

FEDERAL ELECTION COMMISSION
FIRST GENERAL COUNSEL'S REPORT

MUR: 7713

DATE COMPLAINT FILED: March 4, 2020

DATE OF NOTIFICATION: March 9, 2020

RESPONSE RECEIVED: March 31, 2020

DATE ACTIVATED: July 31, 2020

EXPIRATION OF SOL: January 23, 2025

ELECTION CYCLE: 2020

COMPLAINANT: Myra Koutzen

RESPONDENT: Thomas R. Mills

Tom Mills Committee to Elect Tom Mills as
Commissioner
Larry Sommers

**RELEVANT STATUTES AND
REGULATIONS:** 52 U.S.C. § 30121

INTERNAL REPORTS CHECKED: None

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

30 The Complaint alleges that Thomas Mills, a candidate for Commissioner in Palm Beach
31 Shores Town, Florida, accepted a \$100 donation from a Canadian citizen in connection with his
32 campaign. Mills acknowledges that his campaign accepted the donation and asserts that the
33 donation was returned on March 6, 2020. Given the specific circumstances, including the
34 modest amount at issue and the fact that the donation was refunded relatively soon after its
35 receipt, we recommend that the Commission exercise its prosecutorial discretion and dismiss the
36 allegation that Thomas R. Mills, Tom Mills Committee to Elect Tom Mills as Commissioner,
37 and Larry Sommers violated 52 U.S.C. § 30121 and caution the Respondents against future
38 similar violations.

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 Mills acknowledges accepting a \$100 donation from Larry Sommers, a citizen of
 3 Canada.¹ Mills asserts that the donation was accepted in error, was not caught by the campaign's
 4 Volunteer Deputy Treasurer, and was returned on March 6, 2020.² Sommers asserts that he was
 5 unaware that the Act prohibited him, as a foreign national, from making donations to candidates
 6 in the United States.³

7 The Federal Election Campaign Act of 1971, as amended ("Act"), and Commission
 8 regulations prohibit any "foreign national" from "directly or indirectly" making a contribution or
 9 donation of money or any other thing of value, or an expenditure, independent expenditure, or
 10 disbursement, in connection with a federal, state, or local election.⁴ The Act's definition of
 11 "foreign national" includes an individual who "is not a citizen of the United States or a national
 12 of the United States . . . and who is not lawfully admitted for permanent residence[.]"⁵

13 The Act further provides that no person shall knowingly solicit, accept, or receive a
 14 prohibited foreign national contribution or donation.⁶ The term "knowingly" is defined as
 15 having "actual knowledge" that the source is a foreign national, or being aware of "facts that

¹ Mills Resp. at 1 (Mar. 15, 2020); Compl. at 1, Ex. A (Mar. 4, 2020).

² Mills Resp. at 1, Ex. B. Mills also attached a copy of a letter to the Florida Election Commission, dated March 11, 2020, acknowledging the \$100 contribution and refund along with a notation that his committee will report the refund on its March 13, 2020, state financial disclosure report. *Id.* at Ex. C.

³ Sommers Resp. at 1 (Mar. 31, 2020).

⁴ 52 U.S.C. § 30121(a)(1); 11 C.F.R. § 110.20(b).

⁵ 52 U.S.C. § 30121(b); 11 C.F.R. § 110.20(a)(3).

⁶ 52 U.S.C. § 30121(a)(2).

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1 would lead a reasonable person to conclude that there is a substantial probability that" or "facts
 2 that would lead a reasonable person to inquire whether" the source is a foreign national.⁷

3 Respondents do not dispute that Sommers made, and Mills and his campaign accepted, a
 4 prohibited foreign national donation. In light of the modest amount of the donation and the fact
 5 that the donation was refunded relatively soon after its receipt,⁸ we recommend that the
 6 Commission exercise its prosecutorial discretion and dismiss the allegation that Thomas R.
 7 Mills, Tom Mills Committee to Elect Tom Mills as Commissioner, and Larry Sommers violated
 8 52 U.S.C. § 30121.⁹ We further recommend that the Commission caution the Respondents
 9 against future similar violations.

10 **IV. RECOMMENDATIONS**

11 1. Dismiss the allegation that Thomas R. Mills, Tom Mills Committee to Elect Tom
 12 Mills as Commissioner, and Larry Sommers violated 52 U.S.C. § 30121;
 13
 14 2. Caution Thomas R. Mills, Tom Mills Committee to Elect Tom Mills as
 15 Commissioner, and Larry Sommers against future violations of 52 U.S.C.
 16 § 30121;
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 18 3. Approve the attached Factual and Legal Analysis;
 19
 20 4. Approve the appropriate letters; and
 21
 22 5. Close the file as to all Respondents.

⁷ 11 C.F.R. § 110.20(a)(4).

⁸ The donation was received on January 23, 2020, and returned on March 6, 2020. *See* Compl. at 1, Mills Resp. at 1. Although not directly applicable to this case, if the treasurer of a federal committee accepts a contribution that did not appear to be made by a foreign national at the time it was accepted but later information surfaces indicating that the contribution was made by a foreign national, the treasurer must refund that contribution within 30 days. 11 C.F.R. §103.3(b)(2). Applying this regulation by analogy, there is information suggesting that the donation was returned soon after the campaign became aware of its illegality through the Complaint and a similar complaint filed with the Florida Election Commission in late February 2020. *See* note 2.

⁹ *See Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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10.16.20

13 Date

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