



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

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| In the Matter of |) | |
| |) | |
| Mick Cornett for Congress, Mike |) | MUR 5781 |
| McCarville, in his official capacity as |) | |
| Treasurer, Mick Cornett Video |) | |
| Productions, Inc. |) | |

**STATEMENT OF REASONS OF CHAIRMAN ROBERT D. LENHARD, VICE CHAIRMAN
DAVID M. MASON AND COMMISSIONER ELLEN L. WEINTRAUB**

Ralph L. Harvey filed the complaint in this matter alleging that Michael Earl (“Mick”) Cornett, Mike McCarville, and Mick Cornett Video Productions, Inc. (“MCVP”) violated the Federal Election Campaign Act (the “Act”), 2 U.S.C. § 431 et seq. The alleged violations involve MCVP’s coordinated distribution of a mailer fewer than 45 days before a primary election. The Commission unanimously rejected recommendations of the Office of General Counsel and voted 4-0 to: (1) dismiss the matter with an admonishment, (2) close the file, and (3) send appropriate letters.¹

I. BACKGROUND

At issue is the alleged coordination between Mick Cornett, who ran unsuccessfully in 2006 to fill the seat in Oklahoma’s 5th Congressional District and MCVP, a company owned by Mr. Cornett.² The Complainant received a mailer from MCVP fewer than 45 days before the primary elections that included a photograph of Mr. Cornett and which advertised the audio-visual services of MCVP.³ The Complainant asserted that he had no previous dealings with MCVP, nor did he have any use for the video services offered by MCVP in the mailings.⁴ Rather, he suggests that the mailer was “an illegal corporate contribution done in coordination with the candidate” to increase name and face recognition for Mr. Cornett.⁵

¹ Voting affirmatively were Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky and Weintraub. Commissioner Walther did not vote.

² MUR 5781, Factual and Legal Analysis at 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

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In turn, Mr. Cornett submits that MCVP began its operations in 1999, which served as his sole source of income until he was elected to the Oklahoma City Council in 2001.⁶ Since Mr. Cornett was elected mayor of Oklahoma City in 2004, his son has run the daily operations of MCVP and Mr. Cornett indicated that his son was responsible for “all aspects of the brochure in question” and states that “similar mailings” had been made in previous years.⁷ According to Mr. Cornett’s response to the complaint, the mailing in question was sent to over 1,400 Chamber of Commerce members based on a Chamber mailing list.

II. DISCUSSION

Pursuant to the Act, corporations may not make contributions “in connection with” a federal election and corporate officers may not consent to such contributions. 2 U.S.C. § 441b(a). Moreover, federal candidates and political committees may not knowingly accept or receive such contributions. *Id.* A contribution includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i). “Anything of value” includes in-kind contributions. 11 C.F.R. § 100.52(d)(1).

Among other things, the Act defines in-kind contributions as expenditures made by any person “in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents.” 2 U.S.C. § 441a(a)(7)(B). A payment for a coordinated communication is an in-kind contribution to the candidate’s authorized committee with which it is coordinated and must be reported as an expenditure made by that candidate’s authorized committee. 11 C.F.R. § 109.21(b)(1).

To determine whether a communication is coordinated, 11 C.F.R. § 109.21 establishes a three-prong test. First, the communication must be paid for by a person other than a federal candidate, a candidate’s authorized committee, or political party committee, or any agent of any of the foregoing. Second, one or more of the four content standards described in 11 C.F.R. § 109.21(c) must be satisfied. Third, one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. *See* 11 C.F.R. § 109.21(a).

The mailer sent by MCVP may have constituted a coordinated communication under 11 C.F.R. § 109.21, which would have been prohibited under 2 U.S.C. § 441b because MCVP is incorporated. While it appears that all three prongs of the coordinated communication test are satisfied, *see* MUR 5781 Factual and Legal Analysis at 3-5, the cost of producing and posting the mailers was likely minimal.

Given the limited size and cost of the mailing and the Commission’s limited resources, the Commission determined that this issue was not worth pursuing but was more appropriately dismissed with an admonishment. *See Heckler v. Chaney*, 470 U.S. 821 (1985); *see also Ryan for Congress*, Matter Under Review 4791, Statement of Reasons by Vice Chairman Darryl R. Wold, Commissioners Lee Ann Elliott, Danny L. McDonald, David M. Mason, and Karl J.

⁶ *Id.*

⁷ *Id.*


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Sandstrom (deciding to admonish and close the file based on minimal cost of violation under *Heckler*).

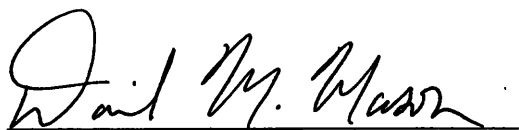
III. CONCLUSION

For the foregoing reasons, the Commission has determined to dismiss the matter with admonishment and close the file.

December 31, 2007



Robert D. Lenhard
Chairman



David M. Mason
Vice Chairman



Ellen L. Weintraub
Commissioner

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