

JACK GRAHAM FOR U.S. SENATE

1873 So Bellaire Street, Suite 908
Denver, CO 80222-4356

July 19, 2018

FEDERAL ELECTION COMMISSION
Office of the General Counsel
Washington, D.C. 20463

RE: MUR: 7398
Jack Graham for U.S. Senate (ID: C00608232)
and Cheryl S. Klein in her official capacity as treasurer

This is in response to your letter dated June 8, 2018, and the accompanying "Factual and Legal Analysis" regarding the referral from the Reports Analysis Division for our committee's failure to disclose disbursements totaling \$252,571 on our original 2016 12-Day Pre-Primary Report.

The substantive concern expressed in the January 10, 2017, referral letter from the RAD was an "inadequate response to the concerns raised by the substantial increase in disbursements ..."

The response, as I understood it from our RAD contact, was that we needed to document the disbursement reporting mistake was, indeed, an inadvertent clerical error. It was corrected when it was discovered, so we believed it would not be a violation of the Federal Election law. In fact, it was a clerical error exacerbated by a glitch in the software platform we were using.

The software allowed the user to set the DEFAULT for disbursement SUBTYPE. We set it for "PAYMENT." Instead, the software did not recognize the custom default and, instead, pulled from an unseen, internal "pick-list" which pulled in "PRESIDENTIAL LIBRARY" as the first item when "P" was pressed. Further complicating the error, making it more difficult to find the source of the error, the item appeared in our data pull with the correct TYPE "Operating Expense." But the erroneous SUBTYPE prevented it from even pulling into the FEC report, even though it was in our data pull. That also is why we were not able to identify the source of the error more quickly. In fact, it was not found until after the primary election was held. (SUBTYPE did not even display until we executed a more detailed form of data pull.) The pre-primary report was filed June 13, 2016, the primary election was held June 28, 2016. The mistake was found and the amendment filed before the next report was filed, July 15, 2016.

We believed we had complied with the spirit and the letter of the law. That was the reason we chose to request the matter be dismissed with no penalty, rather than going through the Alternative Dispute Resolution process. We understand that the magnitude and the timing of the mistake require careful review. But the fact remains that it was an unintentional mistake. The entry that caused the error was dated a few days prior to the cut-off for the pre-primary report and could just as easily have been dated the day after. The committee fully intended for that disbursement to be reported in the pre-primary filing.

We respectfully request that the Commission assess a lesser penalty, as a necessary administrative action, but suggest that a finding of "reason to believe" the law was violated would not be warranted, because:

- (1) It was a purely unforeseen and unintentional mistake;
- (2) The mistake was corrected as soon as possible after it was identified;
- (3) There was no complaint filed as a result of the error;
- (4) The reporting delay had no effect on the outcome of the election;

- (5) The committee has had no financial activity since October 31, 2016, with the exception of responding to the FEC concerns still pending. The last financial activity is reported in the FEC report filed for Fourth Quarter 2016. There is no bank account. There is no prospect to raise additional funds.
- (6) As Treasurer of the Committee, I can personally assure you I will not be acting as treasurer for a federal campaign committee in the future.

We recognize the need to assess an administrative penalty because it happened just prior to a critical pre-election report. But we suggest that a lesser penalty would be fair. We would be willing to agree to a \$3,000 penalty.

Thank you very much for your time and consideration.

Sincerely,

Cheryl Klein

Cheryl Klein
Treasurer, Jack Graham for U.S. Senate

ADDENDUM:

I hereby swear that the above statements are true and correct, to the best of my knowledge, and that the sole responsibility for the tracking and reporting of finances for the Jack Graham for U.S. Senate Committee in 2016 was mine, as Treasurer for the Committee.

Cheryl A Klein
Signed, Cheryl S. Klein, Treasurer

July 19, 2018
Date