



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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RETURN RECEIPT REQUESTED

FEB 13 2009

Grant Bosse

Hillsboro, NH 03244

RE: MUR 6057
Jennifer Horn for Congress and
Mark S. Cookson, in his official
capacity as treasurer

Dear Mr. Bosse:

On January 29, 2009, the Federal Election Commission reviewed the allegations in your complaint dated August 18, 2008, and found that on the basis of the information provided in your complaint, and information provided by the respondents, there is no reason to believe Jennifer Horn for Congress and Mark S. Cookson, in his official capacity as treasurer, violated 11 C.F.R. § 102.9(e). Accordingly, on the same date the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which more fully explains the Commission's finding, is enclosed.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Jennifer Horn for Congress MUR: 6057
4 and Mark S. Cooksen, in his
5 official capacity as treasurer
6

7 **I. INTRODUCTION**

8 This matter arises out of a complaint alleging that Jennifer Horn for Congress and
9 Mark S. Cooksen, in his official capacity as treasurer (“the Committee”), used general election
10 funds to pay for campaign expenses before the primary election. However, a review of the
11 Committee’s disclosure reports filed with the Federal Election Commission (“the Commission”) reveals that the Committee’s cash on hand during the relevant reporting periods exceeded the
12 total general election contributions minus general election disbursements during those time
13 periods. Therefore, there is no reason to believe that the Committee violated the Federal Election
14 Campaign Act of 1971, as amended (“the Act”) or Commission regulations in connection with
15 the allegations in this matter.
16

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. BACKGROUND**

19 Complainant, Grant Bosse, alleges that his opponent’s campaign used general election
20 funds to pay for campaign expenses before the primary election. Bosse and Horn were both
21 candidates for the Republican nomination in New Hampshire’s Second Congressional District
22 during the 2008 election cycle. Horn ultimately won the primary election held on September 8,
23 2008, and went on to run in the general election against the Democratic nominee. She then lost
24 the general election on November 4, 2008.

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1 The complainant explains that he reviewed the Committee's 2008 April and July
2 Quarterly Reports filed with the Commission and found that the Committee carried a negative
3 primary balance at various points during the primary election period, including from March 18
4 through March 31, on May 5, and from May 20 through May 22. *See* Complaint and
5 Attachments. Bosse alleges that the campaign's expenditures "regularly exceeded the amount of
6 cash-on-hand available to [the Committee] during the primary" and that the Committee must
7 have used "Max Out" contributions exceeding \$2,300 during the primary election period to cause
8 the Committee to carry a negative primary balance. *Id.* The Complaint states that even
9 assuming that the Committee received all of its unitemized receipts at the beginning of each
10 reporting period, the campaign still spent funds in excess of its primary election funds.

11 The Committee contends that it complied with Commission regulations by having
12 recorded cash on hand in excess of general election funds during both the April and July
13 Quarterly reporting periods in question. *See* Committee's Response to Complaint at 2. The
14 Committee's response also clarifies that certain general election expenses for phones and rent
15 totaling \$3,905 were incurred during the primary, which explains its alleged use of general
16 election funds during the primary election period. It notes that these expenses were for deposits
17 that will be refunded at the end of the campaign and will be available should the candidate lose
18 the primary election. *Id.* at 1.

19 The Committee filed three disclosure reports with the Commission before the primary
20 election of September 9, 2008. In its 2008 April Quarterly Report, the Committee disclosed cash
21 on hand in the amount of \$30,671.90; \$11,750 in total contributions designated toward the
22 general election; and no disbursements for general election purposes. In its 2008 July Quarterly
23 Report, the Committee reported cash on hand in the amount of \$20,745.34; no contributions

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1 designated toward the general election; and no disbursements for general election purposes.

2 Finally, in its 2008 Pre-Primary Report, the Committee reported cash on hand in the amount of
3 \$145,491.84; no contributions designated toward the general election; and no disbursements for
4 general election purposes.

5 **B. ANALYSIS**

6 The Act requires treasurers to keep an account of all contributions received by a political
7 committee. 2 U.S.C. § 432(c). Committees can accept contributions for the general election
8 before the primary election provided that they employ “an acceptable accounting method to
9 distinguish between contributions received for the primary election and contributions received
10 for the general election.” 11 C.F.R. § 102.9(e)(1); Advisory Opinion 1980-122 (New Yorkers for
11 Myerson), at 1-2. Acceptable accounting methods for this purpose include the designation of
12 separate accounts for each election or the establishment of separate books and records for each
13 election. 11 C.F.R. § 102.9(e)(1). A committee’s records must demonstrate that “prior to the
14 primary election, recorded cash on hand was at all times equal to or in excess of the sum of
15 general election contributions received less the sum of general election disbursements made.”
16 11 C.F.R. § 102.9(e)(2). In the context of an advisory opinion, the Commission described the
17 purpose of these regulations, stating that “[t]hese regulations are designed to ensure that
18 candidates in [this] situation do not use general election contributions for the primary election.”
19 Advisory Opinion 1992-15 (Russo for Congress), at 2.

20 Further, general election contributions may be used to make advance payments for
21 general election purposes, but should the candidate not win the primary election, the committee
22 must have enough cash on hand to refund all general election contributions. *See* MUR 5388 (Jim
23 Treffinger for Senate), Factual and Legal Analysis, at 2; *see also* Advisory Opinion 1986-17

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1 (Friends of Mark Green), at 4 (concluding that the Act did not prohibit a committee from making
2 expenditures for the general election before the primary election, such as advance payments or
3 deposits in connection with the general election). If a candidate is not a candidate in the general
4 election, any contributions made for the general election must be refunded to the contributors,
5 redesignated, or reattributed. *See* 11 C.F.R. § 102.9(e)(3); *see also* Advisory Opinion 1986-17
6 (Friends of Mark Green), at 3 (stating that contributions designated for a particular election may
7 be accepted but become refundable to the contributors if the candidate does not participate in that
8 election). As discussed above, Horn was a candidate in both the primary and general elections.
9 Thus, the Committee was permitted to accept both contributions toward the primary and general
10 election and make disbursements for primary and general election purposes.

11 A review of the Committee's receipts and disbursements disclosed in its 2008 April
12 Quarterly, July Quarterly, and Pre-Primary Reports indicates that the Committee's recorded cash
13 on hand during each of those periods exceeded its general election contributions minus general
14 election disbursements. On their face, the Committee's disclosure reports do not reveal
15 violations of the Act in connection with the allegations in this matter. The complainant,
16 however, draws attention to the Committee's unitemized receipts as possibly having an effect on
17 the cash on hand balance, but that concern has no bearing on our analysis of the Committee's
18 balances.

19 Regardless of how we examine the Committee's receipts and disbursements, the end
20 result is the same: the Committee's reported cash on hand balances exceeded its general election
21 contributions minus general election disbursements for each reporting period. While the
22 complainant argues that the use of any general election funds is strictly prohibited, Commission
23 regulations only prohibit Committees from making disbursements that exceed their cash on hand

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1 balance for the primary election. *See* 11 C.F.R. § 102.9(e)(2); *see also Explanation and*
2 *Justification for Contribution Limitations and Prohibitions*, 67 Fed. Reg. 69,928, 69,929
3 (Nov. 19, 2002) (establishing that the standard for an acceptable accounting method is that “a
4 committee’s records must demonstrate that prior to the primary election, recorded cash on hand
5 was at all times equal to or in excess of the sum of general election contributions received less
6 the sum of general election disbursements made”). Further, the Act and Commission regulations
7 only require the itemization of receipts that have an aggregate amount or value in excess of \$200.
8 2 U.S.C. § 434(b)(3); 11 C.F.R. § 104.3(4)(i). Our examination of the Committee’s disclosure
9 reports pursuant to those requirements did not reveal violations of the Act or Commission
10 regulations.

11 Accordingly, the information available in the Committee’s disclosure reports
12 demonstrates that the Committee had sufficient funds for its primary election expenses, and the
13 Complaint fails to provide any specific information to contradict those reports. Therefore, there
14 is no reason to believe the Committee violated 11 C.F.R. § 102.9(e) in connection with the
15 allegations in this matter.

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