

Memorandum

To: Jean W. Cunningham, Chair
Harold Y. Pyon, Vice-Chairman
Nancy Rodrigues, Secretary
James Alcorn, Esq., Deputy Secretary

From: J. David Allen, Campaign Finance Manager

Date: October 9, 2009

RE: Complaint

Committee ID: CC981199

Committee Name: Ware for House of Delegates

Candidate: Delegate Onzlee Ware

Complainant: Mark Powell

Issues:

1. Personal use of campaign committee funds
2. Payee's addresses are incomplete or missing
3. The use of "Reimbursement" as the description of goods or services
4. Payments to self in round dollar amounts
5. \$800 loan to Purcell Marcus on June 1, 2009 report
6. Payment listing the entity paid as "Cash Withdraw" in the amount of \$1,300, with the description shown as primary workers.

Findings:

1. Reports for the filing deadlines of: April 15, 2009, June 1, 2009, July 15, 2009 All had missing or incomplete information.
2. Reports for the filing deadlines of: April 15, 2009, June 1, 2009, July 15, 2009 All had some descriptions listed as "Reimbursement."
3. Reports for the filing deadlines of: April 15, 2009, June 1, 2009, July 15, 2009 All had some payments payable to Delegate Ware for round dollar amounts.
4. An expenditure listed on the June 1, 2009 Schedule D (expenditures) did list a loan of \$800 to Purcell Marcus.
5. An expenditure listed on the July 15, 2009 Schedule D (expenditures) did list an entity paid as "Cash Withdraw" in the amount of \$1,300, with the description shown as primary workers.

Relevant Statutory and Policy Provisions:

§ 24.2-948.4. Final report requirement; disbursement of surplus funds, subsection D states, "...It shall be unlawful for any person to convert any contributed moneys, securities, or like intangible personal property to his personal use or to the use of a member of the candidate's "immediate family" as that term is defined in § 30-101."

§ 24.2-947.3 (F) "It shall be unlawful for any candidate, his treasurer, or any person receiving contributions or making expenditures on a candidate's behalf or in relation to his candidacy, to fail to report every contribution and expenditure as required by this article." Expenditures must list, "...The name and address of the person paid..." (§ 24.2-947.4. (C)).

§ 24.2-947.4 (C) (2) A brief description of the purpose of the expenditure

§ 24.2-947.3 (D) "All contributions and expenditures received or made by any candidate, or received or made on his behalf or in relation to his candidacy by any person, except independent expenditures, shall be paid over or delivered to the candidate's treasurer or shall be reported to the treasurer in such detail and form as to allow him to comply fully with this chapter..."

§ 24.2-947.3 (E) "The candidate or his treasurer shall keep detailed and accurate accounts of all contributions turned over to and expenditures made by the candidate or his treasurer on behalf of the candidate or his campaign committee, or reported to any candidate or his treasurer pursuant to this article. Such account shall set forth the date of the contribution or expenditure, its amount or value, the name and address of the person or committee making the contribution or to whom the expenditure was made, and the object or purpose of the contribution or expenditure..."

§ 24.2-947.3 (F) "It shall be unlawful for any candidate, his treasurer, or any person receiving contributions or making expenditures on a candidate's behalf or in relation to his candidacy, to fail to report every contribution and expenditure as required by this article."

§ 24.2-947.4 (C) (2) A brief description of the purpose of the expenditure

Instructions for Completing this Form (SBE-945E)

Schedule E: Loans

This schedule is to be used when reporting any loans received or repaid.

LOAN - includes any money paid to the candidate or committee that the lender expects to be repaid. A loan may be made by any entity.

§ 24.2-945.1. Definitions: "Expenditure - means money and services of any amount, and any other thing of value, paid, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, or person for the purpose of expressly advocating the election or defeat of a clearly identified candidate..."

§ 24.2-947.4 (C) (1) "The name of the person contracting for or arranging the expenditure..."

Requests:

1. On June 10, 2009, a certified letter was sent by staff to Delegate Ware notifying him of the omissions in his reports and requesting that he amend the reports by June 22, 2009.
2. On June 10, 2009, a certified letter was sent by staff to Delegate Ware notifying him of the omissions in his reports and requesting that he amend the reports by June 22, 2009.

3. On June 10, 2009, a certified letter was sent by staff to Delegate Ware notifying him of the omissions in his reports and requesting that he amend the reports by June 22, 2009.
4. On July 24, 2009, a certified letter was sent by staff to Delegate Ware notifying him of the complaint
5. On July 24, 2009, a certified letter was sent by staff to Delegate Ware notifying him of the omissions in his report and requesting that he amend the report.

Conclusions:

1. § 24.2-948.4 sets out the requirements for a candidate campaign committee to file a final report. Subsection B states, " A final report shall be required when (i) a candidate no longer seeks election to the same office in a successive election, (ii) a candidate seeks election to a different office, or (iii) the candidate is deceased." The law has to be taken as a whole, not by parts. When reading § 24.2-948.4 as a whole, it is clear that prohibition against converting contributed campaign funds to personal use only applies to the closing of a campaign finance account. Therefore the Board has no statutory authority to refer complaints regarding personal use of campaign funds to any other officials for further investigation unless or until a candidate files a final report under § 24.2-948.4.
2. Delegate Ware's report was amended on June 22, 2009
3. Delegate Ware's report was amended on June 22, 2009
4. Delegate Ware's report was amended on June 22, 2009
5. Delegate Ware's report was amended on September 4, 2009
6. Delegate Ware's report was amended on September 4, 2009

Recommendations:

1. No further action needed.
2. No further action needed.
3. No further action needed.
4. No further action needed.
5. No further action needed.
6. No further action needed.