



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 7073
Meluskey for U.S. Senate, Inc., *et al.*)

STATEMENT OF REASONS OF COMMISSIONER LEE E. GOODMAN

In this matter I voted against finding reason to believe that Meluskey for U.S. Senate, Inc. and Julianne Ryan in her official capacity as treasurer (the “Committee”) failed to accurately disclose information about the source of funds Alexander Meluskey loaned to his campaign in violation of 52 U.S.C. § 30104(b).¹ I concluded that the evidence in the record does not support a finding of reason to believe because the most recent Financial Disclosure Report (“FD Report(s)”) Meluskey filed with the U.S. Senate does not indicate that he had insufficient financial resources from which to draw the amount loaned to his campaign.

I. FACTUAL BACKGROUND

From March 10, 2015, to December 29, 2016, Meluskey made 36 loans to the Committee, totaling \$788,773.² The Committee reported that each loan was unsecured and came from Meluskey’s “personal funds.”³ The Committee has not made any payments on the loans to date.⁴

The complaint alleged that the Committee has not properly disclosed the source of Meluskey’s loans. The Complaint argues that the loans could not have come from Meluskey’s personal funds because, based on Meluskey’s October 7, 2015 FD Report to the Senate, he

¹ See MUR 7073 (Meluskey for U.S. Senate, Inc., *et al.*), Certification at ¶1 (Dec. 12, 2017). I did vote to find reason to believe that Alexander Meluskey violated 52 U.S.C. § 30102(e)(1) by failing to file a timely Statement of Candidacy and that the Committee violated 52 U.S.C. §§ 30104(b)(2) and 30120(a) by accepting and failing to disclose in-kind contributions and by failing to include the appropriate disclaimers in episodes of “The Alex Meluskey Show”. See *id.* at ¶5.

² Meluskey for U.S. Senate, Inc., Schedule C, 2017 October Quarterly Report (Oct. 13, 2017) (listing all of Meluskey’s loans).

³ *Id.*

⁴ *Id.*

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reported no assets.⁵ In Response, the Committee asserts that Meluskey's Senate FD Reports showed that he had "significant assets and the ability to loan his campaign" the amounts disclosed by the Committee.⁶

II. LEGAL ANALYSIS

Federal candidates may make unlimited contributions from their own "personal funds" to their authorized campaign committees.⁷ The Act and Commission regulations provide that "personal funds" are (a) amounts derived from assets that, under applicable State law, the individual had legal right of access to, or control over, and to which the individual had legal and rightful title or an equitable interest at the time the individual became a candidate; and (b) income received during the current election cycle, which includes salary from employment, income from investments, and "gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle."⁸ If a candidate jointly owns an asset with his spouse, and there is no instrument or state law indicating the allocation of their ownership interests, the candidate's "personal funds" would include half of the value of the property.⁹

Authorized committees that receive loans or funds derived from loans must disclose to the Commission the "[l]oans made, guaranteed, or endorsed by a candidate . . . including loans derived from a bank loan to the candidate or from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit . . .".¹⁰ In all such instances, the committee must indicate the source, value, date, and interest rate of the loan, and whether the loan is secured.¹¹ If the candidate guarantees or endorses a loan made directly to the

⁵ Complaint at 1.

⁶ Committee Response at 2-3.

⁷ 11 C.F.R. § 110.10.

⁸ 52 U.S.C. § 30101(26)(A)-(B); 11 C.F.R. § 100.33(a)-(b).

⁹ 52 U.S.C. § 30101(26)(C); 11 C.F.R. § 100.33(c). However, if state law permits each joint account holder access to and control over the whole, the Commission will deem that state law to serve as the "instrument of conveyance or ownership" under 11 C.F.R. § 100.33(c)(1). *See Addendum to Legal Analysis on Proposed Interim Audit Report on Friends for Menor (LRA 732) – Contributions from Person Funds in Jointly Held Bank Accounts* (July 2, 2008) ("[P]revious precedent has not applied the 'one-half interest rule' in cases involving jointly held bank accounts if state law gives each party access to and control over the whole." (citing MUR 3505 (Citizens for Ron Klink, *et al.*), MUR 2292 (Stein for Congress, *et al.*), and OGC Comments on Bauer for President 2000, Inc. – Proposed Audit Report at 5-6 (May 6, 2002)).

¹⁰ 11 C.F.R. § 104.3(a)(3)(vii)(B); *see* 52 U.S.C. § 30104(b)(2)(G).

¹¹ *See Schedule C, FEC Form 3, Report of Receipts and Disbursements for an Authorized Committee (revised May 2016)* ("FEC Form 3").

committee, rather than making the loan directly from his “personal funds,” the committee must also include information about the lending institution and the types and value of collateral used to secure the loan.¹²

Here, the Commission’s Office of General Counsel recommended finding reason to believe Meluskey violated the Act because “*it is not clear* that Meluskey had sufficient ‘personal funds’ to loan the Committee \$788,773.”¹³ Meluskey’s FD Reports may not be complete. Indeed, he appears to have omitted a personal checking or savings account entirely, despite a reference to “Savings” in the income section of his 2016 FD Report.¹⁴ However, the fact that Meluskey’s FD Reports alone are “not clear” is not a sufficient basis on which to make an affirmative reason to believe finding and improperly shift the burden of proof to Meluskey.¹⁵ Meluskey’s sworn declaration and most recent FD Report reveal substantial financial resources at his disposal, including assets valued at between approximately \$932,015 and \$6,605,000, in addition to an annual income of at least \$312,408.¹⁶ Thus there were more than adequate assets from which Meluskey could have funded \$788,773 in personal loans to his committee.

In sum, the record does not support the conclusion that Meluskey had insufficient personal funds to loan his campaign \$788,773, let alone “no assets” as alleged in the complaint. To the contrary, evidence in the record indicates Meluskey possessed significant financial wealth. As a result, there is not a sufficient justification for a reason to believe finding. Accordingly, and in exercise of prosecutorial discretion,¹⁷ I voted against finding reason to believe that Meluskey violated 52 U.S.C. § 30104(b).

¹² See Schedule C-1, FEC Form 3, *supra* note 11.

¹³ MUR 7073, (Meluskey for U.S. Senate, Inc., *et al.*), First Gen. Counsel’s Rpt. at 11 (emphasis added).

¹⁴ The lack of clarity may weigh *in favor* of Meluskey, since a personal checking or savings account would likely hold additional funds with which to loan his campaign.

¹⁵ See *Machinists Non-Partisan Political Action Comm. v. FEC*, 655 F.2d 380, 388 (D.C. Cir. 1981) (“[M]ere ‘official curiosity’ will not suffice as the basis for FEC investigations”); MUR 6056 (Protect Colorado Jobs, Inc.), Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Donald F. McGahn at 6 n.12 (“[T]he RTB standard is not met if the Commission simply ‘did not have . . . sufficient information to find *no* reason to believe’ The Commission must have more than . . . unanswered questions before it can vote to find RTB and thereby commence an investigation.”); see also Statement of Reasons of Commissioners Darryl R. Wold, David M. Mason, and Scott E. Thomas at 2, MUR 4850 (Deloitte & Touche, LLP, *et al.*) (“The burden of proof does not shift to a respondent merely because a complaint is filed.”).

¹⁶ See Alexander Meluskey, United States Senate Financial Disclosures, Candidate Report (Amendment 1) (Nov. 19, 2016); Alexander Meluskey Decl. ¶14 (Aug. 26, 2016). The value for individual reported assets ranges from several thousand dollars to several hundred thousand dollars. See *id.* The actual value of Meluskey’s reported assets likely falls somewhere in between.

¹⁷ *Heckler v. Chaney*, 470 U.S. 821 (1985).

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Lee E. Goodman
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Commissioner

Feb. 12, 2018

Date

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