



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

August 13, 2020

TO: Patricia C. Orrock
Chief Compliance Officer

FROM: Neven F. Stipanovic *NFS*
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Compliance Advice

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SUBJECT: Interim Audit Report on Mike Braun for Indiana (LRA 1096)

I. INTRODUCTION

The Office of the General Counsel has reviewed the draft Interim Audit Report ("Report") on Mike Braun for Indiana ("Committee"). The Report contains seven findings: (1) Misstatement of Financial Activity; (2) Failure to File 48-Hour Notices; (3) Disclosure of Occupation and/or Name of Employer; (4) Receipt of Apparent Prohibited Contributions — Loans; (5) Receipt of Contributions in Excess of the Limit; (6) Disclosure of Memo Entries and Candidate Loans; and, (7) Personal Use of Campaign Funds.¹ We concur with the findings, except regarding Finding 4. As explained below, we recommend that the Committee provide information to show that certain loans and lines of credit were made on a basis that assured repayment. We also recommend that the Committee be given an opportunity to show that an apparent corporate contribution represents the candidate's personal funds. If you have any

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a), (b)(6).

questions, please contact Danita Alberico, the attorney assigned to this audit.

II. RECEIPT OF APPARENT PROHIBITED CONTRIBUTIONS — LOANS

a. Assurance of Repayment — Bank Loans

The Committee received five loans and eleven lines of credit totaling \$7,049,405. These consisted of promissory/consumer bank notes and open ended lines of credit in the name of the Candidate. The Committee provided the auditors with loan agreements for the five loans obtained from lending institutions. The Audit Division found that the loans and lines of credit were not made in the ordinary course of business because they were not made on a basis that assured repayment. The Committee's supporting documentation did not indicate that the respective lending institutions had a perfected security interest in collateral owned by the Candidate or the Committee or that a written agreement in which the Candidate or the Committee had pledged future receipts to the lending institutions existed. The Audit Division recommends that the Committee demonstrate that the loans and lines of credit were made in the ordinary course of business and on a basis that assured repayment by submitting documentation, which may include, but is not limited to, statements from the financial institutions noting their policies on lending without guarantors or collateral. We concur, but recommend that the Audit Division be more specific in its recommendation and ask the Committee to provide relevant information from the respective lending institutions, as described below.

The Commission's regulations provide that a loan of money to a political committee or a candidate by a bank is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. 11 C.F.R. § 100.82. A loan will be deemed to be made in the ordinary course of business if, among other requirements, it is made on a basis that assures repayment. 11 C.F.R. § 100.82(a)(2). A loan, including a line of credit, shall be considered made on a basis that assures repayment if (1) the lending institution making the loan perfected a security interest in collateral owned by the candidate or political committee receiving the loan and (2) amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, does not exceed the contributions limits. 11 C.F.R. § 100.82(e)(1)(i)-(ii). A loan is also considered made on a basis that assures repayment if the lending institution has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts such as public funds, contributions, or interest income. 11 C.F.R. § 100.82(e)(2). The Committee does not fulfill these requirements because neither the Committee nor the Candidate provided collateral or pledged future receipts to secure the loans and lines of credit.

If the requirements of Section 100.82(e)(1) and (2) are not met, the Commission will consider the totality of the circumstances on a case-by-case-basis in determining whether a loan was made on a basis that assures repayment. 11 C.F.R. § 100.82(e)(3). The Committee contends that the totality of the circumstances shows that the loans and lines of credit were extended to the Candidate based on his status as a high net worth, creditworthy individual, but it has not provided any documentation to support this contention.² We are thus unable to determine

² The Committee raised this issue in its Request for Consideration of Legal Question filed with the Commission on April 8, 2020. The Commission did not agree to consider the request. See [Policy Statement](#)

whether, considering the totality of the circumstances, the loans and lines of credit were extended to the Candidate based on his status as a high net worth, creditworthy, individual and consequently were made on a basis that assures repayment.

Although the Committee reported the terms of the loans and lines of credit on Schedule C-1, *see* 11 C.F.R. § 104.3(d)(1)(i)-(iv), the Committee did not include the required lending institution certifications. Under section 104.3(d)(1)(v), a lending institution must certify that the borrower's responses are accurate to the best of the lender's knowledge, that the loan or line of credit was made or established on terms and conditions no more favorable at the time than those imposed for similar credit granted to borrowers of comparable credit worthiness, and that the lending institution is aware of the requirement for terms which assure repayment. Because the lending institutions did not certify the loans and lines of credit, we cannot, at this stage, rely on the disclosure reports to evaluate the Committee's contention. The Committee may, however, submit lending institution certifications and amend its disclosure reports consistent with 11 C.F.R. § 104.3(d)(1) to support its contention that the loans and lines of credit were made on a basis that assured repayment.

The Committee may also provide other information to demonstrate that the loans and lines of credit were based on the assurance of repayment. We, therefore, recommend that the Audit Division specify the other information the Committee could provide. For example, the Committee should be encouraged to include the following information from each of the lending institutions at issue: (1) the length of time of the Candidate's relationship with the bank; (2) the Candidate's creditworthiness, net worth, assets and repayment history; (3) the bank's underwriting criteria for unsecured loans of the type made to the Candidate; and (4) information demonstrating that the loan terms were not unduly favorable to the candidate. The Commission found this type of information relevant in prior matters addressing whether loans made by banks were based on the assurance of repayment. *See* MUR 5198 (Cantwell 2006 Committee), First General Counsel's Report (Jan. 7, 2004), at 9-10; Commission Certification in the Matter of the Honorable Maria Cantwell; Cantwell 2006 and Keith Grinstein, as treasurer; U.S. Bank National Association (Jan. 13, 2004) (Commission found no reason to believe a violation occurred after Committee submitted information from bank showing candidate's long-standing and pre-existing relationship, creditworthiness, net worth, assets and repayment history, and that candidate substantially exceeded the bank's underwriting criteria for an unsecured loan); Advisory Opinion 1994-26 (Cunningham) (Commission found lines of credit that pre-existed candidacy were made on basis that assured repayment and that candidate's use of the lines of credit was permissible based on his personal financial status and loan terms that were not unduly favorable to the candidate).

b. Corporate Contributions Reported as Candidate Loans

The auditors identified two checks received by the Committee totaling \$1,500,000 that

[Regarding a Program for Requesting Consideration of Legal Questions by the Commission \("Program"\), 84 Fed. Reg. 36602 \(July 29, 2019\) \(two or more Commissioners must agree that the Commission should consider the request\).](#)

appear to be from a corporation. The checks were from Meyer Distributing, but the Committee reported them as loans from the Candidate's personal funds. The Candidate was the president of Meyer Distributing during the audit period. The Committee never repaid the \$1,500,000. The Committee contends that the two checks were issued to the Candidate pursuant to his employment agreement as compensation for services he provided to Meyer Distributing. The Audit Division recommends that the Committee submit documentation demonstrating that the contributions totaling \$1,500,000 were not from a prohibited source or, if prohibited, were resolved through timely refunds. The Audit Division, however, does not address the Committee's contention that the loans were made from personal funds or provide guidance on the documentation the Committee should submit to demonstrate that the loans were made from the Candidate's personal funds.

Personal funds of a candidate include income received during the current election cycle, including salary and other earned income that the candidate earns from bona fide employment.³ 11 C.F.R. § 100.33(b)(1). The Committee contends that the \$1,500,000 represents compensation paid to the Candidate from Meyer Distributing for services rendered pursuant to his employment agreement. We recommend that the Audit Division present this issue in the Report and give the Committee an opportunity to show that the funds represent salary or other earned income the Candidate earned from bona fide employment and thus were the personal funds of the Candidate.

³ Personal funds of a candidate also include: (1) income from the candidate's stocks or other investments including interest, dividends, or proceeds from the sale or liquidation of such stocks or investments; (2) bequests to the candidate; (3) income from trusts established before the beginning of the election cycle; (4) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary; (5) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and (6) proceeds from lotteries and similar legal games of chance. 11 C.F.R. § 100.33(b)(2)-(7).