



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Neil P. Reiff, Esq.
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1090 Vermont Ave. NW, Suite 750
Washington, DC 20005

DEC 17 2018

RE: MUR 7556
Kansas Democratic Party and Bill
Hutton in his official capacity as
treasurer

Dear Mr. Reiff:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the “Commission”) became aware of information suggesting your client, Kansas Democratic Party and Bill Hutton in his official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the “Act”). On December 6, 2018, the Commission found reason to believe that your client violated 52 U.S.C. §§ 30104(b)(1), (3)(A), and (8), provisions of the Act and 11 C.F.R. §§ 102.17(c)(8)(i)(B), 104.3(a)(1), (d), 104.11(a). The Factual and Legal Analysis, which formed a basis for the Commission’s finding, is enclosed for your information.¹

We have also enclosed a brief description of the Commission’s procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are 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 you notify the Commission in writing that you wish 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.²

¹ This matter addresses some, but not all, of the potential violations which your client was notified of on Nov. 17, 2017. *See* Letter re: AR 17-08R from Jeff Jordan, Asst. Gen. Counsel, FEC, to Bill Hutton, Treasurer, Kansas Democratic Party (Nov. 17, 2017). For administrative purposes, issues relating to the Committee’s itemization of contributions from joint fundraisers in conjunction with the Hillary Victory Fund will be addressed in a separate matter. You will receive further notice when the Commission takes action on that activity.

² 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).

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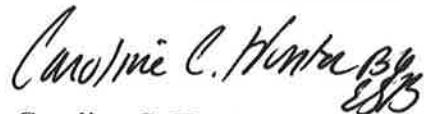
In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation 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 you 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 you violated the law.

If you are interested in engaging in pre-probable cause conciliation, please contact Nicholas Mueller, the attorney assigned to this matter, at (202) 694-1577 or nmueller@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe 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 you are 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.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at http://www.fec.gov/em/respondent_guide.pdf.

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: Kansas Democratic Party and
Bill Hutton in his Official
Capacity as Treasurer **MUR: 7556**

I. INTRODUCTION

10 This matter was generated based on information ascertained by the Federal Election
11 Commission (the “Commission”) in the normal course of carrying out its supervisory
12 responsibilities. *See* 52 U.S.C. § 30109(a)(2). The Commission’s Reports Analysis Division
13 (“RAD”) referred Kansas Democratic Party and Bill Hutton in his official capacity as treasurer
14 (“Committee”) for a number of apparent reporting violations.

15 In response to the Referral, the Committee states that its review “reveal[s] several fixable
16 errors that the [Committee] is working with an outside consultant to fix and file amended reports
17 in the next few weeks.”¹ To date, such amendments have not been filed.

18 As discussed below, the Commission finds reason to believe that the Committee violated
19 the reporting requirements of the Federal Election Campaign Act of 1971, as amended (the
20 "Act") and Commission regulations by failing to: (1) provide itemized contributor information
21 for contributions received through joint fundraising; (2) accurately report debts; and (3)
22 accurately report cash on hand.

23 II. FACTS

24 The Committee is a state committee of the Democratic Party and is affiliated with several
25 other committees, including Kansas Party Victory Fund.² During the 2015-16 election cycle,

¹ Resp. at 1 (Jan. 5, 2018).

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1 RAD sent 25 separate letters over 17 months to the Committee requesting additional information
 2 (“RFAIs”).³ The Committee filed an amendment to its 2016 February Monthly Report and twice
 3 amended its 2016 Post-General Election and 2016 Year-End Reports, but otherwise did not
 4 respond to the RFAIs.

5 On November 17, 2017, the Commission notified the Committee that it had been referred
 6 to OGC for possible enforcement action, and identified the unresolved issues that RAD identified
 7 from the Committee’s 2015 and 2016 reports.⁴ On January 5, 2018, the Committee responded,
 8 stating that “[u]nbeknownst to the [Committee], the consultant, who had been responsible for
 9 preparation of reports and all correspondence with the Commission, had not been responding” to
 10 these RFAIs.⁵ The Committee further notes that it is no longer associated with this consultant.⁶
 11 The Committee states that there are several “fixable errors” and that it is working to file amended
 12 reports “in the next few weeks.”⁷ To date, no such amendments have been filed. The Committee
 13 requests that in light of these to-be-filed “comprehensive amendments,” the Commission should
 14 take no further action or refer the matter to the Alternative Dispute Resolution Office.⁸

² See Amended Statement of Organization, Kansas Democratic Party (Mar. 20, 2017). The Committee was audited by the Commission in the 2012 election cycle. The Committee conciliated the matter, agreed to pay a civil penalty of \$19,000, and admitted to violating the Act and Commission regulations by understating receipts and disbursements and by failing to maintain monthly payroll logs. Conciliation Agreement ¶¶ IV.2-3, VI.1, MUR 7258 (Kansas Democratic Party).

³ See, e.g., Request for Additional Information, 2015 Mar. Monthly Rpt. (Sept. 22, 2015) (noting discrepancies in cash on hand reported and instructing the Committee to correct the discrepancy and amend all affected reports); Request for Additional Information, 2016 Year-End Rpt. (Feb. 26, 2017) (noting the failure to itemize contributor information relating to a joint fundraising transfer and instructing the Committee to amend its report).

⁴ Notification Letter from Jeff Jordan, OGC, to Bill Hutton, Kansas Democratic Party (Nov. 17, 2017) (“Notification”).

⁵ Resp. at 1-2.

⁶ *Id.* at 2.

⁷ *Id.* at 1.

⁸ *Id.* at 1-2.

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1 **III. LEGAL ANALYSIS**

2 The Referral includes three violations: failure to itemize contributions received from
3 joint fundraisers, inaccurate reporting of debts, and inaccurate reporting of cash on hand.

4 **A. Failure to Itemize Contributions**

5 The treasurer of a political committee is responsible for itemizing any contribution from
6 an individual if the contribution exceeds \$200 per calendar year either by itself or when
7 aggregated with other contributions from the same contributor.⁹ Each participating committee in
8 a joint fundraiser must file a memo Schedule A itemizing its share of gross fundraising receipts
9 as contributions from the original contributors to the extent required by 11 C.F.R. § 104.3(a).¹⁰

10 Here, the Committee disclosed \$42,601.49 in transfers received from Kansas Party Victory Fund
11 during the 2016 calendar year.¹¹ However, the Committee only itemized \$4,479.25 of the
12 contributions it received in connection with Kansas Party Victory Fund.¹² Therefore, \$38,122.24
13 in contributions was not itemized as required.¹³ Accordingly, the Commission finds reason to
14 believe that the Committee violated 52 U.S.C. § 30104(b)(3)(A) and 11 C.F.R.
15 § 102.17(c)(8)(i)(B).

⁹ 52 U.S.C. § 30104(b)(3)(A).

¹⁰ 11 C.F.R. § 102.17(c)(8)(i)(B). Itemization requires the amount of the contribution, the date of receipt, the full name and address of the contributor, the contributor's occupation and the name of his or her employer, and the calendar year-to-date total of all contributions from the same contributor. 11 C.F.R. § 104.3(a)(4)(i).

¹¹ See Kansas Democratic Party, Amended February Monthly Report (June 19, 2016) (reporting \$14,068.38 in joint fundraising transfers from Kansas Party Victory Fund and providing no itemization); Kansas Democratic Party, May Monthly Report (May 20, 2016) (reporting \$13,459.47 in joint fundraising transfers from Kansas Party Victory Fund and providing no itemization); Kansas Democratic Party, Pre-General Report (Oct. 27, 2016) (reporting \$15,073.64 in joint fundraising transfers from Kansas Party Victory Fund and providing no itemization); *see also* Notification at 3-4.

¹² See Kansas Democratic Party, October Monthly Report (Oct. 20, 2016) (reporting no joint fundraising transfers from Kansas Party Victory Fund, but itemizing \$4,479.25 in contributions connected to joint fundraising transfers from Kansas Party Victory Fund, presumably disclosed on another report).

¹³ *Id.*

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1 **B. Failure to Accurately Disclose Debts**

2 The Act and Commission regulations require political committees to disclose the amount

3 and nature of their outstanding debts and obligations until those obligations are extinguished.¹⁴

4 A political committee must file separate schedules for debts owed by and to the committee with a

5 statement explaining the circumstances and conditions under which each debt and obligation was

6 incurred and extinguished.¹⁵ A debt of \$500 or less must be reported at the time that payment

7 was made or within 60 days of the date the political committee incurs the debt, whichever comes

8 first, and a debt exceeding \$500 must be disclosed in the report that covers the date on which the

9 debt was incurred.¹⁶

10 Here, the Committee's 2016 August Monthly Report disclosed four debts with an

11 outstanding beginning balance of \$40,733.50, but the 2016 July Monthly Report disclosed no

12 debts at the close of the prior period.¹⁷ Similarly, the Committee's 2016 September Monthly

13 Report disclosed no outstanding debts at the beginning of the period, but the 2016 August

14 Monthly Report disclosed seven debts totaling \$42,238.13 outstanding at the end of the prior

15 period.¹⁸ Between the two inaccurate reports, there is a total of \$82,971.63 in debt reporting

16 discrepancies. Accordingly, the Commission finds reason to believe that the Committee violated

17 52 U.S.C. § 30104(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(a).

¹⁴ 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

¹⁵ 11 C.F.R. § 104.11(a).

¹⁶ 11 C.F.R. § 104.11(b).

¹⁷ Notification at 3.

¹⁸ *Id.*

1 **C. Failure to Accurately Disclose Cash on Hand**

2 The Act and Commission regulations require political committees to disclose the amount
3 of cash on hand at the beginning of each reporting period.¹⁹ The Committee's 2015 March and
4 April Monthly Reports contain discrepancies regarding the Committee's cash on hand.²⁰ In both
5 instances, the amount disclosed as the ending cash on hand in the previous month fails to match
6 the cash on hand reported at the beginning of the next month. Specifically, the Committee's
7 2015 February Monthly Report disclosed \$53,331.00 cash on hand at the end of the period, and
8 the 2015 March Monthly Report shows a beginning cash on hand of \$93,206.39, a discrepancy of
9 \$39,875.39.²¹ The Committee's 2015 April Monthly Report disclosed a beginning cash on hand
10 of \$54,765.40 compared to the ending cash on hand of \$94,640.79 disclosed on the 2015 March
11 Monthly report, a discrepancy of \$39,875.39.²² Between the two inaccurate reports, there is a
12 total of \$79,750.78 in cash on hand reporting discrepancies. Accordingly, the Commission finds
13 reason to believe that the Committee violated 52 U.S.C. § 30104(b)(1) and 11 C.F.R.
14 § 104.3(a)(1).

¹⁹ 52 U.S.C. § 30104(b)(1); 11 C.F.R. §§ 104.3(a)(1), 104.12.

²⁰ Notification at 1.

²¹ *Id.*

²² *Id.*