



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Suzan Korth, Treasurer
American Delta Party
5440 Morehouse Drive, Suite 5000
San Diego, CA 92121
Email: info@americandeltaparty.com

MAY 30 2019

RE: MUR 7611
(formerly RR 18L-30)
American Delta Party and
Suzan Korth in her official
capacity as treasurer

Dear Ms. Korth:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that American Delta Party and you in your official capacity as treasurer ("Committee") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On August 29, 2018, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On May 16, 2019, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30116(f) and 30118(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is enclosed for your information.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that the Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Committee is notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless the Committee notifies the Commission in writing that it wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law.

If the Committee is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1616 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, the Committee may submit any factual or legal materials that it believes are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's Guidebook for Complaints and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

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Suzan Korth, Treasurer
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If the Committee intends to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis

1000444-0100

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: American Delta Party and
Suzan Korth in her official
capacity as treasurer

MUR 7611

I. INTRODUCTION

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This matter was generated based on information ascertained by the Federal Election Commission ("Commission") in the normal course of carrying out its supervisory responsibilities. The Commission's Reports Analysis Division ("RAD") referred American Delta Party and Suzan Korth in her official capacity as treasurer ("Committee") to the Office of General Counsel for receipt of a \$25,000 excessive contribution from an individual and a \$7,000 prohibited contribution from a limited liability corporation ("LLC") disclosed on its 2016 August Monthly Report.¹ The Committee did not respond to the RAD Referral. For the reasons discussed below, the Commission finds that there is reason to believe that the Committee accepted excessive and prohibited contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

On July 11, 2016, the Committee received a contribution of \$7,000 for "in-kind professional fees" from Direct Contact Voter Solutions, LLC ("Direct Contact").² On July 31, 2016, the Committee received a \$30,000 contribution in the form of a loan from an individual,

¹ RAD Referral at 1 (Aug. 28, 2018).

² Committee 2016 August Monthly Report at 7. There is no public information on Direct Contact Voter Solutions, LLC, but there is a similarly-named LLC registered at the same address, Direct Contact Voter Services, LLC.

Roque De La Fuente.³ After RAD reviewed the Committee's 2016 August Monthly Report, it sent a Request for Additional Information ("RFAI") to the Committee regarding these contributions.⁴

The Committee told RAD that the \$7,000 LLC contribution was an in-kind contribution and that it was unsure how the Committee would disclose a refund.⁵ RAD informed the Committee that it must pay the vendor for the goods or services it provided.⁶ The Committee then asked RAD for clarification on reporting the refund of the \$25,000 excessive portion of De La Fuente's contribution.⁷

RAD had follow-up discussions with the Committee in November 2017 regarding the Direct Contact and De La Fuente contributions.⁸ The Committee stated that it did not have sufficient funds to refund the excessive contribution or to reimburse the vendor for the apparently prohibited in-kind contribution.⁹ The Committee has not refunded these contributions to date. The Committee did not respond to the RAD Referral.

³ Committee 2016 August Monthly Report at 6.

⁴ See RFAI dated Dec. 27, 2016.

⁵ RAD Referral at 2 (Feb. 8, 2017 communication).

⁶ *Id.* RAD also informed the Committee that it had not responded to an earlier RFAI concerning the Committee's amended Statement of Organization, which indicated that the Committee was a national committee for the "WAD" party. See RFAI dated July 25, 2016; see also Committee's Amended Statement of Organization (June 28, 2016). This RFAI stated "before using the contribution limits and/or statutes applicable for national parties, your committee must petition the Commission for an advisory opinion to determine if it satisfies the criteria for national party status." See RFAI at 1.

⁷ See RAD Referral at 2 (Feb. 15, 2017 communication). If the Committee had national party committee status, see note 6, De La Fuente's \$30,000 contribution would have been within the limits. See 52 U.S.C. § 30116(a)(1)(B).

⁸ RAD Referral at 3, 4.

⁹ *Id.* at 4. The Committee reported \$1,386 in cash-on-hand on its 2019 February Monthly Report, which is the latest report filed by the Committee. The Committee also reports an outstanding balance of \$32,723.25 of loans owed to De La Fuente. *Id.* at 13.

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B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits political committees from knowingly accepting any contribution in violation of the provisions of 52 U.S.C. § 30116.¹⁰ The Act provides that no person shall make contributions to any political committee that is not an authorized committee or a political party committee in any calendar year which, in the aggregate, exceed \$5,000.¹¹ Thus, by receiving a contribution of \$30,000 from De La Fuente, the Committee accepted an excessive contribution of \$25,000 from him. The Commission finds that there is reason to believe that the Committee accepted an excessive contribution from De La Fuente in violation of 52 U.S.C. § 30116(f).

The Act defines "contribution" to include anything of value made by any person for the purpose of influencing any election for Federal office.¹² "Anything of value" includes all in-kind contributions and unless otherwise exempted, 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.¹³ The Act and Commission regulations prohibit corporations from making contributions to a federal political committee (other than an independent-expenditure-only political committee), and a political committee is prohibited from knowingly accepting or receiving such contributions.¹⁴

¹⁰ 52 U.S.C. § 30116(f).

¹¹ 52 U.S.C. § 30116(a)(1)(C).

¹² 52 U.S.C. § 30101(8)(A)(i).

¹³ See 11 C.F.R. § 100.52(d)(1).

¹⁴ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

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The Committee accepted a contribution of \$7,000 for "in-kind professional fees" from Direct Contact.¹⁵ Accordingly, the Commission finds that there is reason to believe that the Committee accepted an in-kind prohibited contribution of \$7,000 from Direct Contact in violation of 52 U.S.C. § 30118(a).

¹⁵ Contributions by limited liability companies, such as Direct Contact, are considered corporate or partnership contributions depending on whether the LLC elects to be treated as a partnership or as a corporation by the Internal Revenue Service. *See* 26 C.F.R. § 301.7701-3.

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