FOLEY

FOLEY & LARDNER LLP
ATTORNEYS AT LAW

MEMORANDUM

CLIENT-MATTER NUMBER
045955-1-3

TO: Ana Pena-Wallace

FROM: Cleta Mitchell, Esq.

DATE: March 1, 2005

RE: Huffman for Congress and David Huffman (MUR5507)

Attached are the original affidavits of Dean Proctor and Lawrence David Huffman and property appraisals that were faxed to you on Friday, February 25, 2005. If you have any questions, please contact me at 202-295-4081.

Thank you.

CMI/lmm

Attachment(s)

Catawba County
North Carolina

Affidavit of Dean Proctor

I, Dean Proctor, do hereby affirm and state:

1. David Huffman was a candidate for the Republican nomination for the U.S. House of Representatives for the 10th congressional district of North Carolina during the 2004 primary and runoff elections, and his campaign committee was the Huffman for Congress committee.

2. I served as the Finance Chairman of the Huffman for Congress committee.

3. I had previously helped candidates for state and local office raise money for their campaigns, including having helped David Huffman in his candidacies for Sheriff of Catawba County.

4. I had not previously served as a Finance Chairman for a federal campaign committee.

5. I worked with David Huffman to raise funds for his congressional campaign including helping to arrange for a loan to the Huffman for Congress campaign.

6. I spoke with several bankers during the May-June 2004 time period regarding the possibility that David Huffman might wish to borrow funds to loan to his congressional campaign.

7. Every banker with whom I spoke advised me that David Huffman was well known and well respected in the community, had sufficient assets and no debts such that they believed him to be creditworthy and that they would be willing to loan him funds for his campaign.

8. In early to mid- June, 2004, I was asked by the campaign to expedite the loan to David Huffman because of the increasing expenses of the campaign.

9. As I recall, David Huffman was either out of state or leaving the state for a meeting for several days during the time period when it was determined that the loan needed to be obtained sooner, rather than later, in order to be able to meet the needs of the campaign.

10. I spoke with the representative from BB&T bank and we decided that since I already had a line of credit with the bank, I could draw down on my line of credit and loan the funds to David Huffman for the loan to the campaign and then when David Huffman was back in town or available he would come in and execute the paperwork to make the loan directly to David Huffman.

11. I was not aware that there was anything wrong with handling the transaction in this manner.

12. On June 15, 2004, I drew down on my line of credit at BB&T bank and loaned the money to David Huffman for him to loan to his campaign.

13. David Huffman loaned the money to the Huffman for Congress campaign on June 17, 2004.

14. I told a friend on Saturday, July 17, 2004, who had come to my house the manner in which the loan had been obtained for the campaign and my friend told me that federal law doesn't allow a campaign loan to be handled in this manner; I immediately contacted the others involved in the campaign's finances and advised them that we might have a problem. We immediately contacted an FEC attorney who advised us

that we were not supposed to have handled the loan in that manner and that we needed to immediately reverse the transaction and report the situation to the FEC.

15. The next business day, Monday, July 19, 2004, the following steps were taken to reverse the earlier transaction:

- David Huffman cashed the campaign certificate of deposit at Peoples State Bank;
- $100,000 from the PSB certificate of deposit was paid to the campaign;
- the Huffman for Congress campaign repaid David Huffman the $100,000 loan that had originated with BB&T
- David Huffman repaid me the $100,000 that I had obtained from BB&T bank from my line of credit; and
- I repaid BB&T the $100,000 drawn down on my line of credit
- David Huffman borrowed $150,000 directly from BB&T bank

16. The transactions enumerated in Paragraph 15 were concluded on the morning of the first business day after I learned that federal campaigns are not allowed to accept loans made to or through a person other than the candidate himself / herself, even though it was never intended that the loan would be from me.

17. Our attorney notified the FEC of the situation and requested a meeting with the Office of General Counsel. I traveled to Washington with David Huffman and the campaign's chairman, Jamie Parsons, and we (along with our attorney) met with the Office of General Counsel of the FEC on July 30, 2004 and we fully disclosed the sequence of events involving the loan.

18. The amount of funds available to the campaign for expenditure did not change as a result of the loan from BB&T bank because the campaign had at its disposal the $100,000 on deposit at Peoples State Bank, starting from the date when the BB&T bank loan proceeds were deposited into the campaign account through the date when the BB&T loan was repaid. Thus, the loan proceeds did not alter the amount of funds actually available to the campaign during the entire time when the BB&T loan to me was outstanding.

19. I made every effort to rectify and duly report the transactions that were in error as soon as I learned that proper procedures hadn't been followed.

20. The erroneous transaction was inadvertent and resulted from not knowing the intricacies of the FEC rules.

21. My actions were not knowing or willful violations of the campaign finance law.

Further Affiant sayeth not.

Dean Proctor

On this 25th day of February, 2005, Dean Proctor personally appeared before me and stated under penalty of perjury that the above and foregoing statements are true and correct to the best of his information and belief.

SEAL

Notary Public

My Commission Expires:

My Commission Expires 05-13-2009

County of Catawba
North Carolina

Affidavit of Lawrence David Huffman

I, Lawrence David Huffman, do hereby affirm and state:

1. I was a candidate for the Republican nomination to the United States House of Representatives for the 10th district of North Carolina during the 2004 primary election in North Carolina.

2. On March 30, 2004, I obtained a personal loan from People's State Bank in the amount of $100,000 to be available for use by my campaign in the event such funds were necessary for campaign expenses.

3. I did not want the loan proceeds used for the campaign if fundraising receipts were sufficient to meet campaign expenses, but wanted the funds readily available for campaign purposes if they were needed.

4. I used the loan proceeds from my loan from People's State Bank to purchase a certificate of deposit at People's State Bank in the amount of $100,000 in order that the interest earned on the certificate of deposit could be used to offset the interest on my loan in the same amount.

5. The certificate of deposit was put in my name by the bank, although both my campaign chairman and I believed that certificate of deposit was in the campaign's name, since the purpose of the loan was to make funds available for campaign purposes.

6. I was not aware until I cashed the certificate of deposit that the bank had issued the CD in my name rather than the Huffman for Congress campaign; the campaign had reported the personal loan to me in the 1st Quarterly Report filed by the campaign on April 15, 2004 as a campaign loan which is what was intended.

7. In June, 2004, I discussed with my Finance Chairman, Dean Proctor, my intent to borrow additional funds for the campaign.

8. Dean Proctor talked informally with various bankers about my plan to borrow additional funds for the campaign and different bankers assured him that I would be approved to borrow another $100,000 for my campaign whenever I decided to execute the transaction.

9. After I was advised that the loan from BB&T was not made in compliance with the FEC regulations and requirements, I immediately took steps to reverse the transaction and correct the mistake(s).

10. On July 19, 2004, I cashed the Certificate of Deposit at People's State Bank and directed the check be made payable to my campaign, Huffman for Congress, since that is what the loan purpose was and since the certificate of deposit was always intended to be used by the campaign, if it was used at all.

11. I gave the $100,000 check to the Huffman for Congress campaign and the campaign, in turn, provided a check payable to me in the amount of $100,000, which repaid the personal loan I had made to the campaign earlier with the loan proceeds from BB&T bank.

12. I deposited the check from the Huffman for Congress campaign into my personal account at First Citizens Bank and directed that a cashiers check be issued by First Citizens Bank to Dean Proctor which repaid the amount drawn by Mr. Proctor from his line of credit at BB&T bank.

13. After reversing the series of transactions involving BB&T bank involving Dean Proctor, I personally borrowed $150,000 from BB&T bank and the funds were used in my campaign.

14. I have since secured the $150,000 loan from BB&T bank with collateral in which I have ownership.

15. I have requested and will furnish financial information and other appraisals to demonstrate that I, individually, have sufficient equity and ownership to secure the loan at BB&T bank.

16. The amount of funds available to the campaign for expenditure did not change as a result of the loan from BB&T bank because the campaign had at its disposal the $100,000 on deposit at Peoples State Bank, starting from the date when the BB&T bank loan proceeds were deposited into the campaign account through the date when the BB&T loan was repaid. Thus, the loan proceeds did not alter the amount of funds actually available to the campaign during the entire time when the BB&T loan to Dean Proctor was outstanding.

17. My campaign and I made every effort to rectify and duly report the transactions that were in error as soon as we learned that proper procedures hadn't been followed.

18. The erroneous transaction was inadvertent and resulted from not knowing the intricacies of the FEC rules.

19. My actions and those of everyone involved in my campaign were mistakes, but were not knowing or willful violations of the campaign finance law.

Further Affiant Sayeth Not.

Lawrence David Huffman

Before me personally appeared this 25th day of February, 2005, Lawrence David Huffman who swore under penalty of perjury that the above statements are true and correct to the best of his knowledge and belief.

SEAL

Notary Public

My Commission Expires:

[redacted]

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5496
DATE COMPLAINT FILED: July 30, 2004
DATE OF NOTIFICATION: August 6, 2004
DATE ACTIVATED: October 19, 2004
[redacted]
EXPIRATION OF SOL: January 16, 2009

MUR: 5507
DATE COMPLAINT FILED: August 4, 2004
DATE OF NOTIFICATION: August 11, 2004
DATE ACTIVATED: October 19, 2004
[redacted]
EXPIRATION OF SOL: January 16, 2009

PRE-MUR: 425
DATE REFERRED: August 9, 2004
DATE ACTIVATED: October 19, 2004
[redacted]
EXPIRATION OF SOL: March 30, 2009

COMPLAINANTS: MUR 5496: Max W. Baker
MUR 5507: Sandy Lyons
Patrick McHenry
George Moretz

SOURCE OF PRE-MUR: *Sua sponte* submission by Huffman for Congress

RESPONDENTS: Lawrence David Huffman
Huffman for Congress and David Blanton, in his official capacity as treasurer
Dale Jarrett Ford, Inc.
Dean Proctor
People's State Bank

[redacted]

RELEVANT STATUTES: 2 U.S.C. § 431(8)
2 U.S.C. § 431(26)
2 U.S.C. § 432(e)(2)
2 U.S.C. § 437g
2 U.S.C. § 434(b)
2 U.S.C. § 441a
2 U.S.C. § 441b
2 U.S.C. § 441f
2 U.S.C. § 441i(e)(1)(A)
11 C.F.R. § 100.33
11 C.F.R. § 100.52
11 C.F.R. § 100.82
11 C.F.R. § 104.3
11 C.F.R. § 110.1(i)
11 C.F.R. § 110.10

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: [redacted][1]

I. INTRODUCTION

The Commission received two complaints questioning the source and legality of a number of loans the candidate, Lawrence David Huffman, made to the Huffman for Congress committee ("the Committee") during the 2004 election cycle.[2] According to the complaints, the candidate obtained over $250,000 in bank loans and reported the source of the money as personal funds. However, according to the allegations, the candidate did not possess sufficient assets to make those loans. In addition, the complainants assert that the Committee raffled off a 2004

[redacted]

[2] Huffman was a candidate for the U.S. House of Representatives from the 10th District of North Carolina during the 2004 primary election. Huffman received 35% of the vote in the primary election, but needed 40% to avoid a runoff. Heather Howard, *Recount Confirms McHenry Winner; GOP Candidate for Congressional Seat Says He Hopes to Unite Party*, CHARLOTTE OBSERVER, August 26, 2004, at 1B. On August 17, 2004, he lost the runoff election by 85 votes to Patrick McHenry. *Id.* This was Huffman's first federal campaign. Previously, Huffman served as Sheriff of Catawba County, North Carolina, an elected position, for 22 years. Jim Morrill, *Lawmakers Weigh in on 10th Race; Group Backed by GOP Officials Runs Ad Blasting 3 Candidates in Primary*, CHARLOTTE OBSERVER, July 17, 2004, at 1B. Huffman's three opposing candidates in the primary election submitted one of the complaints in this matter.

Ford Explorer XLT but did not disclose a disbursement for the purchase of the vehicle in its reports to the Commission. Based on this, they allege that the Committee received an in-kind contribution from the dealership.

At about the same time the complaints were submitted, the Committee, through its counsel, made a *sua sponte* submission disclosing the details of a $100,000 loan the candidate obtained through Dean Proctor, the campaign's Finance Chairman.[3] The *sua sponte* documents also address some of the other loans the candidate made to the Committee. Based on all of the information available in this matter, and for the reasons set forth below, this Office recommends that the Commission: 1) find reason to believe that Dean Proctor knowingly and willfully made an excessive contribution to Huffman for Congress and knowingly and willfully made a contribution in the name of another in violation of 2 U.S.C. §§ 441a(a)(1) and 441f; 2) find reason to believe that the candidate knowingly and willfully accepted an excessive contribution and a contribution in the name of another from Dean Proctor in violation of 2 U.S.C. §§ 441a(f) and 441f; 3) find reason to believe the Committee knowingly accepted an excessive contribution and a contribution in the name of another from Dean Proctor in violation of 2 U.S.C. §§ 441a(f) and 441f; 4) find reason to believe that People's State Bank violated 2 U.S.C. § 441b by making a loan to the candidate outside the ordinary course of business; 5) find reason to believe that the candidate and the Committee accepted a loan outside the ordinary course of business from People's State Bank in violation of 2 U.S.C. § 441b; 6) find reason to believe that the Committee violated 2 U.S.C. § 434(b) for inaccurately reporting a $100,000 loan and a $150,000 line of

[3] Counsel for the Committee contacted this Office on July 20, 2004 and then met with staff on July 30, 2004. The candidate, Dean Proctor, and Jamie Parsons, the campaign chairman, also attended the meeting. The *sua sponte* documents were submitted to this Office on August 9, 2004.

credit; 7) find no reason to believe that the candidate used state campaign funds for his federal campaign in violation of 2 U.S.C. § 441i(e)(1)(A); 8) find no reason to believe that Dale Jarrett Ford, Inc. made a prohibited corporate contribution in violation of 2 U.S.C. § 441b; and 9) find no reason to believe that either the candidate or the Committee accepted a prohibited corporate contribution from Dale Jarrett Ford, Inc. in violation of 2 U.S.C. § 441b.

II. FACTUAL AND LEGAL ANALYSIS

A. THE CANDIDATE'S LOANS

The complaints question the source and legality of six loans the candidate reported making to the Committee, totaling $266,747.01. The Committee's reports filed with the Commission indicate that the source of those loans was the candidate's personal funds. However, the complaints allege that the candidate had insufficient personal assets to make the loans. In support of that contention, the complaints make reference to the Financial Disclosure Statement the candidate filed with the U.S. House of Representatives. They also cite to news accounts that indicate that the candidate borrowed $100,000 against his retirement in early 2004 and that another $166,000 came from a bank loan. *See* Andrew Mackie, *High Stakes*, HICKORY DAILY RECORD, July 18, 2004. However, the complaints do not specify the particular source of the funds, but only argue that the candidate did not have enough personal assets to provide funds for these loans. The Committee's *sua sponte* submission addresses two of the loans questioned in the complaints and also provides information pertaining to a $150,000 line of credit.

Based on a review of the Committee's disclosure reports, it appears that from January through December 2004, the candidate loaned the Committee a total of $416,799.54. Of that

total, $167,142.54 was reported as coming from personal funds, $149,657 was reported as bank loans, and $100,000 was reported as a loan obtained through Dean Proctor.[4]

The loans complained of are the following, as reported on the Committee's original disclosure reports:

January 16, 2004	$6,647.01
March 1, 2004	$100.00
March 30, 2004	$100,000.00
May 10, 2004	$50,000.00
June 9, 2004	$10,000.00
June 17, 2004	$100,000.00

The Committee reported these loans to the Commission soon after they were each incurred. *See* 2004 April Quarterly Report and 2004 July Quarterly Report. Each of the loans was reported as coming from the candidate's personal funds. However, when the January and March loans were first reported, the Committee failed to include information concerning the due dates or interest rates. *See* 2004 April Quarterly Report. In response to a Request for Additional Information ("RFAI") from the Reports Analysis Division ("RAD"), the Committee amended the Schedule C-1 forms filed as part of its 2004 April Quarterly Report to indicate "None" for the due dates and "0%" for the interest rates for the January and March loans.[5]

1. ***Loans from the Candidate's Personal Funds***

As will be discussed in further detail, contrary to what was actually reported by the Committee, of the loans the candidate made to the Committee, only $66,747.01 was actually

[4] As reflected on the Committee's most recently amended disclosure reports, the candidate made the following loans to the Committee in 2004: 01/16/04 - $6,647.01; 3/1/04 - $100; 5/10/04 - $50,000; 6/09/04 - $10,000; 06/17/04 - $100,000; 7/19/04 - $100,395.53; 7/27/04 - $100,000 (draw on line of credit); 08/16/04 - $25,000 (draw on line of credit); and 11/24/04 - $24,657 (draw on line of credit).

[5] RAD sent its RFAI concerning the January and March loans on May 4, 2004. The Committee amended its 2004 April Quarterly Report on May 20, 2004.

derived from the candidate's personal funds. Specifically, the candidate made loans to the Committee, apparently from his personal funds, on January 16, 2004, March 1, 2004, May 10, 2004, and June 9, 2004. The remaining loans disclosed in the Committee's reports are discussed below. *Infra* at 8-20.

The Federal Election Campaign Act of 1971, as amended ("the Act"), permits candidates to make unlimited expenditures from their personal funds in connection with their federal campaigns. *See* 11 C.F.R. § 110.10; *see also Buckley v. Valeo*, 424 U.S. 1, 54 (1976) (holding restrictions on candidates' expenditures from personal funds unconstitutional). Personal funds consist of assets that, at the time of the candidacy, "the candidate has legal right of access to or control over, and with respect to which he had - (i) legal and rightful title; or (ii) an equitable interest;" income such as salary and other earned income from bona fide employment, bequests to the candidate, dividends and proceeds from the sale of the candidate's stocks or other investments; and the candidate's share of assets owned jointly with a spouse. 2 U.S.C. § 431(26); 11 CFR § 100.33. Thus, the candidate could make unlimited use of his income and assets for his federal campaign.

Based on a review of publicly available information, there is no evidence showing that any of the loans the candidate made to the Committee from his personal funds were made from an improper source. The only facts that the Complainants provide are that a series of loans made by the candidate appeared on the Committee's disclosure reports and that the candidate allegedly did not possess enough personal assets to make those loans. The Complainants, however, do not provide any indication as to a possible alternative source of the funds. "Absent personal knowledge, the Complainant, at a minimum, should have made a sufficiently specific allegation

. . . so as to warrant a focused investigation that can prove or disprove the charge." Statement of Reasons in MUR 4960 (Hillary Rodham Clinton for U.S. Exploratory Committee, issued December 21, 2000) (rejecting a complaint that relied only on an attorney's failure to respond to a letter and on unsubstantiated media reports). Without any information tending to show that the candidate used funds, other than personal funds, to make the loans to the Committee, the allegation appears to be mere speculation. *See* MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee) (purely speculative charges do not form an adequate basis to find reason to believe that a violation of the Act has occurred).

Further, it appears that the candidate possessed sufficient assets to make the personal loans he made to the Committee. The financial disclosure statement that the candidate filed with the U.S. House of Representatives indicates the candidate's assets range from $203,126 to $395,125, and are sufficient to make the loans.[6] An additional financial statement that the candidate submitted to the Commission in response to our follow up letter indicates his and his spouse's net worth to be $752,135.10 as of December 31, 2003.

Similarly, there is insufficient evidence to warrant an investigation regarding the allegation that the candidate may have used funds from his state campaign in his federal campaign, in violation of 2 U.S.C. § 441i(e)(1)(A).[7] The only evidence provided is that the cash on hand at the end of the state campaign was similar to the amount of a loan the candidate made to his federal campaign. The ending cash on hand balance for the state committee was $6,614.10

[6] These assets include those the candidate owns individually as well as those he owns jointly with his spouse. His spouse's individual assets are not included above. In calculating the candidate's asset range, we only considered half the value of the jointly held assets.

[7] The Act requires candidates, agents of the candidate and entities established by the candidate to use only those funds that are subject to the limits of the Act in their federal campaigns. 2 U.S.C. § 441i(e)(1)(A). In 2003, the candidate ran for re-election for the position of Sheriff of Catawba County.

and one of the candidate's loans to the federal campaign was $6,647.01. However, the similarity of the two figures alone, would not be sufficient for a finding of reason-to-believe.[8] The final report that the candidate filed with the North Carolina State Board of Elections shows that the state campaign committee was terminated in January 2004 with the ending cash on hand balance never having been disbursed. Additionally, according to the Board of Elections, there are no limitations in North Carolina law on the use of excess campaign funds. Therefore, the candidate could have legally completed the winding down of his sheriff's campaign by paying the remainder of its account to himself, at which point the funds would have become personal funds. Thus, there appears to be no violation of 2 U.S.C. § 441i(e)(1)(A).

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2. The Candidate's Bank Loans

In addition to loaning his campaign money from his personal funds, the candidate also loaned the Committee funds he obtained from financial institutions. Although the Act does not permit contributions by national banks, and prohibits candidates and committees from accepting such contributions, candidates are permitted to obtain bank loans and lines of credit for use in connection with their federal campaigns as long as those transactions are made in the ordinary course of business. 2 U.S.C. §§ 431(8)(B)(vii) and (xiv), 441b; Statement of Reasons, MUR 4944.

In a Chronology of Events ("Chronology") the Committee submitted as part of its *sua sponte* submission, the Committee specifically discusses the loans of March 30, 2004 and June 17, 2004 and also addresses a $150,000 line of credit the candidate obtained on July 19, 2004.

[8] A review of the Committee's disclosure reports filed with the Commission also reveals disbursements in amounts similar to those discussed above. For example, in June 2004 the Committee made a disbursement in the amount of $6,547.84 to B & M Mailing and in July 2004, the Committee made a disbursement to the U.S. Postal Service in the amount of $6,643.16.

First, the Chronology indicates that the candidate personally obtained a $100,000 loan on March 30, 2004 from People's State Bank ("People's"). He used the proceeds to purchase a ninety-day certificate of deposit from People's, which served as collateral for the loan. *See* Chronology at para. 1 and attached documentation. According to the Chronology, the candidate's "intent was to provide the certificate of deposit to the campaign for use as needed, but not to be spent unless needed." *Id.* at para. 2. He explained that because he was uncertain whether the campaign would actually need to use the funds, he decided to purchase a certificate of deposit so that the funds could earn interest during the term of the loan and offset the interest that accrued on the loan. *Id.*

The candidate also clarified that "the purpose of the loan was to make funds available for campaign purposes." Attachment 1, at 3. Accordingly, the Committee reported the loan on its original 2004 April Quarterly Report. A candidate who receives a loan for campaign purposes is deemed to have done so as the agent of his or her campaign. 2 U.S.C. § 432(e)(2). Thus, committees are advised that "[i]f a candidate obtains a bank loan for campaign-related purposes, the committee must report the loan[.]" *Campaign Guide for Congressional Candidates and Committees* (2004) at 71. However, since 2002, committees have been able to report these loans as contributions or loans from the candidate to the committee, *see* 11 C.F.R. §104.3(a)(3)(vii)(B), provided that the financial institution is reported as a secondary source of the loan and that, on the report where the transaction first appears, the committee includes a Schedule C-1 disclosing the terms of the financial institution's loan to the candidate.[9] 11 C.F.R. § 104.3(d)(4). This

[9] Schedule C-1 also must contain the date the loan was incurred, the due date of the loan, the amount of the loan, the interest rate, the name and address of the lending institution, the types and values of any collateral used to secure the loan or an explanation of the basis upon which the loan or line of credit was made. 11 C.F.R. § 104.3(d)(4).

reflects that there are in a sense two transactions involved in such a scenario – one between the financial institution and the candidate, and one between the candidate and his or her committee.

In this case, however, the second transaction was not immediately consummated. Although the candidate avers that he had "campaign purposes" in mind when he obtained the loan, he did not immediately lend or contribute the proceeds of the loan to the Committee. Rather, he used them to purchase a certificate of deposit that remained in his name, not the Committee's (although he says that neither he nor the Committee knew until later that the bank had placed the certificate of deposit in his name). Attachment 1, at 3. Because the certificate of deposit was in his name, he presumably controlled it personally and could have withdrawn it and done what he wished with the proceeds. Thus, the Committee was not required immediately to report the March 30 transaction. In fact, it was not required to report it until the candidate provided the proceeds to the Committee. After consulting with RAD in the wake of its *sua sponte* submission, the Committee amended its reports accordingly. As will be discussed, the Committee did ultimately use the proceeds of the certificate of deposit in July 2004, and reported the funds as a loan from the candidate in its Pre-Runoff Report filed in August 2004. Thus, there appears to be no violation of the reporting requirements of 2 U.S.C. § 434(b) as a result of the March 30th transaction.

Further, it appears that People's made the original March 30 loan in the ordinary course of business. A loan is made in the ordinary course of business when it (1) bears the usual and customary interest rate of the lending institution for the category of the loan involved; (2) is made on a basis that assures repayment; (3) is evidenced by a written instrument; and (4) is subject to a due date or amortization schedule. 11 C.F.R. § 100.82(a). According to copies of the

promissory note and security agreement the Committee provided as part of its *sua sponte* submission, the People's loan of March 30 was made for a period of ninety days, with variable interest at the bank's prime rate, and with a certificate of deposit used as collateral. *See* Chronology and attached documentation.

On June 30, the March 30 loan matured and was renewed. However, the renewal was apparently on terms that did not provide for collateral. The candidate did eventually use the loan proceeds for campaign purposes. Thus, questions arise regarding the legality of the renewed loan. Specifically, the information the Committee provided to the Commission raises the question of whether the People's renewal loan was made on a basis that assured repayment as required by the Act and Commission regulations. 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. §§ 100.82(a) and (e). Loans are made on a basis that assures repayment if there is sufficient collateral, the bank has a perfected security interest in that collateral and the fair market value of the collateral is equal to or greater than the loan amount and any senior liens. 11 C.F.R. § 100.82(e)(1). Alternatively, banks can assure repayment by obtaining a written agreement in which the candidate pledges future receipts to the bank. 11 C.F.R. § 100.82(e)(2). Where none of these conditions exist, however, the Commission can also examine the totality of the circumstances surrounding the loan. 11 C.F.R. § 100.82(e)(3).

It is unclear whether the June 30 renewal loan complied with the Act. The original term of the March 30 loan was ninety days and expired on June 30, 2004. However, on June 30, the loan was renewed for another ninety days on different terms. The ninety-day certificate of

deposit used as collateral for the March 30 loan was "released" on June 30, 2004 and no other collateral was used as security for the renewal loan.[10] *See* Chronology at para. 8 and attached "Collateral Change Document" and "Simple Interest Promissory Note" dated June 30, 2004. Thus, the renewal loan remained unsecured. We have no other information indicating how or whether the renewal was made on a basis that assured repayment. As a result, the information available at this time provides reason to believe that People's State Bank may have made a prohibited contribution in the form of an unsecured loan, and that the candidate, Huffman for Congress and David Blanton, in his official capacity as treasurer, may have accepted the prohibited contribution in violation of 2 U.S.C. § 441b. Further, as will be discussed below, *infra* at 14-15, it appears the Committee did not properly report the June 30 renewal loan in its reports to the Commission.

The Chronology also discusses the June 17, 2004 loan in the amount of $100,000. According to the candidate, in June 2004, he planned to obtain an additional loan to use in connection with his federal campaign and discussed the matter with Dean Proctor, the Committee's Finance Chairman. Attachment 1, at 3. Proctor approached a number of banks about making a loan to the candidate. Chronology at para. 5-6. Proctor avers that "as a matter of convenience" because the candidate was traveling out of town at the time and because he "was asked by the campaign to expedite the loan to David Huffman because of the increasing expenses of the campaign," Attachment 1, at 5, he decided to draw on his own personal credit line with Branch Banking and Trust Company ("BB&T") and provide those funds to the campaign. *Id.*;

[10] By "released," Respondents apparently mean that the certificate of deposit was no longer collateral for the loan. However, the candidate did not cash the certificate of deposit at this point; the loan proceeds remained in the certificate of deposit, on deposit at People's.

Chronology at para. 6. His intention, he avers, was that when the candidate returned, he and BB&T would "execute the paperwork to make the loan directly to [the candidate]." Attachment 1, at 5. Proctor withdrew $100,000 from his personal line of credit, endorsed the check made out to him, and gave the check to the candidate, who then deposited the funds into his personal bank account. Chronology at para. 7. The candidate then wrote a check for $100,000 to the Committee from his personal bank account, which the Committee subsequently recorded as a loan from the candidate in its 2004 July Quarterly Report. When it initially reported the loan, the Committee did not disclose that Proctor was the source of the funds.

Shortly after the Committee filed its 2004 July Quarterly Report with the Commission, questions were raised in the press about the candidate's loans to his campaign. *See* Morrill, *supra* note 2, at 1B. According to Respondents, on July 17, 2004, the same date that a news account concerning the loans appeared in a local paper, Gaye Watts, a friend of Proctor's who was also the Finance Director for a rival candidate, went to Proctor's house to discuss the candidate's loans. Chronology at para. 9; Attachment 1, at 5. Proctor states that he described to her "the manner in which the [June 17] loan had been obtained for the campaign." Attachment 1, at 5. At that point, according to Proctor, Watts told him that the transaction was illegal. *Id* at 6. Upon learning of the illegality, Proctor says he immediately contacted others involved with the campaign's finances and discussed the matter with them. They also contacted an attorney who confirmed the impropriety of the arrangement. Upon receiving such confirmation, Proctor, the candidate and the Committee assert they immediately took steps to reverse the transaction.

On July 19, 2004, the candidate cashed the certificate of deposit that was previously used as collateral for the March 30 loan and which now held the proceeds of the June 30 renewal loan,

and used the proceeds to repay Proctor. According to the candidate, his intent was to unwind the transaction and correct any mistakes. Attachment 1, at 3. Since the certificate of deposit had been intended to be used by the campaign, when the candidate cashed the certificate of deposit, he asked People's to provide a cashier's check to "Huffman for Congress" instead of payable to the candidate himself.[11] *Id.* Upon receipt of the cashier's check, the Committee then produced a check in the amount of $100,000 payable to the candidate in order to repay him for the June 17 loan that had been reported as being from the candidate's personal funds but was really from Proctor. *See* Chronology at para. 15; Attachment 1, at 3. The candidate used that $100,000 payment from the Committee to repay Proctor, who then repaid his own line of credit. Attachment 1, at 6. The candidate then obtained his own line of credit from BB&T in the amount of $150,000. Attachment 1, at 4.

The Committee reported the receipt of the funds from the certificate of deposit as a loan from the candidate incurred on July 19, 2004 in the amount of $100,395.00 and also reported that it made a $100,000 disbursement to the candidate on July 19, 2004. Both transactions appeared in the Committee's Pre-Runoff Report. In addition, the Committee amended its 2004 July Quarterly Report with respect to the June 17 loan by adding Proctor as an endorser/guarantor on the corresponding Schedule C-1. Then, because the Committee paid it off in July, the June 17 loan no longer appeared in subsequent disclosure reports to the Commission.

However, the Committee inaccurately reported the funds from the certificate of deposit as coming from personal funds. The funds in the certificate of deposit, of course, were the proceeds of the March 30 loan, as renewed without collateral on June 30. As instructed by RAD, the

[11] In his affidavit, the candidate reiterates that "the certificate of deposit was always intended to be used by the campaign, if it was used at all." Attachment 1, at 3.

Committee removed the March 30 certificate of deposit from its 2004 April Quarterly Report under the theory that the candidate had not actually provided the funds to the Committee at that time. However, when the funds were actually disbursed to the Committee, they had to be properly reported to the Commission. *See supra* at 9. Following its receipt of the loan, the Committee needed to report to the Commission whether the candidate used personal funds, borrowed money from a lending institution or obtained the funds from some other source. 2 U.S.C § 434(b); 11 C.F.R. §§ 104.3(a) and (d). Because the funds in the certificate of deposit were derived from a bank loan that the candidate obtained for use in his federal campaign, the Committee should have reported the bank as an endorser/guarantor on Schedule C-1 and should have reported the terms of the bank loan. 11 C.F.R. § 104.3(d)(4). However, even after its *sua sponte* submission, the Committee never did file a Schedule C-1 and report the terms of the People's loan to the Commission. Therefore, there is reason to believe that Huffman for Congress and David Blanton, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

Proctor exceeded the Act's contribution limits when he drew $100,000 on his line of credit and then provided those funds to the candidate for use in his federal campaign. 2 U.S.C. § 441a(a). A loan is considered a contribution under the Act and thus, cannot exceed the contribution limits. 11 C.F.R. § 100.52. Further, loans endorsed or guaranteed by persons, other than a bank or a spouse, are also considered contributions under the Act.[12] 2 U.S.C. § 431(8)(B)(vii); 11 C.F.R. §§ 100.52(a) and (b)(3). According to Commission records, Proctor

[12] A candidate's spouse is bound by the same contribution limits as any other individual. 2 U.S.C § 441(a); 11 C.F.R. § 110.1(i). However, the spouse is permitted to co-sign a loan for the candidate when the loan involves the use of a jointly owned asset as collateral and where the value of the candidate's share of the property equals or exceeds the amount of the loan. 11 C.F.R. § 100.52(b)(4). No contribution by Mrs. Huffman is at issue here.

had contributed $4,000 to the Huffman campaign, distributed among the primary and runoff elections. Any additional funds provided by Proctor to the candidate or the Committee would exceed the Act's contribution limits. Likewise, any loan that Proctor made or guaranteed for the candidate would also be considered a contribution and could not exceed the limits. Therefore, the June 17 loan that Proctor obtained on behalf of the candidate exceeded the Act's limits. Moreover, Proctor provided the funds to the candidate, who acted as an intermediary, and provided them to the campaign in his own name. Because a loan is a contribution, Proctor made a contribution in the name of another and Huffman allowed his name to be used to make a contribution in the name of another. Finally, because both Proctor and Huffman were agents of the campaign and their knowledge is attributable to the campaign, the Committee knowingly accepted an excessive contribution in the name of another. Accordingly, there is reason to believe that Dean Proctor violated 2 U.S.C. §§ 441a(a)(1)(A) and 441f; and that Lawrence David Huffman, Huffman for Congress and David Blanton, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) and 441f.

The information available at this time provides reason to investigate whether Proctor's excessive contribution and contribution in the name of another were knowing and willful. 2 U.S.C. §§ 437g(a)(5)(B) and 437g(d). The phrase "knowing and willful" indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 3778 (daily ed. May 3, 1976); *see also Fed. Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge"

that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). The evidence does not have to show that a respondent "had specific knowledge of the regulations" or "conclusively demonstrate" a respondent's "state of mind," if there are facts and circumstances from which a reasonable inference can be made that the respondent knew his or her conduct was illegal. *Id.* at 213–15. An inference of a knowing and willful violation can be drawn from an "elaborate scheme [to] disguis[e]." *Id.*

Proctor avers that he did not attempt to hide the facts of the illegal loan, but rather was open in discussing the details of the loan with an opposing candidate's Finance Director. Chronology at para. 9-10. If it occurred as he describes it, Proctor's discussion with Ms. Watts would not be consistent with the actions of a person who was trying to conceal a 441f scheme. Indeed, Proctor asserts that until she told him, he did not know that the transaction was illegal. Attachment 1, at 6. Further, upon discovery of the illegality both Proctor and the candidate appear to have immediately taken steps to rectify the situation. *Supra* at 13-14.

However, Proctor's account remains to be verified. No reference to his conversation with Watts appears anywhere in the complaint filed by the opposing candidates. *See* Complaint dated August 3, 2004. One might think that if an opposing campaign knew of Proctor's admission that he was the source of the funds, it would have referred to the admission in the complaint. Moreover, the Committee has offered no affidavit by Watts or any other similar corroboration of this portion of Proctor's account. In addition, there are inconsistencies between the version of events Proctor offered at his meeting with staff and the version in the written *sua sponte* materials, as well as between each of those versions and extrinsic facts. At the July 30 meeting with staff, Proctor indicated that the Committee did not immediately need the proceeds of the

June 17 loan, but that there was a desire to obtain the loan quickly in order to make the Committee's financial position, as reflected in its cash on hand, look stronger at the time of its next disclosure report. In the Committee's written submission, Proctor indicates that there was a desire to obtain the loan quickly "because of the increasing expenses of the campaign." These rationales are potentially at odds with each other. Moreover, if the former justification was the case, it is unclear why, with the close of books date for the next report still 13 days away, the Committee could not wait for Huffman to return from out of town to obtain the loan himself; and if the latter justification was the case, it is unclear why the Committee could not simply draw on the $100,000 Huffman had on deposit at People's State Bank for precisely such a contingency.[13]

In another potential inconsistency, Proctor stated in the July 30 meeting, and local media accounts refer to Huffman as saying, that one of the earlier loans was borrowed against Huffman's retirement. *See* Andrew Mackie, *High Stakes; Candidates Ante up $1.4 Million of Their Own Money in Republican Primary,* HICKORY DAILY RECORD, July 18, 2004. However, none of the reports filed by the Committee and none of the *sua sponte* documents show any loan either borrowed from or collateralized by Huffman's retirement savings.

[redacted] in the interest of fair notice to the Respondents we recommend the Commission find that the violations connected to the Proctor transaction were knowing and willful.

[13] In their affidavits, both Proctor and the candidate aver that "the campaign had at its disposal the $100,000 on deposit at People's State Bank, starting from the date when the BB&T bank loan proceeds were deposited into the campaign account through the date when the BB&T loan was repaid." Attachment 1, at 4-6.

The Committee's *sua sponte* submission also makes reference to the $150,000 line of credit the candidate obtained from BB&T on July 19, 2004 after he repaid the illegal loan from Proctor. Chronology at para. 16. At the time of the submission, the line of credit was unsecured. The promissory note drawn up on July 19, 2004 that accompanied the *sua sponte* submission makes no reference to any collateral being used as security for the loan. The Chronology states that the line of credit was "to be secured by [the candidate's] personal residence but a closing date for that transaction has not yet occurred. The loan is unsecured in the interim." *Id.* In a subsequent affidavit, the candidate stated that the line of credit was secured "with collateral in which [he has] ownership" and that he has "sufficient equity and ownership to secure the loan," Attachment 1, at 4, but he provided no further details in the affidavit.

As part of its *sua sponte* submission, the Committee provided a letter from BB&T dated July 29, 2004 that outlines some of the terms of the line of credit, including that it was to be secured by the personal residence the candidate owned jointly with his spouse. In obtaining a bank loan, candidates can use assets they own jointly with a spouse as collateral for the loan. 11 C.F.R. § 100.52(b)(4); AO 1991-10. However, the value of the candidate's share of the asset must equal or exceed the amount of the loan. 11 C.F.R. § 100.52(b)(4). In response to our request for clarification regarding the line of credit, the Committee submitted appraisal reports for a personal residence and a parcel of land that the candidate owned jointly with his spouse, with a total value of $305,000. If the candidate's share is one half, then he could have used half the value of the jointly held properties (i.e., $152,500) as collateral for the line of credit. Information provided by the candidate indicates that as of December 2003 one of those properties was subject to a mortgage of $23,988. We are not aware of any other liens on the

properties. Thus, if this collateral was in fact used to secure the line of credit, it would appear to be adequate.

The line of credit was reported in the Pre-Runoff Report filed on August 5, 2004. Although the Committee properly reported the bank as the source of the funds for the $150,000 line of credit, the Committee failed to specify any collateral or other assurance of repayment on the corresponding Schedule C-1. The Committee continued reporting draws on the line of credit in its 2004 October Quarterly and 2004 Year End Reports, but the corresponding Schedule C-1s never reflected any collateral. We have no information regarding when the candidate's property actually collateralized the line of credit. In light of the information indicating that arrangements were made to collateralize the line of credit and that the collateral would have been adequate, we recommend at this time only that the Commission find reason to believe that Huffman for Congress and David Blanton, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to completely report the nature of the collateral or other source of repayment. In the course of investigating that violation we will confirm that the line of credit was actually collateralized and make further recommendations if they are appropriate.

B. THE FORD EXPLORER

In an effort to raise funds for the campaign, the Committee raffled off a 2004 Ford Explorer XLT in July 2004. The complaints allege that the Committee never disclosed a disbursement for the purchase of the Ford Explorer in its reports to the Commission and that, as a result, it appeared that the automobile constituted an illegal in-kind contribution. An in-kind contribution constitutes anything of value and includes the "provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or

services." 11 C.F.R. § 100.52(d)(1). Based on a review of the information provided by Dale Jarrett Ford, Inc. ("Dale Jarrett"), it does not appear that the Committee accepted an illegal contribution from the dealership.

According to Norwood Poole, Vice President of Dale Jarrett, on or about May 12, 2004, a Committee representative contacted the dealership "to discuss the sale of a car to the Huffman Campaign which was to be used in a raffle to raise campaign funds." Poole Affidavit (August 2004), at 1. Mr. Poole arranged the sale under a formula that would permit the sale of the vehicle below the invoice price, but would still allow the dealership to make a profit. In an affidavit, Mr. Poole described the Huffman transaction in detail. Attachment 2, at 2. According to documentation provided by the dealership, the price that Dale Jarrett and the Committee agreed on for the purchase of the vehicle was the invoice price of $30,903.49 (i.e., what the Ford Motor Company charged Dale Jarrett). At the time of the sale there was also $4,000 in rebate incentives available toward the purchase of the vehicle. Pursuant to the formula, the Committee ultimately paid $26,903.49 for the vehicle and the raffle winners assigned the $4,000 in rebates to the dealership, which all covered the cost of the vehicle.

Mr. Poole explained that "Dale Jarrett Ford sells the vehicle to the event organizer for invoice cost less the rebates . . . [and] the winner is responsible for sales tax, tag transfer, electronic filing and customer services unless the event organizer chooses to pay some or all of those particular fees." Attachment 2, at 3. In an affidavit, Mr. Poole indicated that the dealership used this formula routinely and stated that they did not "make a special deal or lower sale price to the Huffman Campaign" or provide a discount on the sale that would not be available to the general public. Poole Affidavit (August 2004), at 1-2. In fact, he explained "[t]he purchase price

[Dale Jarrett] charged was equal to or greater than the majority of all of [their] single car sales that are made at the dealership." *Id.* at 1.

Mr. Poole explained that in its sale to the Committee, Dale Jarrett made a profit through a "holdback" in the amount of $992 and through "Customer Services" charges that totaled $399.99. Attachment 2, at 3. The holdback consists of 3% of the invoice price and it is what Ford pays dealerships for every vehicle sold. *Id.* Further, the Customer Services charges are part of the preparation charges that the raffle winners paid. Such preparation charges also include taxes, and title and transfer fees. *Id.*

In addition, Dale Jarrett's customary sales practices, as they pertained to raffles and other fund raising events, included permitting the event organizer to "take possession of the vehicle before it is actually purchased . . . to allow them to promote the event and allow people to see the vehicle they are purchasing a ticket to win." Attachment 2, at 4. These arrangements, however, are contingent on the event organizer providing insurance on the vehicle and does not include advance transfer of the title. *Id.* According to Mr. Poole, it is customary for the event organizer to pay for the vehicle once the raffle winner is announced and not before the raffle. Poole Affidavit (August 2004), at 1.

According to Dale Jarrett, the Huffman campaign paid for insurance on the Ford Explorer and displayed the vehicle at raffle functions. *See* Poole Affidavit (August 2004) and attached documentation. The winner of the Huffman raffle was announced on July 20, 2004. On July 26, the raffle winner paid tax, title, transfer and document preparation charges and, on July 27, the Committee paid the cost of the vehicle as determined under Dale Jarrett's formula. *Id.* The

Committee reported the July 27th disbursement to Dale Jarrett Ford in the amount of $26,903.49 in its Pre-Runoff Report covering the period of July 1 through July 28, 2004.

As additional evidence to demonstrate that the dealership did not deviate from its standard practices in the Huffman sale, Mr. Poole provided documentation from other sales that used the same formula, as well as from some sales where the dealership charged less for a vehicle and made even less of a profit. For instance, documentation pertaining to a fundraising event that benefited the YMCA for Hickory, North Carolina, showed that Dale Jarrett sold a Ford Explorer to the event organizer at invoice cost minus rebates. Attachment 2, at 3. According to the documentation provided, rebates are consistently assigned to the dealership as part of the sales transaction. Further, Dale Jarrett also provided documentation pertaining to sales to non-fundraising customers where Ford vehicles were sold below the invoice price. Some of that documentation pertained to sales of 2004 Ford Explorer XLT sport utility vehicles like the one purchased by the Huffman campaign. Mr. Poole explained that Dale Jarrett's philosophy involved "peaks and valleys" and that "the line is the invoice amount and you have to have some [sales] over the line and some below the line if you are going to be a volume dealer." Attachment 2, at 4.

The information available in this matter does not suggest that a violation of the Act took place. As a corporation, Dale Jarrett cannot make a contribution in connection with any election to any political office, and a candidate and a political committee cannot knowingly accept such a prohibited contribution. 2 U.S.C. § 441b(a). As discussed *supra*, Dale Jarrett provided a detailed account of its transaction with the Committee, explained its customary practices with regard to raffles and other fundraising events, and provided documentation of representative

sales. The evidence provided demonstrates that the Committee did not receive any preferential treatment. Dale Jarrett used a fixed formula in setting a price for the vehicle the Committee wanted to purchase. Further, the price that was set was not below the "usual and normal charge for such goods." 11 C.F.R. § 100.52(d)(1). In fact, according to the documentation provided, the dealership offered larger discounts to other customers and sometimes sold vehicles below the invoice cost. Based on the foregoing, this Office recommends that the Commission find no reason to believe that Dale Jarrett Ford, Inc. made, or that the Committee knowingly accepted, a prohibited corporate contribution in violation of 2 U.S.C. § 441b in the sale of the vehicle.

III. INVESTIGATION

[redacted]

[redacted]

IV. RECOMMENDATIONS

1. Merge Pre-MUR 425 and MUR 5507 into MUR 5496.

2. Find reason to believe that Dean Proctor knowingly and willfully violated 2 U.S.C. §§ 441a(a)(1) and 441f.

3. Find reason to believe that Lawrence D. Huffman knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 441f.

4. Find reason to believe that Huffman for Congress and David Blanton, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441f.

5. Find reason to believe that People's State Bank, Lawrence D. Huffman, Huffman for Congress and David Blanton, in his official capacity as treasurer, violated 2 U.S.C. § 441b as it pertains to the June 30, 2004 renewal loan.

6. Find no reason to believe that Lawrence D. Huffman violated 2 U.S.C. § 441i(e)(1)(A).

7. Find no reason to believe that Lawrence D. Huffman, Huffman for Congress, David Blanton, in his official capacity as treasurer, and Dale Jarrett Ford, Inc violated 2 U.S.C. § 441b as it pertains to the Ford Explorer.

8. Approve the attached Factual and Legal Analyses.

9. [redacted]

10. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

4/11/05
Date

BY: [signature]
Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement

[signature]
Sidney Rocke
Assistant General Counsel

[signature]
Ana Peña-Wallace
Attorney

Attachments:
1- [redacted]
2- [redacted]
3- Factual and Legal Analyses