



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 15 2010

Stephen M. Ryan
Matthew M. Leland
McDermott Will & Emery LLP
600 Thirteenth Street, NW
Washington, DC 20005

RE: MUR 6215
Tate Snyder Kimsey Architects Ltd.
J. Windom Kimsey

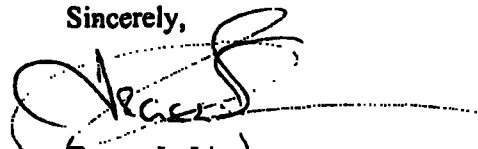
Dear Messrs. Ryan and Leland:

On October 15, 2010, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of violations of 2 U.S.C. §§ 441b, 441c, and 441f, provisions of the Federal Election Campaign Act of 1971, as amended, and 11 C.F.R. § 114.2, a provision of the Commission's regulations. Accordingly, the file has been closed in this matter as it pertains to Tate Snyder Kimsey Architects Ltd. and J. Windom Kimsey.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me at (202) 694-1650.

Sincerely,



Tracey L. Eigon
Attorney

Enclosure
Conciliation Agreement

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6215
Tate Snyder Kimsey Architects Ltd.)
J. Windom Kimsey)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint. The Federal Election Commission ("Commission") found reason to believe that Tate Snyder Kimsey Architects Ltd. violated 2 U.S.C. §§ 441b, 441c, and 441f and 11 C.F.R. § 114.2, and J. Windom Kimsey (collectively, "Respondents") violated 2 U.S.C. §§ 441b and 441f and 11 C.F.R. § 114.2.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

- I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).
- II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.
- III. Respondents enter voluntarily into this agreement with the Commission.
- IV. The pertinent facts in this matter are as follows:
 1. Tate Snyder Kimsey Architects Ltd. ("TSKA") is an architectural design firm incorporated in the state of Nevada. The firm was founded in 1960 and provides architectural services to local, state and federal agencies. TSKA does not have a registered political committee with the Commission.

2. J. Windom Kimsey is the President and Design Principal of TSKA.
3. Friends for Harry Reid ("Reid Committee") is the principal campaign committee for Senator Harry Reid.
4. TSKA held a fundraiser in honor of Senator Harry Reid on February 17, 2009 ("Reid Fundraiser").

Applicable Law

5. The Federal Election Campaign Act ("the Act") prohibits corporations from making contributions from their general treasury funds in connection with the election of any candidate for federal office. See 2 U.S.C. § 441b(a).
 6. The Act also prohibits any person from making a contribution in the name of another and from knowingly permitting his or her name to be used to effect such a contribution. See 2 U.S.C. § 441f.
 7. Commission regulations provide that examples of making a contribution in the name of another include:
 - (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, or
 - (ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.
- 11 C.F.R. § 110.4(b)(2)(i)-(ii).

8. Section 441b(a) of the Act also prohibits any officer or director of any corporation from consenting to any contribution by the corporation. This prohibition extends to the facilitation of contributions to candidates or political committees by a corporation and its officers, directors or agents. *See* 11 C.F.R. § 114.2(f)(1). Facilitation includes officials of a corporation directing subordinates to plan, organize or carry out the fundraising project as part of their work responsibilities using corporate resources, *see* 11 C.F.R. § 114.2(f)(2)(i)(A); soliciting contributions outside the corporation's restricted class, consisting of its stockholders and executive or administrative personnel, and their families, *see* 11 C.F.R. §§ 114.1(j) and 114.2(f); using a list of customers, clients, vendors, or others not within the restricted class to solicit contributions or distribute invitations to fundraisers without advance payment for the fair market value of the list, *see* 11 C.F.R. § 114.2(f)(2)(i)(C); providing catering or other food services operated or obtained by the corporation without advance payment for the fair market value of the services, *see* 11 C.F.R. § 114.2(f)(2)(i)(E); and collecting and forwarding contributions earmarked to candidates or their authorized committees, *see* 11 C.F.R. §§ 110.6(b)(2)(ii) and 114.2(f)(2)(i)(E).

9. Section 441c of the Act prohibits direct or indirect contributions by a federal contractor at any time between the commencement of negotiations and the latter of the completion of performance under the contract or the termination of negotiations for such contract. *See also* 11 C.F.R. §§ 115.1, 115.2.

The Reid Fundraiser

10. In December of 2008, J. Windom Kimsey attended a fundraising event for Senator Harry Reid. After attending the event, Mr. Kimsey decided to hold a similar fundraiser

for Senator Reid. Mr. Kimsey and other TSKA staff then worked with staff from Senator Reid's local campaign office to hold the event on February 17, 2009.

11. Mr. Kimsey instructed his assistant, Peggy Memering, who normally plans office parties and performs administrative tasks, to handle the logistics of the event and gave her a list of potential contributors for the event. Ms. Memering spent a significant amount of time organizing the event by communicating with the Reid Committee staff, helping to produce the invitations, overseeing the guest list, arranging for a photographer, and working with the catering vendor, Wolfgang Puck Café in Las Vegas.

12. In particular, Ms. Memering communicated with Reid Committee staff to ensure that the Committee received all of the contributions, and on at least one occasion, mailed a contribution check to the Committee.

13. In certain communications, Reid Committee staff sought her assistance in collecting outstanding contributions and in compiling and updating the guest lists. For example, Christopher Anderson, a staff member of the Reid Committee, wrote in an email to Ms. Memering, "Peggy, Here is the updated list of who attended and contributions. Please let us know what contributions we can still expect." In response, Ms. Memering would send in an updated list.

14. In addition, Mr. Kimsey asked Jane Michael, TSKA's marketing and graphic design specialist, to create invitations for the event. Ms. Michael spent approximately 18 hours working on the invitations in TSKA's Las Vegas Office, and TSKA paid her hourly wage of \$22.07 for the time she spent creating the invitations. TSKA reimbursed both Ms. Michael as well as Ms. Memering for costs relating to the production of the invitations, but did not charge the Reid Committee for such costs or for Ms. Michael and Ms. Memering's time.

15. Furthermore, although Mr. Kimsey notified Megan Jones, a Reid Committee staff member, that TSKA would be sending the invitations out during the week of January 19, 2009, the Reid Committee did not pay the costs for mailing the invitations.

16. Prior to the event, Ms. Jones sent Mr. Kimsey a draft invitation, which stated "Tate Snyder Kimsey Architects invite you to a luncheon honoring Senator Harry Reid" and a contribution form stating,

Federal law requires us to use our best efforts to collect and report the name and mailing address, occupation and name of employer of individuals who make contributions. Corporate contributions and contributions from non-U.S. citizens who are not lawfully admitted permanent residence [sic] are prohibited. All contributions by individuals must be made from personal funds and may not be reimbursed or paid by any other person.

The final invitation prepared and distributed by TSKA included the same language.

17. Many of the individuals who received the invitations were not employees of TSKA. TSKA and Reid Committee staff exchanged numerous emails containing attachments where contributors were listed by name and employer. In one email, dated February 10, 2009, Megan Jones of the Reid Committee asked Ms. Memering to invite a particular individual who worked for an outside trade association. Later that day, Christopher Anderson sent another email to Mr. Kimsey asking whether members of the trade association had been invited and requesting a copy of the guest list. On another occasion, the Reid Committee asked if Ms. Memering could determine whether employees of IBE Consulting, Inc. would be sending in personal checks after the Committee had received a corporate check from the corporation.

18. The catering costs for the fundraiser totaled \$1,615.39. In email correspondence between Ms. Memering and the Reid Committee, the parties agreed that TSKA would directly pay the vendor and then the Reid Committee would send a reimbursement check. Mr. Kimsey,

however, paid the catering costs using his personal credit card and submitted these expenses to TSKA in his expense report for reimbursement. The Reid Committee reimbursed the company \$1,615.39 for the catering expenses.

19. TSKA collected and forwarded contributions on at least one occasion. On March 31, 2009, Ms. Memering sent the Reid Committee an email notifying it that she was putting a check from Alan Locke for \$1,000 in the mail. In an email dated March 13, 2009, Ms. Memering faxed a copy of a contribution form with the contributor's credit card number to the Reid Committee apparently because the Committee had not received a copy. Ms. Memering further indicated that she would be looking into "the other missing donations," possibly suggesting that she may be sending other contributions to the Reid Committee that it may not have received.

20. The Reid Fundraiser raised \$20,650.

Reimbursed Contributions

21. TSKA used corporate funds to reimburse two TSKA employees: Randy Spitzmesser, who made a \$1,000 contribution to the Reid Committee, and Christopher Fenton, who made a \$500 contribution to the Reid Committee.

22. Before the Reid Fundraiser, Mr. Spitzmesser approached Mr. Kimsey about seeking a reimbursement for his \$1,000 contribution to the Reid Committee. Mr. Kimsey agreed to reimburse him from TSKA's corporate account.

23. At Mr. Kimsey's request, Ms. Memering approached Mr. Fenton to ask whether he would contribute to the fundraiser. When Mr. Fenton expressed concern that he may not have adequate funds, Ms. Memering informed him that Mr. Kimsey would authorize a reimbursement

to Mr. Fenton. Mr. Fenton's expense report itemized his \$500 contribution to the Reid Committee.

24. Shelly Lyons, TSKA's Business Manager and Office Manager, prepared the reimbursement checks for Messrs. Spitzmesser and Fenton at Mr. Kimsey's request.

25. Mr. Kimsey repaid Mr. Spitzmesser's \$1,000 reimbursement to TSKA with a personal check drawn from his personal bank account on October 23, 2009, and Mr. Fenton repaid his \$500 reimbursement to TSKA with a personal check drawn from his account on October 25, 2009.

Government Contractor Contributions

26. One of TSKA's clients is the General Services Administration ("GSA"), which handles acquisition and procurement for the federal government.

27. On October 8, 2003, TSKA signed an Indefinite Delivery Indefinite Quantity ("IDIQ") contract with GSA, pursuant to which the government could buy an "indefinite-quantity" of services for a one-year period (plus four one-year options). See 48 C.F.R. § 16.504(a). Respondents contend that TSKA received no task orders and performed no work for the Federal Government pursuant to this IDIQ contract.

28. On February 27, 2008 GSA sent out a request for proposals for another IDIQ contract. On September 16, 2008, TSKA was selected for the contract. The parties executed the contract on April 2, 2009. Respondents contend that no work was performed on the IDIQ contract by TSKA during this period.

29. On April 9, 2009, GSA issued a request for proposals for an \$8.3 million design contract for the modernization of the Otay Mesa Land Port of Entry. On July 24, 2009, TSKA was awarded the contract.

30. TSKA contends that it did not make any contributions with the intent of receiving, in return, any governmental benefit, and the Commission has not conducted an investigation and has no information that TSKA did so.

V. Respondents committed the following violations:

1. Respondents violated 2 U.S.C. §§ 441b and 441f.
2. Respondents violated 2 U.S.C. § 441b and 11 C.F.R. § 114.2.
3. For the purpose of resolving this matter without the need for additional proceedings before the Commission, TSKA will not contest the Commission's finding that it violated 2 U.S.C. § 441c.

VI. 1. Respondents will cease and desist from violating 2 U.S.C. §§ 441b and 441f and 11 C.F.R. § 114.2.

2. TSKA will not violate 2 U.S.C. § 441c in the future.

VII. Respondents will pay a civil penalty to the Federal Election Commission in the amount of \$34,800, pursuant to 2 U.S.C. § 437g(a)(5)(B).

VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

IX. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

X. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

XI. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Christopher Hughey
Acting General Counsel

BY: Kathleen Guith
Kathleen Guith
Acting Associate General Counsel
for Enforcement

10-15-10
Date

FOR THE RESPONDENTS:

J. Windom Kimsey
Name: J. Windom Kimsey
Title: President

9/25/10
Date