



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Christopher M. Marston
2652 Group LLC
P.O. Box 26141
Alexandria, VA 22313

JUL - 2 2019

RE: MUR 7421

Dear Mr. Marston:

On June 28, 2018, the Federal Election Commission notified your clients, Cramer for Senate and you in your official capacity as treasurer, Senator Kevin Cramer, and Kris Kramer of a complaint alleging that they had violated certain sections of the Federal Election Campaign Act of 1971, as amended.

On June 20, 2019, the Commission found, on the basis of information provided by your clients, that there is no reason to believe that Cramer for Senate and you in your official capacity as treasurer, Kevin Cramer, and Kris Cramer violated 52 U.S.C. § 30114(b). The Commission also voted to dismiss the allegation that Cramer for Senate and you in your official capacity as treasurer violated 52 U.S.C. § 30104(b). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

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), effective September 1, 2016.

If you have any questions, please contact Adrienne Baranowicz, the attorney assigned to this matter, at (202) 694-1573.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Y. Tran", with a long horizontal flourish extending to the right.

Lynn Y. Tran
Assistant General Counsel

Enclosure:
Factual and Legal Analysis

16047428001

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Cramer for Senate and Christopher M. Marston MUR 7421
4 in his official capacity as treasurer
5 Kevin Cramer
6 Kris Cramer
7

8 **I. INTRODUCTION**

9 The Complaint alleges that Representative Kevin Cramer, his wife Kris Cramer, and
10 his principal campaign committee, Cramer for Senate and Christopher M. Marston in his
11 official capacity as treasurer (the "Committee"), (collectively "Respondents") violated the
12 Federal Election Campaign Act of 1971, as amended, (the "Act") and Commission
13 regulations by converting campaign funds to personal use. The Complaint also alleges that
14 the Committee failed to report advance payments that the Cramers made for travel expenses
15 and failed to timely reimburse the Cramers for those advance payments. For the reasons
16 discussed below, the Commission finds no reason to believe that the Respondents violated 52
17 U.S.C. § 30114(b)(2) and dismisses the allegation that the Committee violated 52 U.S.C.
18 § 30104(b).

19 **II. FACTS**

20 Congressman Kevin Cramer was a successful candidate for a U.S. Senate seat in
21 North Dakota in the November 6, 2018, election. Cramer announced his candidacy on
22 February 16, 2018,¹ and filed his Statement of Candidacy on March 7, 2018, designating the
23 Committee as his principal campaign committee.²

¹ Cramer for Senate Announcement & Rally, FACEBOOK.COM, <https://www.facebook.com/events/758956704298458/>.

² Kevin Cramer, Statement of Candidacy at 1 (Mar. 7, 2018).

1 Following his announcement, Cramer traveled to multiple campaign events
2 throughout North Dakota, including appearing before local Republican Party groups and
3 making an appearance with Vice President Michael Pence.³

4 In its Pre-Primary Report covering the period from April 1 to May 23, 2018, the
5 Committee reported disbursements of \$1,152.75 and \$531.38 to Cramer and Mrs. Cramer,
6 respectively, as reimbursements for “mileage” for travel that occurred during the first quarter
7 of 2018, and a disbursement of \$253 to Cramer as a “per diem” for sixteen meals.⁴

8 The Complaint alleges that Cramer and Mrs. Cramer impermissibly converted
9 campaign funds to personal use because the reimbursements for travel expenses and meals
10 were not related to Cramer’s Senate campaign.⁵ Based on the Committee’s mileage
11 reimbursements of \$1,152.75 to Cramer and \$531.38 to Mrs. Cramer, the Complaint suggests
12 that the reimbursements were permissible only if Cramer drove approximately 2,115 miles
13 and Mrs. Cramer almost 1,000 miles during the first three months of 2018.⁶ The Complaint
14 argues this amount of travel is “suspect and highly unusual,” stating that it would have been
15 impossible for the Cramers to travel enough during the first quarter of 2018 to justify the
16 amounts reimbursed.⁷ The Complaint also alleges that the Committee impermissibly paid

³ Amanda Seitz, *AP Fact Check: Rep. Kevin Cramer Did Drive 2,300 Miles*, AP NEWS, July 4, 2018, <https://apnews.com/1b3ec6428ec149339fc418a304e379e9> (This news article was cited in the Response.).

⁴ Pre-Primary Report of Receipts and Disbursements at 153, 156 (May 31, 2018).

⁵ Compl. at 1-2.

⁶ *Id.* (using the Internal Revenue Service reimbursement rate of 54.5 cents per mile to calculate distances).

⁷ *Id.* at 1-2.

10044744001

1 Cramer a salary or stipend when it reimbursed him \$253 for “per diem,” arguing that the
2 reimbursement was not for any actual costs for meals incurred by Cramer.⁸

3 In addition, the Complaint alleges that the Committee was prohibited from
4 reimbursing Cramer for the travel and meal expenses, arguing that some of the expenses
5 were not reimbursable because they were not made within the time frame required under
6 Commission regulations and therefore should have been treated instead as in-kind
7 contributions from Cramer.⁹ The Complaint also argues that Cramer’s advance payments
8 should have been reported as contributions until the Committee made reimbursements.¹⁰

9 Respondents submitted a joint response denying the personal use allegations, stating
10 that Cramer and Mrs. Cramer were reimbursed for driving to campaign events and that the
11 Committee paid Cramer a reasonable per diem for meals that followed Commission
12 guidelines.¹¹ To support its response, the Committee cites to an Associated Press (“AP”)
13 article which concluded that the Cramer’s campaign schedule was consistent with the amount
14 reimbursed for mileage.¹² The AP reviewed travel records provided to it by Cramer’s
15 campaign and reported that Cramer took seven trips to attend more than a dozen campaign
16 events between January and March, 2018, traveling over 2,300 miles, including a 210-mile
17 round trip to attend a Republican Party event in Dickinson and a 420-mile round trip to

⁸ *Id.* at 5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6.

¹¹ Resp. at 2.

¹² *Id.*; see also Seitz, *supra* note 3.

2025-07-14 14:40:01

1 appear with Vice President Pence in Fargo.¹³ The article also reported that Mrs. Cramer
2 traveled 975 miles to attend campaign events, including the Pence event in Fargo and a state
3 GOP convention in Grand Forks.¹⁴

4 Respondents also state that the Committee provided a per diem for travel-related
5 meals in lieu of exact reimbursements.¹⁵

6 III. LEGAL ANALYSIS

7 A. There is No Reason to Believe that the Respondents Converted Campaign 8 Funds to Personal Use

9 The Act prohibits any person from converting campaign funds to personal use,
10 defining “personal use” as using funds “to fulfill any commitment, obligation, or expense of
11 a person that would exist irrespective of the candidate’s election campaign or individual’s
12 duties as a holder of Federal office.”¹⁶ The Commission’s implementing regulation
13 enumerates types of disbursements that qualify as *per se* personal use and others that are
14 determined on a case-by-case basis.¹⁷ Travel and travel-related meals are evaluated on a
15 case-by-case basis.¹⁸ The Commission has stated that it will not find a personal use violation
16 “[i]f the candidate can reasonably show that the expenses at issue resulted from campaign or
17 officeholder activities.”¹⁹ Accordingly, a campaign committee’s payment of a per diem for

¹³ Seitz, *supra* note 3.

¹⁴ Resp. at 2 (July 19, 2018); Seitz, *supra* note 3 (noting that the Cramer campaign provided Mrs. Cramer’s event schedule).

¹⁵ Resp. at 2.

¹⁶ 52 U.S.C. § 30114(b); *see also* 11 C.F.R. § 113(g).

¹⁷ 11 C.F.R. § 113.1(g)(1)(ii).

¹⁸ *Id.*

¹⁹ Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7866-67 (Feb. 9, 1995).

1003442001

1 travel and travel-related subsistence expenses are permissible under the Act and Commission
2 regulations and the Commission has found per diems paid to family members permissible
3 when their travel is connected to campaign activities or official events.²⁰

4 The Committee's reimbursements to Cramer and Mrs. Cramer, and the per diem to
5 Cramer, do not appear to violate the personal use regulations. The Complaint does not point
6 to any specific information to support its allegation, instead relying on an assertion that the
7 amount of the reimbursements seemed excessive compared to a general impression of how
8 much the Cramers could have reasonably traveled for the campaign during the relevant time
9 period.²¹ The Response denies the allegation and cites the AP's investigation which
10 concluded that the reported mileage reimbursements were "not only plausible, [but] true."²²

11 The Complaint likewise fails to provide any information substantiating the allegation
12 that the \$253 reimbursement for Cramer's meals was not a permissible campaign-related
13 expense because it did not reflect the "actual cost" incurred.²³ The Commission has
14 previously approved the use of per diems to pay for campaign-related travel and meals in lieu
15 of recording the actual costs for mileage, lodging, and meals.²⁴ In this matter, the payment to

²⁰ See Personal Use of Campaign Funds, 60 Fed. Reg. at 7866-67; see also Advisory Op. 1996-34 (Thornberry) at 3 (Sept. 12, 1996) (allowing a committee to pay for the travel expenses of a candidate's wife when the travel was part of a campaign trip); Factual & Legal Analysis at 3-4, MUR 7100 (Donald J. Trump for President, *et al.*) (finding no reason to believe that a personal use violation occurred when a committee paid for campaign-related travel expenses incurred by a candidate's family members).

²¹ See Compl. at 4-5 (citing the distance traveled and the number of days that Congress was in session to suggest that Representative Cramer's official duties should have prevented some campaign travel).

²² Seitz, *supra* note 3.

²³ See *id.* at 4-6.

²⁴ Resp. at 2 (citing Advisory Op. 1984-08 (Duncan) at 1 ("AO 1984-08")).

1 Cramer of \$15.81 per meal was in line with the then-applicable GSA reimbursement rates for
2 meals and incidentals in North Dakota.²⁵

3 Because the Complaint failed to provide any support for the personal use allegations,
4 the Commission finds no reason to believe that the Committee, Kevin Cramer, or Kris
5 Cramer violated 52 U.S.C. § 30114(b)(2).

6 **B. The Allegations Regarding the Misreported In-Kind Contributions are**
7 **Dismissed Pursuant to *Heckler v. Chaney***

8 A-political committee must report each person who makes a contribution aggregating
9 in excess of \$200 per election cycle.²⁶ The payment by an individual from personal funds for
10 costs incurred in providing goods or services to a candidate or political committee is a
11 contribution unless specifically exempted under the Act and Commission regulations.²⁷ The
12 regulations provide that the payment for an individual's transportation and subsistence
13 expenses incurred while traveling on behalf of a candidate or political committee are not
14 reportable contributions provided the individual is reimbursed within specified time periods.
15 Specifically, if the expenses were not paid for with a personal credit card, the reimbursement
16 must occur within thirty days of the date on which the expenses were incurred; if the
17 expenses were paid for with a personal credit card, the reimbursement must be made within
18 60 days of the closing date of the billing statement on which the charges appear.²⁸

²⁵ See Pre-Primary Report at 153 (noting that the \$253 per diem covered 16 meals). The then-applicable GSA standard rates for meals and incidental expenses incurred in North Dakota allow \$11 for breakfast, \$12 for lunch, \$23 for dinner, and \$5 for incidental expenses. GENERAL SERVICES ADMINISTRATION, Per Diem Rates Look-Up, https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=ND&fiscal_year=2018 (last visited Jan. 31, 2019).

²⁶ 52 U.S.C. § 30104(b)(3).

²⁷ 11 C.F.R. § 116.5(b).

²⁸ 11 C.F.R. § 116.5(b)(2).

1 Additionally, political committees must treat an obligation arising from advance payments
2 for travel expenses as an outstanding debt until reimbursed.²⁹

3 There is insufficient information in the record to determine that the Cramers advanced
4 personal funds for travel and travel-related subsistence expenses that were not timely
5 reimbursed and therefore resulted in reportable contributions to the Committee. The travel
6 expenses at issue were incurred in the first quarter and early April of 2018 and were
7 reimbursed in April 2018, which suggests that some of the reimbursements may have
8 exceeded the 30- or 60-day windows provided in the regulations if the expenses were
9 incurred early in the quarter. We do not have information, however, about when the Cramers
10 incurred the expenses or how they paid for these expenses, and there is information to
11 indicate that at least some of the travel was reimbursed within 30 days. For example, both
12 Cramer and Mrs. Cramer submitted reimbursements for mileage to attend a fundraising event
13 with Vice President Pence on March 27, 2018, and the Committee reported reimbursements
14 to the Cramers on April 12 and 23, 2018.³⁰ The Committee also reportedly reimbursed Mrs.
15 Cramer for travel to attend the state GOP convention in Grand Forks, which was held in early
16 April.³¹

17 Even if the Committee did not reimburse the Cramers for travel-related advance
18 payments, the available record suggests that the amount of any advance payments that were
19 not reimbursed in the required time frame are likely to be *de minimis*. Accordingly, the

²⁹ 11 C.F.R. § 116.5(c).

³⁰ Pre-Primary Report at 153, 156 (reporting a reimbursement to Mrs. Cramer on April 12, 2018, and to Cramer on April 23, 2018).

³¹ Seitz, *supra* note 3.

- 1 Commission dismisses the allegation that the Committee violated 52 U.S.C. § 30104(b) in
- 2 connection with reporting payments for travel expenses by the Cramers pursuant to *Heckler*
- 3 *v. Chaney*.³²

³² 470 U.S. 821 (1985).

10047442001