



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 20 2008

John S. Reed, Esq.
Reed Weitekamp Schell & Vice PLLC
500 W. Jefferson Street, Suite 2400
Louisville, KY 40202-2812

Re: MUR 5965
Dant Clayton Corporation

Dear Mr. Reed:

On January 28, 2008, the Federal Election Commission ("Commission") notified your client, Dant Clayton Corporation ("Dant Clayton"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On November 6, 2008, the Commission found, on the basis of the information in the complaint and information provided by Dant Clayton, that there was no reason to believe your client violated 2 U.S.C. § 441b(a). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter at (202) 694-1598.

Sincerely,

A handwritten signature in black ink that reads "Susan L. Lebeaux".

Susan L. Lebeaux
Acting Deputy Associate General Counsel
for Enforcement

Enclosure:

Factual and Legal Analysis for Dant Clayton Corporation

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Dant Clayton Corporation

MUR: 5965

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6 **I. INTRODUCTION**

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8 This matter was generated by a complaint filed with the Federal Election Commission
9 (“Commission”) by Jack L. Richardson, IV. *See* 2 U.S.C. § 437g(a)(1).

10 Gregory E. Fischer, the Chief Executive Officer of Dant Clayton Corporation (“Dant
11 Clayton”), declared his intention to run in Kentucky’s 2008 Democratic primary for a United
12 States Senate seat on his campaign website on January 16, 2008. The complaint alleges that
13 Dant Clayton made impermissible corporate in-kind contributions during December 2007 in the
14 form of corporate resources utilized in connection with Fischer’s Senate race, specifically the use
15 by Fischer of his corporate e-mail account to seek finance staff should he decide to run, and the
16 inclusion in an attachment to his e-mail of the corporate e-mail address of a Dant Clayton
17 employee for receipt of resumes from persons interested in applying. In its response, Dant
18 Clayton does not deny the alleged e-mail activities, but maintains that they did not constitute in-
19 kind corporate contributions.

20 **II. FACTS**

21 The complaint’s allegation is based on a blog website report, which is attached thereto;
22 the report contains a copy of an e-mail and job description that Fischer sent from his Dant
23 Clayton corporate e-mail account on December 24, 2007, addressed to “undisclosed recipients.”
24 In the e-mail, Fischer states “[w]hile I have not made a final decision re the US Senate run, we
25 are preparing for a possible announcement in January.” Fischer further states that since
26 “[f]undraising is one of the first activities to kick into gear,” paid finance staff and a Finance

1 Director are needed. He asks the e-mail recipients to think about persons who might qualify and
2 attaches to his e-mail a job description for the positions.¹ The attachment concludes: “To apply,
3 e-mail cover letter and resume to: csadler@dantclayton.com.” It appears that Cindy Sadler, a
4 Dant Clayton employee, is the “csadler” referenced in the e-mail attachment. *See*
5 <http://center.spoke.com/info/p9IbWzr/CindySadler>.

6 **III. ANALYSIS**

7 Dant Clayton’s response asserts that because Fischer was not yet a “candidate” within the
8 meaning of 2 U.S.C. § 431(2) when the activity took place, the ban on corporate contributions was
9 not applicable.² Dant Clayton further maintains that even if Fischer was a “candidate” at the
10 relevant time, if its volunteer employees “used corporate resources, it is Dant Clayton’s belief that
11 the use of those resources was ‘occasional, isolated or incidental’ within the meaning of
12 11 C.F.R. § 114.9(a) and would not be a contribution.” Dant Clayton response at 1-2.

13 The Act prohibits corporations from making contributions or expenditures from their
14 general treasury funds in connection with any election of any candidate for Federal office.
15 Contributions include “any gift, subscription, loan, advance, or deposit of money or anything of
16 value made by any person for the purpose of influencing any election for Federal office.”
17 2 U.S.C. § 431(8)(A)(i). The Act defines expenditures as “any purchase, payment distribution,

¹ The attached job description is headed “DEMOCRATIC CAMPAIGN STAFF NEEDED,” subheaded “HIRING FINANCE STAFF IN CAMPAIGN TO BRING FRESH IDEAS TO THE US SENATE,” and states that the responsibilities include “[t]raveling and working directly with the Candidate and Friends of the Candidate.”

² Whether Fischer was a candidate or not at the time of the activities in question, he was not permitted to accept corporate contributions even though he had not yet become a “candidate.” Sections 101.2 and 101.3 of the Commission’s regulations provide that when an individual becomes a candidate, all funds received or payments made in connection with his or her campaign prior to becoming a candidate are considered contributions or expenditures under the Act and must be disclosed in the first report filed by the candidate’s authorized committee. Because funds or payments made in connection with a pre-candidacy campaign may later be subject to federal restrictions and reporting requirements, they must be federally compliant. *See also* 11 C.F.R. §§ 100.72(a) and 100.31.

1 loan, advance, deposit, or gift of money or anything of value made by any person for the purpose
2 of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i). The term “anything of
3 value” includes all “in-kind contributions.” 11 C.F.R. § 100.7(a)(1)(iii)(A). *See* 2 U.S.C.
4 § 441b(b)(2).

5 While a campaign’s use of corporate resources may be deemed to be an in-kind
6 contribution and, thus, an illegal corporate contribution in violation of 2 U.S.C. § 441b, section
7 114.9(a)(2) of the Commission’s regulations contains a safe harbor that describes certain uses of
8 corporate facilities to be “occasional, isolated, or incidental,” and, if qualifying as such, not
9 prohibited corporate contributions. Individual volunteer activity that does not exceed one hour
10 per week or four hours per month, regardless of whether the activity is undertaken during or after
11 normal working hours, as well as voluntary individual Internet activities, as set forth in 11 C.F.R.
12 § 100.94, fall within the safe harbor, provided that the activity does not prevent an individual
13 from completing the normal amount of his or her compensated work, does not increase the
14 overhead or operating costs of the corporation, and is not performed under coercion. *See*
15 11 C.F.R. § 114.9(a)(2)(ii). *See also Explanation and Justification for Internet Communications*,
16 71 Fed. Reg. 18589, 18611 (April 12, 2006) (“E&J”).

17 Section 100.94, referenced in this safe harbor provision, exempts individual volunteer
18 Internet activity, whether independent or in coordination with a candidate, from the definition of
19 “contribution.” The exemption applies to an individual’s uncompensated personal services
20 related to Internet activities, which includes sending or forwarding messages, providing a
21 hyperlink or other direct access to another person’s website, paying a nominal fee for the use of
22 another person’s website, and any other form of communication distributed over the Internet.
23 The exemption also covers an individual’s uncompensated use of equipment or services,

1 including computers, software, domain names, and any other technology that is used to provide
2 access to or use of the Internet, regardless of who owns the equipment and services.

3 Based on the available information, it appears that the activities in issue fall within the
4 scope of the safe harbor provision. The complaint offers no indication that Fischer did anything
5 but use his company's e-mail account on behalf of his campaign (and he did so at 12:52 A.M. on
6 December 24, 2007, which means that he likely wrote and sent it on his own time, not Dant
7 Clayton's), and ask individuals interested in joining the campaign to send resumes to another
8 Dant Clayton employee's e-mail address. These activities are encompassed in section
9 114.9(a)(2)'s safe harbor provision. *See* E&J at 18596 ("there is virtually no cost associated with
10 sending e-mail communications, even thousands of e-mails to thousands of recipients...."). Nor
11 does the complaint provide any indication that Dant Clayton employees, including Ms. Sadler,
12 engaged in activities on behalf of Fischer's campaign that were outside of section 114.9(a)(2)'s
13 safe harbor provision. Thus, the use of Dant Clayton's corporate resources does not constitute an
14 in-kind corporate contribution.

15 Therefore, the Commission finds no reason to believe that Dant Clayton Corporation
16 violated 2 U.S.C. § 441b(a).

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