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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2004—20]

Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Commission is issuing a Policy Statement to clarify when, in the course of an enforcement proceeding (known as a Matter Under Review or “MUR”), a treasurer is subject to Commission action in his or her official or personal capacity, or both. Under this policy, when the Commission investigates alleged violations of the Federal Election Campaign Act, as amended, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act (collectively “the Act” or “FECA”) involving a political committee, the treasurer will typically be subject to Commission action only in his or her official capacity. However, when information indicates that a treasurer has knowingly and willfully violated a provision of the Act or regulations, or has recklessly failed to fulfill duties specifically imposed on treasurers by the Act, or has intentionally deprived himself or herself of the operative facts giving rise to the violation, the Commission will consider the treasurer to have acted in a personal capacity and make findings (and pursue conciliation) accordingly. This Policy Statement also addresses situations in which treasurers are subject to Commission action in both their official and personal capacities, and situations where successor treasurers are named.

The goal in adopting this policy is to clarify when a treasurer is subject to Commission action in a personal or official capacity, while at the same time

preserving the Commission’s ability to obtain an appropriate remedy that will satisfactorily resolve enforcement matters, or to seek relief in court, if necessary, against a live person. Importantly, the policy is grounded in the statutory obligations specifically imposed on treasurers and well-established legal distinctions between official and personal capacity proceedings.

DATES: December 16, 2004.

FOR FURTHER INFORMATION CONTACT: Peter G. Blumberg, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is modifying its current practices to specify more clearly when a treasurer is subject to a Commission enforcement proceeding in his or her “official” and/or “personal” capacity.¹ Specifically, when a complaint asserts sufficient allegations to warrant naming a political committee as a respondent, the committee’s current treasurer will also be named as a respondent in his or her official capacity. In these circumstances, reason-to-believe and probable cause findings against the committee will also be accompanied by findings against the current treasurer in his or her official capacity. When the complaint asserts allegations that involve a past or present treasurer’s violation of obligations that the Act or regulations impose specifically on treasurers, then that treasurer may, in the circumstances described below, be named in his or her personal capacity, and findings may be made against the treasurer in that capacity. Thus, in some matters the current treasurer could be named in both official and personal capacities. Maintaining the Commission’s ability to pursue a treasurer as a respondent in either official or personal capacity allows the Commission discretion to fashion an appropriate remedy for violations of the Act.²

¹ The terms “official capacity” and “representative capacity” are generally interchangeable, as are the terms “personal capacity” and “individual capacity.” See *McCarthy v. Azure*, 22 F.3d 351, 359 n.12 (1st Cir. 1994).

² In any scenario, the Commission will, of course, remain free to exercise its prosecutorial discretion not to pursue a respondent. For example, the Commission, in some cases, may decide not to

Notably, political committees are artificial entities that can act only through their agents, such as their treasurers, and often can be, by their very nature, ephemeral entities that may exist for all practical purposes for a limited period, such as during a single election cycle. Due to these characteristics, identifying a live person who is responsible for representing the committee in an enforcement action is particularly important. Without a live person to provide notice to and/or to attach liability to, the Commission may find itself at a significant disadvantage in protecting the public interest and in ensuring compliance with the laws it is responsible for enforcing. By virtue of their authority to disburse funds and file disclosure reports and to amend those reports, treasurers of committees are in the best position to carry out the requirements of a conciliation agreement such as paying a civil penalty, refunding or disgorging contributions, and amending reports.

The Act designates treasurers to play a unique role in a political committee; indeed, a treasurer is the only office a political committee is required to fill. 2 U.S.C. 432(a). Without a treasurer, committees cannot undertake the host of activities necessary to carry out their mission, including receiving and disbursing funds and publicly disclosing their finances in periodic reports filed with the Commission. *Id.*; 2 U.S.C. 434(a)(1). Given this statutory role, especially the authority to receive and disburse funds (e.g., pay a civil penalty, refund improper contributions, disgorge ill-gotten funds) on behalf of the committee, designating the treasurer as the representative of the committee for purposes of compliance with the Act makes sense.

Although the Commission may be entitled to take action as to a treasurer in both an official and individual capacity, in the typical enforcement matter the Commission expects that it will proceed against treasurers only in their official capacities. However, the Commission will consider treasurers parties to enforcement proceedings in their personal capacities where information indicates that the treasurer

pursue a predecessor treasurer who technically has personal liability where the committee, through its current treasurer, has agreed to pay a sufficient civil penalty and to cease and desist from further violations of the Act.