



FEDERAL ELECTION COMMISSION
Washington, DC 20463

BY EMAIL ONLY

April 29, 2022

h.kirbyjr@kirby-smith.com
Kirby-Smith Machinery, Inc.
6715 W. Reno Ave.
Oklahoma City, OK 73127

RE: MUR 7844
Kirby-Smith Machinery, Inc.

Dear Sir/Ma'am:

On November 4, 2020, the Federal Election Commission ("Commission") notified Kirby-Smith Machinery, Inc. of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to Kirby-Smith Machinery, Inc. at that time. Upon further review of the allegations contained in the complaint, and information supplied by respondents, the Commission, on April 19, 2022, decided to exercise its prosecutorial discretion and voted to dismiss this matter. The Commission then closed its file in this matter. The General Counsel's Report, which more fully explains the Commission's decision, 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). If you have any questions, please contact Don Campbell, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

Roy Q. Lockett

BY: Roy Q. Lockett
Assistant General Counsel

Enclosure:
General Counsel's Report

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7844

Respondents: Kirby-Smith Machinery, Inc.
 Restore Oklahoma and
 Cabell Hobbs in his official
 capacity as treasurer¹

Complaint Receipt Date: October 28, 2020

Response Date: November 24, 2020

EPS Rating:

**Alleged Statutory and
 Regulatory Violations:**

52 U.S.C. § 30119(a)
11 C.F.R. § 115.2(a), (c)

The Complaint alleges that Kirby-Smith Machinery, Inc. (“Kirby-Smith”) made a prohibited \$10,000 contribution as a federal contractor to Restore Oklahoma, an independent-expenditure-only political committee (“IEOPC”), in violation of the Federal Election Campaign Act of 1971, as amended (the “Act”).² The Complaint alleges that Kirby-Smith held at least two government contracts with the Department of Defense at the time that it made a contribution to Restore Oklahoma.³ During the timeframe that Kirby-Smith was allegedly a federal contractor, it made a contribution to Restore Oklahoma on September 10, 2020, in the amount of \$10,000.⁴ The Complaint also raises questions as to whether Restore Oklahoma knowingly solicited a prohibited federal contractor contribution.

¹ Restore Oklahoma is an independent-expenditure-only political committee registered with the Commission. Restore Oklahoma Statement of Organization at 2 (July 30, 2020).

² Compl. at 2, 6 (Oct. 28, 2020).

³ *Id.* Specifically, the Complaint asserts that Kirby-Smith held one contract covering the period of February 14, 2020, through October 6, 2020, in the amount of \$276,591, and a second contract from February 26, 2020, through November 23, 2020, in the amount of \$103,151. *Id.*

⁴ *Id.* at 3; Restore Oklahoma 2020 October Quarterly Report at 11 (Oct. 13, 2020).

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EPS Dismissal Report

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1 Kirby-Smith did not respond to the Complaint. In its Response, Restore Oklahoma states
2 that it immediately refunded Kirby-Smith's contribution upon learning of Kirby-Smith's federal
3 contractor status, and argues that the Complaint does not present any facts to suggest that a knowing
4 solicitation occurred.⁵ As disclosed on its 2020 30-Day Post-General Report, Restore Oklahoma
5 refunded the contribution on November 20, 2020.⁶

6 Based on its experience and expertise, the Commission has established an Enforcement
7 Priority System using formal, pre-determined scoring criteria to allocate agency resources and
8 assess whether particular matters warrant further administrative enforcement proceedings. These
9 criteria include (1) the gravity of the alleged violation, taking into account both the type of activity
10 and the amount in violation; (2) the apparent impact the alleged violation may have had on the
11 electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in
12 potential violations and other developments in the law. This matter is rated as low priority for
13 Commission action after application of these pre-established criteria. Given that low rating and the
14 low dollar amount at issue, we recommend that the Commission dismiss the Complaint consistent
15 with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and
16 use of agency resources.⁷ We also recommend that the Commission close the file and send the

⁵ Restore Oklahoma Resp. at 2 (Nov. 24, 2020).

⁶ Restore Oklahoma 2020 30-Day Post-General Report at 11 (Dec. 3, 2020).

⁷ *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985).

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1 appropriate letters.

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2/25/2022

Date

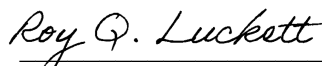
Lisa J. Stevenson
Acting General Counsel

Charles Kitcher
Associate General Counsel

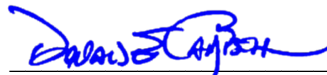
BY:



Claudio J. Pavia
Acting Deputy Associate General Counsel
for Enforcement



Roy Q. Lockett
Acting Assistant General Counsel



Donald E. Campbell
Attorney