



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
Friends for Shurtleff and Lynn Gilbert,)	
in her official capacity as treasurer;)	
Shurtleff Joint Fund and Lynn Gilbert,)	MUR 6225
in her official capacity as treasurer;)	
PAC for Utah's Future;)	
Mark L. Shurtleff; and)	
Guidant Strategies)	

STATEMENT OF REASONS
Chairman MATTHEW S. PETERSEN and
Commissioners CAROLINE C. HUNTER and DONALD F. McGAHN

The complaint in this matter alleged that Utah Attorney General Mark L. Shurtleff, a state officeholder who was also running for federal office, used non-federal funds in support of his federal candidacy. Specifically, the complaint alleged that Shurtleff used non-federal funds to pay for certain "testing the waters" activities, including polling; that Shurtleff formed a joint fundraising committee that raised non-federal funds for federal election activity; and that Shurtleff's federal campaign accepted prohibited in-kind contributions in the form of campaign expenses paid for by a prohibited source.

The facts in this case do not amount to a violation of the law. The polling expenses were allocated between the federal and non-federal committees pursuant to Commission regulations. The joint fundraising activity was conducted in accordance with Commission regulations governing such activity. And there is no evidence that Shurtleff's federal campaign committee received any improper in-kind contributions. Therefore, we rejected the recommendation by the Office of General Counsel ("OGC") that the Commission find reason to believe that the Respondents violated the Federal Election Campaign Act of 1971, as amended ("the Act").

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I. BACKGROUND

Mark L. Shurtleff is currently the Attorney General of Utah, having been reelected to a third four-year term in November 2008. He maintains a state-registered candidate committee (Shurtleff 2008) and a state-registered leadership PAC (PAC for Utah's Future or "state PAC").¹ On May 20, 2009, Shurtleff formally announced his candidacy for U.S. Senate, and filed his Statement of Organization for his principal campaign committee, Friends for Shurtleff ("FFS"), on May 29, 2009 and his Statement of Candidacy on June 3, 2009.² The complaint for this matter was filed on October 27, 2009. Shurtleff suspended his U.S. Senate campaign on November 4, 2009.

In February of 2009, three months before he announced his senatorial candidacy, Shurtleff began "testing the waters" activities regarding a possible U.S. Senate campaign or a possible Utah Gubernatorial campaign. As part of this effort, Shurtleff hired Guidant Strategies to conduct testing the waters polling to assist in determining which race was his best option. Shurtleff allocated the costs of the polling 50/50—half as testing the waters activities related to the gubernatorial campaign and half as testing the waters activities for the potential U.S. Senate campaign. Guidant invoiced the then-unregistered U.S. Senate committee, FFS, for \$10,500, which was incorporated into other bills as a debt obligation and accurately reported as such by FFS on their first report to the Commission.³

In August 2009, Shurtleff formed a joint fundraising committee to combine the efforts of raising funds for his U.S. Senate race and for the non-election account associated with his state leadership PAC for an annual event known as the "Shurtleff Shotgun Blast."⁴ FFS and the state PAC crafted a joint fundraising agreement to create the Shurtleff Joint Fund ("SJF"), which registered with the Commission on August 6, 2009.⁵ Per the agreement, any funds received that were permissible under the Act were retained by FFS, while any funds received that were impermissible under the Act were transferred to the non-election account of the state PAC.⁶ The expenses were to be allocated by FFS and the state PAC based on their respective portions of the funds received by SJF.⁷ The invitation to the "Shurtleff Shotgun Blast" contained a clear disclaimer explaining to contributors how the joint fundraiser would operate.⁸ According to the

¹ PAC for Utah's Future is a Utah state-registered committee formed by Shurtleff. There are no prohibitions or limitations under Utah law applicable to the state PAC in regards to the contributions it receives or the transfers it makes to Utah campaign committees. The state PAC focuses on raising funds to pay for Shurtleff's officeholder expenses, as permitted under Utah law, and for making charitable contributions. MUR 6225, Response at 3-4.

² MUR 6225, First General Counsel's Report ("FGCR") at 4.

³ MUR 6225, Response at Exhibit 2 and Exhibit 3.

⁴ Although Shurtleff was a U.S. Senate candidate at the time, he still was required to fulfill his duties as Utah Attorney General. State officeholders in Utah are required to maintain an account for funds raised to pay for official duties.

⁵ MUR 6225, Response at 5-7.

⁶ MUR 6225, Response at Exhibit 4.

⁷ 11 C.F.R. § 102.17(c)(7)(i)(A).

⁸ MUR 6225, Response at 6.

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Response, SJF raised a total of \$96,600. Of this amount, \$4,125 was deposited in the FFS account and the remaining \$92,475 was deposited in the state PAC non-election account. As such, FFS was required to pay less than 5% of the expenses associated with the Shotgun Blast.⁹

During the period from Shurtleff's testing the waters phase through his candidacy, the state PAC continued in its efforts to assist Shurtleff in his official duties as Utah Attorney General, including employing Guidant for fundraising event management for those efforts. In fact, the state PAC reported payments to Guidant on several dates from June through November 2009, totaling approximately \$13,000 for fundraising event management and consulting services.

The complaint in this matter alleged that Utah Attorney General Mark L. Shurtleff, FFS and Lynn Gilbert, in her official capacity as treasurer, SJF and Lynn Gilbert, in her official capacity as treasurer, PAC for Utah's Future, and Guidant Strategies ("Guidant") (collectively, "the Respondents") violated the Act during Shurtleff's campaign for U.S. Senate by "using state-raised 'soft money' to subsidize his federal election campaign."¹⁰

OGC recommended that the Commission find reason to believe that Shurtleff and SJF (a joint fundraising committee established by FFS and the state PAC) violated the Act's prohibition on the solicitation of non-federal funds by federal candidates, 2 U.S.C. § 441i(e). OGC also asserted that the state PAC made improper in-kind contributions for the benefit of Shurtleff's federal candidacy and, on that basis, recommended that the Commission find reason to believe that: (1) the state PAC made an excessive in-kind contribution to FFS and spent funds not subject to the Act's amount and source limitations in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441i(e); (2) FFS knowingly received impermissible in-kind contributions in violation of 2 U.S.C. §§ 441b(a) and 441a(f); and (3) FFS failed to disclose the receipt of such contributions in violation of 2 U.S.C. § 434(b). As further explained below,¹¹ we voted to reject these recommendations.¹²

II. ANALYSIS

A. **Testing the Waters Expenses: Polling**

In February 2009, while Shurtleff was considering a run for either the Governorship or the U.S. Senate, he engaged Guidant to conduct polling to "aid his decision on whether the

⁹ MUR 6225, Response at 6-7.

¹⁰ MUR 6225, Complaint at 1.

¹¹ For the purposes of 2 U.S.C. § 437g(a)(8), we incorporate by reference herein the responses submitted in this matter by all Respondents.

¹² However, for the reasons set forth in the FGCR, we agreed with OGC's recommendation to find no reason to believe that FFS failed to disclose disbursements to and accepted prohibited in-kind contributions from Guidant. Guidant, in its ordinary course of business and in terms materially indistinguishable from those provided to other clients, billed FFS and the state PAC and extended credit to FFS. Within those terms, FFS and the state PAC continue to make payments to Guidant for the various services provided to each. MUR 6225, FGCR at 14-15.

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Governor's race or the U.S. Senate race was his best option."¹³ Shurtleff's exploratory committee was invoiced for the cost of half of the poll. Contrary to the complainant's assertion, the poll was not required to be paid for entirely with federal funds. In fact, the exploratory committee's course of action was entirely consistent with the Act and Commission regulations.

Commission regulations provide four options for attributing the costs associated with the polling: (1) use the cost allocation formula of the polling firm, (2) divide the costs equally amongst the recipients of the poll, (3) allocate based on the proportion of the results received by each recipient, or (4) use any other reasonable method.¹⁴ In this matter, the Shurtleff committees chose the second option—to split the costs equally between the U.S. Senate exploratory campaign and the Utah gubernatorial campaign.

This method was recently sanctioned by the Commission, acting upon the recommendation of OGC, in a similar enforcement matter, MUR 5722.¹⁵ In that 2007 matter, a state officeholder commissioned a poll to gauge the viability of a potential federal campaign, state Democratic Party officer campaign, and re-election campaign to the state senate. In the First General Counsel's Report, OGC stated that, "[a] possible method of attribution would be to divide the cost of the poll, \$12,750, equally between the three purposes for the poll."¹⁶ Based on that allocation formula, OGC concluded that only one-third of the cost of the poll was attributable to the federal election per 11 C.F.R. § 106.4(e)(2).¹⁷

The plain language of the regulation, 11 C.F.R. § 106.4(e), resolves the issue and absolves the Respondents. Therefore, OGC's proposed investigation to determine the allocation of the costs for the poll was unnecessary.¹⁸ As a result, because Commission regulations clearly allow committees to evenly split the costs associated with a poll, there is no reason to believe that any of the Respondents violated the Act with regards to payment for the poll.

B. Joint Fundraising Activity

The complaint alleges that a fundraising event sponsored by a joint fundraising committee comprised of Shurtleff's federal campaign committee and a non-election account of his state PAC constituted a violation of the Act's prohibition against the raising and spending of

¹³ MUR 6225, Response at 4.

¹⁴ 11 C.F.R. § 106.4(e).

¹⁵ MUR 5722 (Friends for Lauzen), FGCR at 10-11. *See also* MUR 5722, Certification (Commissioners Lenhard, Mason, Toner, Walther, and Weintraub voted affirmatively for the decision to approve the Factual and Legal Analysis, as recommended in the General Counsel's Report dated January 31, 2007. Commissioner von Spakovsky dissented on a separate issue. MUR 5722, Statement of Reasons of Commissioner von Spakovsky.).

¹⁶ *Id.*

¹⁷ *Id.* By contrast, although OGC did not make a specific recommendation with respect to the polling costs, the First General Counsel's Report asserts that, "there is a substantial question as to whether more than 50% of the polling costs should have been attributed to Shurtleff's federal exploratory committee." MUR 6225, FGCR at 8. There is no basis for this assertion.

¹⁸ MUR 6225, FGCR at 8 and 15.

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non-federal funds in connection with a federal election. However, because the activity at issue complied with Commission regulations for establishing so-called joint fundraising committees, there is no reason to believe that any of the Respondents violated the law.

The Act prohibits federal candidates and officeholders from soliciting funds "in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of [the] Act."¹⁹ The same general prohibition applies to soliciting such funds "in connection with any election other than an election for Federal office."²⁰

However, Commission regulations specifically contemplate joint fundraising activities between political committees and unregistered committees or organizations,²¹ and do not prohibit raising funds outside the Act's limits and source prohibitions provided that such funds are placed in a segregated account and used only for non-election purposes. Under this type of arrangement, if a joint fundraising committee accepts contributions beyond the Act's limits and source prohibitions, Commission regulations provide detailed instructions on how to account for and deposit such funds to avoid violating the Act with respect to a joint fundraising member committee who is ineligible to accept such funds.²²

In this matter, FFS (Shurtleff's federal campaign committee) and the state PAC established a joint fundraising committee. Funds raised by the federal campaign committee were subject to the Act's contribution limits and source prohibitions. Donations to the non-election related account of the state PAC were not subject to the Act's contribution limits and source prohibitions because they were solicited and spent for non-election purposes.²³ Specifically, the funds received by the state PAC from its share of the joint fundraising proceeds were used to make charitable donations, pay for expenses related to Shurtleff's official duties as Utah Attorney General,²⁴ or to pay for its share of the expenses related to the Shotgun Blast – all of which are non-election purposes.

Thus, the joint fundraising agreement and invitation materials demonstrate that the joint fundraising committee complied with all applicable regulations. The joint fundraising agreement

¹⁹ 2 U.S.C. § 441i(e)(1)(A).

²⁰ 2 U.S.C. § 441i(e)(1)(B). Unlike section §441i(e)(1)(A), however, (1)(B) only subjects such funds to the Act's limitations and prohibitions, but not its reporting requirements.

²¹ 11 C.F.R. § 102.17(a)(1)(i) and (a)(2) ("Political committees may engage in joint fundraising with other political committees or with unregistered committees or organizations. . . . The participants in joint fundraising activities may include political party committees . . . candidate committees, multicandidate committees, and unregistered organizations . . .") (emphasis added).

²² 11 C.F.R. § 102.17(c)(3)(i).

²³ MUR 6225, Response at 8, n. 17, and Exhibit 6 (explaining that the funds received by the state PAC from its share of the SJF proceeds were used to make charitable donations, pay for expenses related to Shurtleff's official duties as Utah Attorney General, or to pay for its share of the expenses related to the Shotgun Blast – all of which are non-election purposes).

²⁴ Under Utah law, a state officeholder is required to maintain an account to deposit "public service assistance." Utah Code § 20A-11-201(1)(a).

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spelled out that any funds raised beyond the Act's contribution limits and source prohibitions would be segregated and used for non-election purposes.²⁵ The event invitation clearly informed donors of the federal contribution limits and how any additional donations would be used.²⁶

Therefore, the joint fundraising committee was permissible under Commission regulations. In addition, no funds were impermissibly raised outside the Act's contribution limits and source prohibitions because any such funds were used for non-election purposes. Accordingly, there is no reason to believe that any of the Respondents violated the Act with regards to the 2009 "Shurtleff Shotgun Blast."

C. State PAC Payment to Guidant Strategies

Despite respondents' statements to the contrary and the lack of any other evidence, OGC asserts that expenditures made by the state PAC to Guidant for fundraising event management and consulting were made "for the benefit of Shurtleff's federal candidacy," and therefore constituted an in-kind contribution from the state PAC to Shurtleff's federal campaign committee.²⁷ These payments, totaling \$13,137.77, were made between June 2009 and November 2009 (while Shurtleff was also a candidate for the U.S. Senate). Respondent asserts that these payments were made by the state PAC for activities related to Shurtleff's official duties as Attorney General.²⁸

According to the Respondents, the state PAC's primary purpose is to raise funds to pay for Shurtleff's officeholder expenses,²⁹ either directly or as transfers to Shurtleff's Attorney General campaign committee.³⁰ Thus, it makes sense that the state PAC's disclosure forms list the purpose of the expenditures to Guidant as "Fundraising Event Management." These expenses illustrate that Shurtleff routinely used Guidant in connection with his Attorney General

²⁵ MUR 6225, Response at Exhibit 4, Joint Fundraising Agreement ¶2.

²⁶ MUR 6225, Complaint at 5 ("Contributions permissible for the senatorial committee will be attributed to the senatorial committee. (Individuals, sole proprietorships, partnerships, and LLCs treated as partnerships may contribute \$2,400 per election, and federal multicandidate PACs may contribute \$5,000 per election.) Other contribution amounts will be attributed to a separate account of PAC for Utah's Future and used for non-election purposes, such as occasional charitable donations, or other purposes permitted by law.").

²⁷ MUR 6225, FGCR at 11.

²⁸ MUR 6225, Response at ¶9.

²⁹ Under Utah law, a state officeholder is required to maintain an account to deposit "public service assistance." Utah Code § 20A-11-201(1)(a). This is defined as "anything of value," including donations, "when given or provided to an officeholder to defray the costs of functioning in a public office or aid the officeholder to communicate with the officeholder's constituents." Utah Code § 20A-11-101(36)(a). Once the individual is no longer a state officeholder, the individual "may not expend or transfer the money in a campaign account in a manner that would cause the former state officeholder to recognize the money as taxable income under federal tax law." Utah Code § 20A-11-201(4)(a). Since it would be considered a business expense deduction, expending funds from this type of account for officeholder expenses, such as for official travel and for trinkets and brochures discussing issues pertinent to his office, would not cause the officeholder to recognize the money as taxable income, and is thus permissible. 26 U.S.C. § 527(e)(2). Donations to charitable contributions or political organizations are likewise not treated as income to the officeholder and are permissible. 26 U.S.C. § 527(d)(1), (2).

³⁰ MUR 6225, Response at 2-4.

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activities. Shurtleff could not suspend his duties as Attorney General simply because he was running for U.S. Senate. As such, Respondent's assertion that the expenses to Guidant were attributed towards raising funds to pay for Shurtleff's state officeholder expenses, rather than any election-related activity, is reasonable and we have no evidence to the contrary.³¹ Accordingly, we find no reason to believe that any of the Respondents violated the Act with regards to this activity.

D. Federal Campaign Committee Disbursements

Finally, the complainant alleges that FFS used non-federal funds to start up its campaign infrastructure. According to the complainant, even though, at the time of the complaint, "the campaign boast[ed] a fully functioning website, occupie[d] office space, [held] public events, [gave] away merchandise, mbbilize[u] volunteers, and distribute[d] campaign materials," its July 2009 Quarterly Report only disclosed \$692.79 in distbursements (for office supplies and a booth rental).³²

The quarterly reports filed by FFS in July and October, however, provide additional information that may account for the campaign activities undertaken by, and assets held at, the time the complaint was filed. FFS's July 2009 Quarterly Report shows a campaign debt to Guidant in the amount of \$23,131.56 for "Campaign Mnmt, Fundraising, Surveys." The campaign's October 2009 Quarterly Report discloses the payment of that debt as well as an additional payment of \$17,137.39 to Guidant for "Campaign Mnmt, Fundraising, Webhosting, Tele" and a disbursement of \$6,625 to Web Incentive Management for "Merchandise." Moreover, the report also discloses debts of \$25,412.75 to Guidant for "Mnmt, Fundraising, Seo, Webhosting, Tele," and \$5,062.50 to Global Marketing Alliance for "Rent."

There is no indication that these debts and disbursements were insufficient to pay for the campaign's assets and activities held at the time the complaint was filed. Therefore, we voted against the recommendation that the Commission find reason to believe FFS or the state PAC violated the Act or Commission regulations.

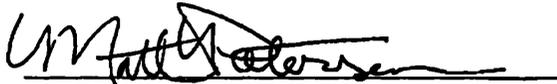
³¹ Even if the state PAC's expenditures were considered to also relate to Shurtleff's potential candidacy for re-election as Attorney General, such activities are specifically permitted under 2 U.S.C. § 441i(e)(2) and (f)(2). *See* MUR 6225. Response at 3, n.5.

³² MUR 6225. Complaint at 7-8.

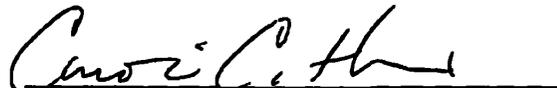
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III. CONCLUSION

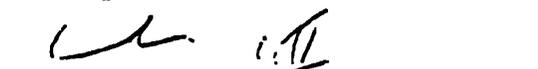
For the foregoing reasons, we voted to reject OGC's recommendation to find reason to believe that the Respondents violated the Act.


MATTHEW S. PETERSEN
Chairman

12/1/2010
Date


CAROLINE C. HUNTER
Commissioner

12/1/2010
Date


DONALD F. McGAHN II
Commissioner

12/1/10
Date

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