



7/6/2018 Received
by: Christal Dennis

BEFORE THE FEDERAL ELECTION COMMISSION

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| In the Matter of |) | |
| |) | |
| Heller for Senate; |) | MUR 7395 |
| Chrissie Hastie, |) | |
| in her official capacity as Treasurer; |) | |
| Heller Enterprises, LLC |) | |

RESPONSE

Through counsel, Heller for Senate, Chrissie Hastie, in her official capacity as Treasurer, and Heller Enterprises, LLC (collectively, “Respondents”) provide the following response to the complaint filed by the Nevada State Democratic Party (“Complainant”) and designated by the Commission as MUR 7395.

Respondents acknowledge that the Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”), and Commission regulations generally prohibit discounts to authorized committees. Complainant has understandably seized on impromptu public statements to the media to allege the violation in this matter; however, such statements should be recognized as hyperbole that are inconsistent with the actual facts of the matter. The record provided herein, including the attached sworn affidavit, demonstrates that Respondents are not in violation of FECA because they have conducted all business dealings appropriately and within established legal parameters. For the reasons stated below, the Commission should easily determine there is no reason to believe Respondents have violated any provisions of FECA or Commission regulations.

I. BACKGROUND

This complaint arises out of payments properly reported by Heller for Senate, the principal campaign committee of Senator Dean Heller. Heller for Senate has properly disclosed operating expenditures to Heller Enterprises, LLC (“Heller Enterprises”), a Utah-based vendor providing digital content and communications services to Heller for Senate in exchange for a negotiated monthly fee of \$2,500. To date, Heller for Senate has paid Heller Enterprises a total of \$52,500 for these services pursuant to that agreement and monthly rate.

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Without providing any support to describe the actual agreement between Heller for Senate and Heller Enterprises, Complainant filed this complaint relying exclusively on media reports and comments made in the media regarding the parties to this complaint. Specifically, Complainant cites representatives of Heller Enterprises and Heller for Senate who, in response to media inquiries about whether Heller for Senate was *overpaying* Heller Enterprises (i.e., unlawfully enriching Senator Heller's son), made impromptu statements that the services provided by Heller Enterprises were being performed at a discount. Without context, Complainant then cites additional operating expenditures appearing on the regular disclosure filings of Heller for Senate to draw an inexplicable comparison between two vendors providing unrelated and inequivalent services to Heller for Senate pursuant to unique and non-overlapping services agreements. Specifically, Complainant cites payments to BASK Digital Media LLC ("BASK") in a comparison with Respondents. BASK, a largescale multidivisional media and digital analytics company, provided comprehensive advertising, digital platform production, search optimization, and analytics to Heller for Senate. Any attempt to equate this work with the social media content produced by Heller Enterprises with the services provided by BASK represents a serious misunderstanding of modern digital business models.

As demonstrated in the attached affidavit of Harrison Heller ("the Affidavit"), who is the responsible party for Heller Enterprises, Respondents negotiated an agreement for services between Heller for Senate and Heller Enterprises in good faith and at arm's length. Heller Enterprises generally negotiates a rate for services directly with prospective clients and begins work once an agreement has been reached with the client based on the fair-market value of the services, as within the experience of Heller Enterprises and the beneficial interests of the parties to the agreement. That is what occurred in the instant matter. Specifically, on May 26, 2016, a proposal was made and agreed to between the parties for a flat rate fee schedule of \$2,500 per month.

II. ANALYSIS

FECA and Commission regulations prohibit the receipt of corporate contributions, including in-kind contributions. Pursuant to FECA, federal candidate campaign committees may not accept contributions from the general treasury funds of incorporated organizations including corporations and trade associations.¹ FECA and Commission regulations define a contribution broadly to not only include traditional cash gifts, but also "anything of value" given to the candidate's campaign committee to influence the outcome of a federal election.²

Commission regulations include goods and services offered free or below market cost within the spectrum of things of value provided to influence an election, so the value of such goods and services become in-kind contributions when received by authorized committees.³ And because in-kind contributions are subject to the same limits and prohibitions as

¹ 52 U.S.C § 30118.

² 52 U.S.C § 30118(b)(2); 11 C.F.R. § 100.52(a); 11 C.F.R. § 100.54.

³ 11 C.F.R. § 100.52.

traditional contributions, the provision of any goods or services may create a contribution that exceeds the applicable limit where the provision of those goods and services is an in-kind contribution to the campaign committee. In addition to being potentially excessive, any goods or services provided by a corporation below market cost will create in an impermissible in-kind contribution to the candidate committee.

Commission regulations state that the provision of goods at less than the usual or normal charge for those goods or services will create an in-kind contribution. The Commission has explained that the usual and normal charge for goods and services is determined by review of the price of those goods or services in the market or the commercially prevailing rate for those goods or services at the time provided.⁴ The Commission has noted that in contracts with family members, the principal committee should not pay more than market value for services and the agreement should contain all terms customary of such agreements or otherwise conform to industry practice.⁵

As attested in the attached Affidavit, Respondents engaged in written negotiations regarding the services to be provided to Heller for Senate by Heller Enterprises prior to any work commencing on behalf of Heller for Senate. Upon inquiry from a representative of Heller for Senate, Heller Enterprises responded that such work was not normally performed by Heller Enterprises pursuant to a standard industry-form contract. Instead, a proposal for a monthly flat-rate fee was presented to Heller Enterprises and agreed to by written communication. Heller Enterprises commenced work on behalf of Heller for Senate only after a fee was agreed to by Respondents.

Harrison Heller, the responsible party for Heller Enterprises, has attested in the Affidavit provided that the process for agreeing upon the rate for the services provided was customary for the business operations of Heller Enterprises. The rate agreed to was neither below nor greater than the value of services Heller Enterprises has received for similar services. Therefore, when considering the market value of similar services provided by Heller Enterprises, the agreement between Respondents was reasonable.

By contrast, Complainant has provided no credible evidence to explain why the Commission should equate unrelated payments to wholly different vendors (i.e., BASK and Heller Enterprises) other than the fact that payments to them appeared on Heller for Senate disclosure filings at the same time. Heller Enterprises provided completely distinct services unrelated to any other vendor to Heller for Senate, including BASK, and should not be arbitrarily compared to any such vendor. With all the facts now before the Commission, it is clear that Heller for Senate and Heller Enterprises engaged in an arm's length negotiation of

⁴ See AO 2010-30 (Citizens United).

⁵ See AO 2001-10 (Jesse L. Jackson, Jr. for Congress).

an agreement for services at market value and customary in the business operations of Heller Enterprises.⁶

III. CONCLUSION

As described above, Respondents have been fully compliant with FECA and Commission regulations. Thus, the Commission should find no reason to believe that a violation has occurred in relation to the facts presented.

Sincerely,



Chris K. Gober
Troy McCurry
Counsel to Heller for Senate, Chrissie Hastie, in her official capacity as Treasurer, and Heller Enterprises, LLC

⁶ See e.g. MUR 5942 (Rudy Giuliani Presidential Committee Inc.) (Commission finding no reason to believe an improper vendor discount was received once the Commission was presented with all the information regarding the facts of the matter, including the business practices of the *New York Times*).

AFFIDAVIT OF HARRIS HELLER

STATE OF NEVADA §
 COUNTY OF CLARK §

BEFORE ME, the undersigned authority, on this day personally appeared HARRIS HELLER, who swore or affirmed to tell truth, and stated as follows:

I, Harris Heller, a resident of Nevada, hereby certify, swear, or affirm that I am competent to give the following declaration based on my personal knowledge, unless otherwise stated, and that the following facts and things are true and correct to the best of my knowledge.

1. I am an experienced professional in the field of creation, distribution, and promotion of digital and web-based media content, including, but not limited to, the production and delivery of social media content.
2. Through my experience in the field of digital and web-based media, I am familiar with the fair market value for providing these services, and I have previously received a monthly fee for this work from a variety of clients, including performing such work as an independent contractor.
3. I do not, in the ordinary course of business, have a set fee for my work; nor do I memorialize the terms of any fee arrangement for my work as an independent contractor in a standard form contract. Instead, the fees and other charges associated with my work as an independent contractor are agreed to through a direct negotiation with my prospective client that includes a discussion of the client's needs and the fair market value of those needs.
4. On May 26, 2016, I entered into an agreement via email with Heller for Senate to provide digital web-based media content on behalf of Heller for Senate as an independent contractor.
5. This agreement was negotiated at arm's length by myself and Mike Slanker who negotiated on behalf of Heller for Senate.
6. The negotiated rate for my work as a consultant on behalf of Heller for Senate was \$2,500, which is evidenced by an email exchange wherein Heller for Senate proposed a reasonable monthly fee in light of the fair market value of those services to be provided. Due to the reasonableness of the proposed fee, I accepted the offer from Heller for Senate in writing by email communication.
7. To the best of my recollection, my work providing digital web-based media content to Heller for Senate commenced following our agreement to this rate.
8. At no point did I discuss with Heller for Senate any special rate, either at a discount or otherwise, either proposed or prospective.
9. Pursuant to my agreement with Heller for Senate, all the work I provided during the term of services was performed according to the agreed upon fair market rate of \$2,500 per

month flat-rate fee schedule; at no point was additional work or services contemplated that was not otherwise reasonable in light of the fee then being charged.

END OF AFFIANT'S STATEMENT.

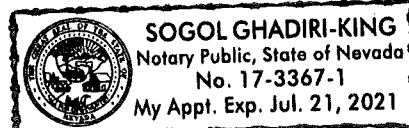
Harris Heller
Harris Heller

STATE OF NEVADA §
 §
COUNTY OF CLARK §

Subscribed and sworn to (or affirmed) before me on this 5th day of July, 2018,
by HARRIS HELLER

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature [Handwritten Signature]


(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.