



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 2, 2008

MEMORANDUM

TO: John D. Gibson
Chief Compliance Officer

Joseph F. Stoltz
Assistant Staff Director
Audit Division

THROUGH: Patrina M. Clark
Staff Director

FROM: Christopher Hughey *pch*
Deputy General Counsel

Lawrence L. Calvert, Jr. *llc*
Associate General Counsel
General Law and Advice

Lorenzo Holloway *LH*
Assistant General Counsel
Public Finance and Audit Advice

Allison T. Steinle *ATS*
Attorney

SUBJECT: Addendum to Legal Analysis on Proposed Interim Audit Report on Friends for Menor (LRA 732) – Contributions from Personal Funds in Jointly Held Bank Accounts

This memorandum serves as an addendum to the Office of the General Counsel's legal analysis on the proposed Interim Audit Report ("IAR") on Friends for Menor ("the Committee"). In our legal analysis, we concluded that the candidate could not contribute more than half of the funds held in a jointly held bank account with his spouse pursuant to the "one-half interest rule" for jointly owned assets under 11 C.F.R. § 100.33(c)(2). The Audit Division has since brought to our attention that previous precedent has not applied the "one-half interest rule" in cases involving jointly held bank accounts if state law gives each party access to and control over the

whole.¹ Such state law has essentially served as the “instrument of conveyance or ownership” under 11 C.F.R. § 100.33(c)(1), permitting candidates to contribute up to 100 percent of the funds held in a jointly held bank account with their spouse.

Here, the candidate is a resident of the State of Hawaii, all accounts at issue were located in the State of Hawaii, and the transactions occurred in the State of Hawaii. Hawaii banking law states that there is a presumption that “[a]ny deposit account held in the names of two or more persons may be paid, on request and according to its terms, to any one or more of the persons.” Haw. Rev. Stat. § 412:4-105. Accordingly, under Hawaii banking law, the candidate appears to have had access to and control over 100 percent of the funds in the joint personal account with his spouse. Hawaii banking law essentially serves as the “instrument of conveyance or ownership” under 11 C.F.R. § 100.33(c)(1), precluding the application of the “one-half interest rule” of 11 C.F.R. § 100.33(c)(2). *See* LRA 543; MURs 3505 and 2292. Consequently, we withdraw our recommendation that the Audit Division revise the IAR to analyze the \$9,000 loan as a possible contribution by the candidate using the candidate’s spouse’s assets. If the candidate intended to make the contribution, he could have permissibly done so using all \$11,302 in the joint personal account.

¹ The Office of the General Counsel previously addressed contributions from personal funds in jointly held bank accounts in our legal analysis for the proposed Final Audit Report (“FAR”) on Bauer for President (LRA 543). We concluded that a jointly held bank account was not subject to the “one-half interest rule” because: (1) 11 C.F.R. § 110.10(b)(3), which was the precursor to the current regulation at 11 C.F.R. § 100.33(c), did not specifically address jointly held *bank accounts*, only “jointly owned assets”; (2) under the applicable state banking law, the jointly held bank account at issue was significantly different than other jointly owned assets because each party had access to and control over the entire account and could withdraw all the funds from the account at any time without the other party’s consent; and (3) in previous rulemakings, the Commission had recognized the differences between jointly held bank accounts and other jointly owned assets.

Our legal analysis in *Bauer* was consistent with our position in two enforcement matters: MUR 3505 (Klink) and MUR 2292 (Stein). In MURs 3505 and 2292, the First General Counsel’s Reports concluded that the “one-half interest rule” did not apply in those cases because each account holder of the joint bank account in question had access to and control over the whole under applicable state law. The applicable state banking law essentially served as the “instrument of conveyance or ownership” giving the candidate a 100 percent share in the funds under 11 C.F.R. § 100.33(c)(1).