FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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JUN 13 2018

RE: MUR 7409
(formerly RR 17L-24)
Mason Tenders District Council of
Greater New York and LI PAC
and Mike Prohaska in his official
capacity as treasurer

Dear Mr. Laufer:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission became aware of information suggesting that your clients, Mason Tenders District Council of Greater New York and LI PAC and Mike Prohaska in his official capacity as treasurer ("Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On August 9, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of the General Counsel for possible enforcement action under 52 U.S.C. § 30109. On June 7, 2018, the Commission found reason to believe that the Committee violated 52 U.S.C. § 30104(b), a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

Please note that that Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Committee is notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless the Committee notifies the Commission in writing that it wishes 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).

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 the Committee 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. Enclosed is a conciliation agreement for your consideration.

If the Committee is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, the Committee may submit any factual or legal materials that it believes 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 sixty 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.

We look forward to your response.

On behalf of the Commission,

Caroline C. Hunter
Chair

Enclosures
Factual and Legal Analysis

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Mason Tenders District Council of Greater New York LI PAC and Mike Prohaska in his official capacity as treasurer

MUR 7409

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities.[1] The Commission's Reports Analysis Division ("RAD") referred Mason Tenders District Council of Greater New York & LI PAC and Mike Prohaska in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to disclose receipts totaling $378,712.72 on its 2016 12-Day Pre-General Report and 2017 February Monthly Report. For the reasons discussed below, the Commission finds that there is reason to believe that the Committee violated 52 U.S.C. § 30104(b).

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

On October 27, 2016, the Committee filed its 2016 12-Day Pre-General Report disclosing no receipts.[2] On April 20, 2017, the Committee filed an Amended 2016 12-Day Pre-General Report disclosing $150,741.42 in receipts, consisting of $734.17 in itemized contributions and $150,007.25 in unitemized contributions. RAD sent a Request for Additional Information

1 *See* 52 U.S.C. § 30109(a)(2).

2 Referral at 1.

("RFAI") to the Committee regarding the receipts that were not originally disclosed.[3] The Committee filed a Miscellaneous Report ("Form 99") in response to the RFAI, which stated:

> [T]he contributions at issue were received by payroll deduction. Prior to the amendment in question, the Committee's longstanding practice, pursuant to FEC analyst guidance, had been to report such contribution by payroll deduction date. Amendments were made pursuant to advice of legal counsel recommending that the Committee instead report such contributions by date of deposit into the Committee's account. Thus, because the date of payroll deduction and date of deposit each occurred in different reporting periods in this instance, the contributions initially reported on the 2016 Pre-General Report were moved by amendments to the 2016 Post-General Report.[4]

The Form 99 also stated that the Committee had amended the two reports to return to its prior practice of reporting contributions by the date of payroll deduction.[5]

The Committee filed its original 2017 February Monthly Report on February 20, 2017, disclosing no receipts.[6] On July 20, 2017, the Committee filed an amended 2017 February Monthly Report disclosing $227,971.30 in receipts.[7] RAD sent an RFAI to the Committee regarding receipts that were not originally disclosed. The Committee filed another Form 99

3 *Id.* at 2.

4 *Id.* at 2-3.

5 *Id.* The Referral notes the Committee's earlier amendments that attempted to correct its 2016 Pre- and Post-General Reports. Specifically, the Committee filed an amended 2016 12-Day Pre-General Report on January 30, 2017, disclosing an increase of $1,569.33 in itemized contributions and $149,172.09 in unitemized contributions. Referral at 1-2. The next day, however, the Committee disclosed those contributions on an amended 2016 30-Day Post-General Report and further amended its Pre-General Report to exclude the contributions. *Id.* at 2. On April 20, 2017, the same day the Committee amended its 2016 Pre-General Report to disclose the contributions, the Committee amended its 2016 Post-General Report to remove the contributions. *Id.* The Committee explained the changes were due to data entry errors. *See id.*; Committee Miscellaneous Electronic Submission (Form 99) (Apr. 20, 2017).

6 Suppl. Referral at 1.

7 *Id.*

stating the "increase in receipts of $227,9[7]1.30 is a correction to conform with date of receipt (not date of deposit) as described in previous Form 99 submissions."[8]

The Committee's responses to the Referral and Supplemental Referral repeat or refer to the explanations in its Form 99s.[9]

B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 52 U.S.C. § 30104.[10] These reports must include, *inter alia*, the total amount of receipts and disbursements, including the appropriate itemizations, where required.[11]

Labor organizations may use a payroll deduction system to collect and forward voluntary contributions from certain persons to a separate segregated fund.[12] When contributions are made through payroll deduction to the separate segregated fund, the date of receipt shall be the date that the collecting agent for the separate segregated fund obtains possession of the contribution.[13]

Here, the Committee admits it reported receiving contributions made through payroll deduction on the date the monies were deposited into the Committee's account, not on the date the monies were deducted from the contributors' pay and received by the Committee's collecting

[8] *Id.* at 2. In the Form 99, the Committee states that the amount reported on the Amended 2017 February Monthly Report was $227,931.30, but the correct amount disclosed was $227,971.30.

[9] Response at 1-2 (Aug. 23, 2017); Suppl. Resp. at 1 (Nov. 28, 2017).

[10] 52 U.S.C. § 30104(a)(1); 11 C.F.R. § 104.1(a).

[11] *See* 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

[12] *See* 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.2(f)(4)(i).

[13] *See* 11 C.F.R. § 102.8(b)(2) and (c); Advisory Op. 1998-25 (Mason Tenders District Council of Greater New York) at 3 (the date of the separate segregated fund's receipt for such contribution is the date when it is received by the collecting agent). *See also* Advisory Op. 1999-33 (MediaOne PAC), Advisory Op. 2000-11 (Georgia-Pacific Corporation).

agent. Thus, the Committee did not comply with the Act's reporting requirements when it failed to disclose a total of $378,712.72 in receipts on its original 2016 12-Day Pre-General and 2017 February Monthly Reports. Therefore, the Commission finds that there is reason to believe that the Committee violated 52 U.S.C. § 30104(b).