

From: mjbauer2@wi.rr.com
To: process@fec.gov
Subject: Comment on Enforcement Process of FEC, Fed. Reg. Vol. 78, No. 13
Date: 04/09/2013 10:24 AM

To Whom It May Concern:

This comment is in regards to the Request for Comment on Enforcement Procedures located in Vol. 78, No. 13 of the Federal Register on Friday, January 18, 2013. Specifically this comment will address the request for comment under section IV. Enforcement Process at the Pre-RTB Stage, A. Complaint Generated Matters, regarding two Office of the General Counsel's ("OGC") current practices related to the pre-Reason to Believe stage of the enforcement process per 2 U.S.C. 437g(a) and Part 111 of the FEC's regulations. In regards to whether the Commission should consider publicly available information not referenced or included in the complaint/response, I would suggest that the Commission continue to engage in the practice of considering material not specifically referenced or included in a complaint based on §437g(a) allowing any person to file a complaint with the Commission as well as the independent nature of the Commission in enforcing FECA. While the filing of a baseless complaint would have consequences for the filing party, maintaining the ability to investigate and consider evidence outside of the complaint/response furthers the Commission's enforcement of FECA independent of any motives of a complaining party. In accordance with reviewing evidence outside of the complaint, any exculpatory evidence obtained by the Commission should be considered along with the pending complaint in the interest of fairness. Additionally, since a reason to believe finding is not a finding that a violation of FECA has occurred, but allows for further investigation, any information obtained that may later turn out to be baseless may be corrected through the Commission's additional procedures.

In regards to the second major question presented in section IV. A., based on language in §437g(a)(2) of FECA ("on the basis of information ascertained in the normal course of carrying out its supervisory responsibilities"), the Act contemplates that the Commission may find a reason to believe that a violation occurred/may occur based on legal theories not alleged in the complaint. Overall, the purpose of the Commission is to enforce the Act, not serve as the legal representative of the person filing the complaint. As a result, if there are other legal theories that may be pursued based on the Act, the Commission in their knowledge and expertise should pursue all legal theories accordingly. The current practice of the OGC providing the parties with notice of any additional theories and allowing them to address them is also an appropriate means of affording due process which should be continued.

Thank you for your time in reviewing this comment.

Sincerely,

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