

National Republican Senatorial Committee

William J. McGinley
General Counsel

July 10, 2006

By Courier

Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR _____

Re: Stephen Laffey, Laffey US Senate, and
City of Cranston

Dear Mr. Norton:

The National Republican Senatorial Committee, through counsel, submits this complaint pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4 against Stephen Laffey, Laffey US Senate, and the City of Cranston. As set forth below, there is reason to believe that Stephen Laffey, Mayor of Cranston and candidate for US Senate, used city taxpayer funds to pay for a mailing that promotes his federal candidacy in violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Federal Election Commission ("Commission") regulations. The information contained in this complaint is based upon recent news reports and information and belief.

Under the Act and Commission regulations, a coordinated political communication constitutes an in-kind contribution to the federal candidate referenced in the communication. Federal candidates who hold local office are not permitted to use city government resources to finance gratuitous political mailings to promote their federal candidacies. The Commission must conduct an immediate investigation of this matter and impose the maximum penalties under law for any violations.

I. Background

Stephen P. Laffey is the Mayor of Cranston, a city located in the State of Rhode Island, and a candidate for US Senate. Laffey US Senate is Mr. Laffey's principal campaign committee. The Rhode Island federal primary election will be held on September 12, 2006. (See Exhibit A.)

On or about June 19, 2006, Cranston mailed the city's tax bills to its residents. A letter from Mayor Laffey to the Cranston taxpayers was included in the tax mailing. Mayor Laffey's

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letter did not contain any procedural information instructing taxpayers how to satisfy their obligations or where the recipients may direct questions about their tax bills. Rather, the communication was a patently political communication that praised Mayor Laffey's alleged fiscal accomplishments, attacked other Rhode Island cities for their fiscal policies, and included a cut-out piece containing skulls and crossbones with a list of fiscal warning signs. The letter closed with the Mayor's signature and the slogan "As always, fighting for you" – a similar slogan to the one that appears in numerous Laffey campaign materials including a sign outside his campaign headquarters. A copy of the letter and a postmarked envelope are attached as Exhibit B, and a video of the sign outside of Laffey campaign headquarters is attached as Exhibit C.

According to news reports, the letter caused an immediate controversy in Cranston. "The majority of the City Council members are crying foul, saying the letter was a not-so-thinly veiled campaign ad for Republican Laffey, who is challenging U.S. Senator Lincoln D. Chafee in a September primary." Barbara Polichetti, Council Raps Laffey for 'Political Ad' In Tax Bills, The Providence Journal (June 28, 2006). Numerous City Council members have informed the press that they received complaints from constituents about the political contents of the letter. See Matt Sanderson, Council Wants Laffey To Pay For 'Political' Letters, Cranstonherald.org (June 29, 2006). In fact, City Council President Aram Garabedian stated that the Mayor did not have the authority to send the letter. Barbara Polichetti, Council Raps Laffey for 'Political Ad' In Tax Bills, The Providence Journal (June 28, 2006). As the Providence Journal reported:

"To me, if it looks like a political ad and acts like a political ad, then it's a political ad," said Councilman John E. Lanni, Jr. "A political ad paid for by the taxpayers." . . . Ward 1 Councilman Terence Livingston said he received complaints from constituents and termed the letter "something I'd expect from a snake-oil salesman."

Id. In fact, the City Council voted 7-2 adopting a non-binding resolution asking the Mayor to repay the approximately \$3,000 the letter added to the cost of mailing the residents' tax bills. M.L. Johnson, Cranston Council Asks Laffey to Repay City For Mailing, Associated Press (June 28, 2006). As of the date of this filing, there is no publicly available evidence that the Mayor or his campaign committee has reimbursed the city for the cost of the political mailing. Copies of the newspaper articles and a television news report on this matter are attached as Exhibit D.

II. Legal Analysis

The Commission has established a three part test to determine whether a communication – such as Mayor Laffey's taxpayer-funded political letter -- constitutes a coordinated communication. Under this test, the communication must: (1) be paid for by a person other than the candidate referenced in the mailing or his authorized committee; (2) satisfy at least one of the content standards; and (3) satisfy at least one of the conduct standards. 11 C.F.R. § 109.21(a). If a communication satisfies each element of the three part test, it is considered a "coordinated communication" and treated as an in-kind contribution to the candidate referenced in the communication. Id. § 109.21(b)(1). If a candidate receives such an in-kind contribution, the candidate's campaign committee must report "the usual and normal value of the communication as an in-kind contribution" in accordance with Commission

regulations. Id. § 109.21(b)(3). As discussed below, the Laffey political mailing satisfies the Commission’s three-part coordination test.

A. The Laffey political mailing satisfies the first test because it was paid for by the City of Cranston – a “person” under the Act and Commission regulations – and not by Mayor Laffey or his campaign.

The first test is satisfied if the Laffey political mailing was paid for by a “person” other than Mayor Laffey, his campaign committee, or one of their agents. Id. § 109.21(a)(1). The FEC has made clear in Advisory Opinions and Enforcement Matters (“MURs”) that “State governments and municipal corporations are persons under the [federal campaign finance laws] and are subject to its contribution provisions.” FEC Adv. Op. 2000-5; see also FEC MUR 5082 First General Counsel’s Report at 6 (“There is also a long history of the [FEC] applying the [federal campaign finance laws] to states in enforcement matters.”); FEC MUR 5127 Factual and Legal Analysis at 4 (“The [FEC], however, has previously made clear that states are ‘persons’ and are thus subject to contribution limits.”).

The Laffey political mailing was paid for by the City of Cranston and included with the city’s tax bills. See Matt Sanderson, Council Wants Laffey To Pay For “Political” Letters, Cranstonherald.org (June 29, 2006) (The “City Council voted Tuesday to demand Republican Mayor Stephen Laffey reimburse the city \$3,366 associated with a letter he included in tax bills that some called political in nature.”); M.L. Johnson, Cranston Council Asks Laffey to Repay City For Mailing, Associated Press (June 28, 2006) (“The city council voted 7-2 along party lines to ask Laffey to repay approximately \$3,000 the letter added to the cost of mailing residents’ tax bills.”).

Thus, the first test is satisfied because the Laffey political mailing was paid for by the City of Cranston, a person other than Mayor Laffey or his campaign committee.

B. The Laffey political mailing satisfies the second test because it referenced Mayor Laffey and was distributed to Rhode Island voters in close proximity to the primary election.

The second test is satisfied if the communication at issue meets at least one of four content standards. 11 C.F.R. § 109.21(a)(2). Under the fourth content standard, a communication satisfies this test if it is: (1) a public communication that refers to a senatorial candidate; (2) publicly distributed or otherwise publicly disseminated 90 days before a primary or general election; and (3) directed to voters in the jurisdiction of the clearly identified candidate. Id. § 109.21(c)(4).

The Laffey political mailing included with the city’s tax bills satisfies the fourth content standard. First, the letter¹ accompanying the city tax bills clearly references Mayor Laffey, and was even signed by him. Second, the letter was apparently postmarked on June 19, 2006

¹ It appears that the letter was sent to thousands of Cranston’s residents. See Barbara Polichetti, Council Raps Laffey for ‘Political Ad’ In Tax Bills, The Providence Journal (June 28, 2006). Therefore, the mailing satisfies the definition of “public communication” under Commission regulations. 11 C.F.R. §§ 100.26 (defining public communication) & 100.27 (defining mass mailing).

– within the 90 day window before Rhode Island’s September 12, 2006 primary election. The 90 day window for the primary election began June 14, 2006.² Finally, the Laffey letter was sent to Rhode Island residents.

Accordingly, the Laffey political mailing satisfies the second test by meeting the fourth content standard.

C. The Laffey political mailing satisfies the third test because Mayor Laffey was materially involved in the creation of the communication, or at the very least, he requested or suggested that the mailing be included in the tax bills.

The third test is satisfied if the communication meets at least one of the conduct standards. Id. § 109.21(a)(3). One of the conduct standards -- the material involvement standard -- is satisfied if a candidate or his campaign committee is materially involved in decisions regarding the content of the communication. Id. § 109.21(d)(2). In addition, the third test may be satisfied if the political mailing was included in the tax bills at the request or suggestion of Mayor Laffey. Id. § 109.21(d)(1).

There does not seem to be any dispute that Mayor Laffey wrote the political letter that was included in the Cranston tax bills. See Barbara Polichetti, Council Raps Laffey for ‘Political Ad’ In Tax Bills, The Providence Journal (June 28, 2006). Newspaper articles also indicate that the letter may have been included in the mailing at the request or suggestion of Mayor Laffey, or that he assented to the inclusion of such a letter in the tax bills. See id.

Therefore, Mayor Laffey’s political mailing satisfies the third test because Mayor Laffey wrote the letter, and may have requested or suggested that the political letter be included with the city tax bills.

² On June 8, 2006, the FEC published the Explanation and Justification supporting the recent changes to the coordination rules that are scheduled to take effect June 10, 2006. One of the changes contained in the revised coordination rules shortens the time period for communications that refer to a House or Senate candidate from 120 days to 90 days before a primary or general election. See 71 Fed. Reg. 33190. Therefore, whether the applicable time period is the existing 120 time period or the revised 90 time period, the communication still satisfies the fourth content standard.

III. Conclusion

The Laffey political mailing satisfies the Commission's three-part coordination test discussed above and, therefore, the costs of the mailing constitute an in-kind contribution from the city to his campaign. Mayor Laffey's failure to comply with the Act and Commission regulations warrants further investigation and enforcement by the Commission. Therefore, the Commission should immediately open an investigation of this matter and find reason to believe that Mayor Laffey, Laffey US Senate and the City of Cranston violated the Act and Commission regulations for the reasons set forth above.

Respectfully submitted,

William J. McGinley

Attachments

SWORN TO AND SUBSCRIBED before me this ___ day of July, 2006.

Notary Public

My Commission Expires: