicans" with members that have included "Presidents and Vice Presidents, GOP Members of Congress, Governors, state party leaders and influential Republicans everywhere").

⁶⁴ *Supra* at 13.

⁶⁵ *Supra* at note 60; see also 2017 Amended July Quarterly, Schedule B (Dec. 29, 2017), <http://docquery.fec.gov/cgi-bin/forms/C00550871/1195464/>.

1 December 2017, after the prescribed winding-down period. But these payments were for
2 legal and compliance fees incurred during the campaign, all of which are permissible under
3 Commission regulations. Therefore, these five disbursements do not appear to have been
4 personal expenses and would not have violated the Act.⁶⁶

5 However, it is unclear how ten disbursements made from March through June 2017 to
6 “Senate Catering,” with “Fundraising” listed as their purpose, would qualify as expenses relating
7 to winding down the Committee or Zinke’s duties as a Representative. The Committee contends
8 that those expenses were related to Zinke’s officeholder duties in connection with a longstanding
9 bi-partisan meeting between Senators and Members of Congress from Montana that Zinke
10 apparently continued to attend after being sworn in as Interior Secretary.⁶⁷ Setting aside that
11 Zinke was no longer in Congress, these post-confirmation disbursements totaled only \$1,250, and
12 they stopped once Zinke’s replacement was sworn into Congress in June 2017.⁶⁸ Accordingly,
13 the Commission dismisses the personal use allegations relating to these disbursements as a
14 matter of prosecutorial discretion.⁶⁹

⁶⁶ *Id.*

⁶⁷ *See* Joint Resp. at 7.

⁶⁸ *Supra* at note 34; 2017 Amended July Quarterly at 12-15, 21 (Dec. 29, 2017), <http://docquery.fec.gov/cgi-bin/forms/C00550871/1195464/>.

⁶⁹ *Heckler*, 470 U.S. 821.

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