



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA ELECTRONIC AND FIRST CLASS MAIL

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MAR 28 2019

RE: MUR 7586
(Formerly Pre-MUR 608)

Dear Ms. Laham:

On March 26, 2018, your clients, International Council of Shopping Centers, Inc. ("ICSC") and the International Council of Shopping Centers, Inc. Political Action Committee ("ICSC PAC"), filed a *sua sponte* submission notifying the Federal Election Commission ("Commission") that ICSC and ICSC PAC may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").

Upon review of the available information, the Commission, on March 20, 2019: opened a matter under review; found reason to believe that ICSC violated 52 U.S.C. §§ 30118(a) and 30102(b)(2) and 11 C.F.R. §§ 102.6(c)(4) and 102.8(b); and found reason to believe that ICSC PAC violated 52 U.S.C. §§ 30118(a), 30102(b)(2) and 30104(b) and 11 C.F.R. § 102.6(c)(1). The Factual and Legal Analysis, which provides the basis for the Commission's findings, is enclosed for your information.

Please note that your clients have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

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 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 your clients violated the law.

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If your clients are interested in engaging in pre-probable cause conciliation, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650 or rlockett@fec.gov, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, it 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 your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery 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 Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish 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).

Carol A. Laham, Esq.
MUR 7586
Page 3 of 3.

We look forward to your response.

On behalf of the Commission,



Ellen L. Weintraub
Chair

Enclosures
Factual and Legal Analysis
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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: International Council of Shopping Centers, Inc. MUR 7586
International Council of Shopping Centers, Inc.
Political Action Committee, and Betsy R. Laird
in her official capacity as treasurer

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I. INTRODUCTION

The International Council of Shopping Centers, Inc. ("ICSC") and ICSC Political Action Committee ("ICSC PAC") (collectively "Respondents") submitted a *sua sponte* submission ("Submission") acknowledging that ICSC improperly deposited into ICSC PAC's federal account corporate funds totaling \$343,979. Respondents also acknowledge the untimely transfer and deposit of PAC contributions and the inaccurate reporting of the PAC's cash-on-hand balances over a five-year period.¹ For the reasons discussed below, the Commission has found reason to believe that ICSC violated 52 U.S.C. §§ 30118(a) and 30102(b)(2) and 11 C.F.R. § 102.6(c)(4) and 102.8(b); and that ICSC PAC violated 52 U.S.C. § 30118(a), 30102(b)(2) and 30104(b) and 11 C.F.R. § 102.6(c)(1).

II. FACTUAL BACKGROUND

ICSC is an incorporated trade association that represents more than 70,000 members of the retail real estate industry.² ICSC PAC is the separate segregated fund ("SSF") of ICSC and is registered with the Commission as a multi-candidate political committee.³

¹ *Sua Sponte* Submission of ICSC and ICSC PAC (Mar 27, 2018) ("Submission"). See also Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) ("*Sua Sponte* Policy").

² See Who We Are – Our Mission, available at: <https://www.icsc.org/who-we-are/our-mission>.

³ Submission at 3; ICSC PAC Amended Statement of Organization (Jan. 2, 2014).

1 As discussed in further detail below, the violations described in the submission largely
2 relate to two types of errors. First, corporate funds were improperly classified as PAC
3 contributions and deposited into the PAC's federal account instead of its administrative account.⁴
4 Second, individual contributions were improperly classified as administrative donations and
5 deposited into the PAC's administrative account.⁵ The source of the error was traced to ICSC's
6 membership services department, which did not uniformly follow proper procedures for handling
7 PAC-related funds when members paid their annual association membership fees and
8 contributed to the PAC at the same time.⁶

9 According to Respondents, ICSC PAC solicits voluntary contributions from members at
10 the same time those members renew their ICSC memberships.⁷ They explain that a typical ICSC
11 dues renewal form for an affiliate member stated that a one-year renewal cost \$125, and it
12 suggested an additional \$25 contribution to ICSC PAC.⁸ If a member paid by credit card, the
13 member indicated whether the payment was from individual funds or a corporate credit card by
14 marking a box beside the words "Check here if this is a corporate card."⁹ The membership
15 renewal forms informed members that voluntary contributions made to ICSC PAC with

⁴ Submission at 1-2, 6.

⁵ *Id.* at 6.

⁶ *Id.*

⁷ *Id.* at 4.

⁸ *Id.* at 5. The renewal form also solicited donations to ICSC's state issues fund, not at issue in this matter.
Id.

⁹ *Id.*

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Year	Amount incorrectly deposited into ICSC PAC Federal Account
2012	\$10,250 ¹⁶
2013	\$77,868
2014	\$72,270
2015	\$66,361
2016	\$81,130
2017	\$36,100
TOTAL	\$343,979 ¹⁷

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2 ICSC's investigation also uncovered an additional \$9,850 in member PAC contributions that
3 ICSC retained in its general ledger account instead of transferring to the PAC's federal
4 account.¹⁸ Finally, ICSC's audit revealed that the PAC's disclosure reports understated the
5 amount in the PAC's bank account by \$73,216, and this error began occurring sometime before
6 2013. These understatements resulted in inaccurate disclosure reports from 2013 through
7 2017.¹⁹

¹⁶ This transfer reflects an estimated amount. See Submission at 2; Supplemental *Sua Sponte* Submission of ICSC and ICSC PAC at 1 (July 9, 2018) ("Supplemental Submission"). ICSC states that for the unexplained \$73,217 amount in the federal account prior to 2013 it applied the same percentage (14%) of the total transfers during the 2013-2017 period that were impermissible ($\$73,217 \times .14 = \$10,250$). *Id.*

¹⁷ Submission at 8.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 9.

1 Respondents state that ICSC took a number of remedial steps, including: (1) transferring
2 \$343,979 in misdirected funds from the PAC's federal account to its administrative account;²⁰
3 (2) transferring the \$9,850 in funds in ICSC's general ledger account to ICSC PAC's federal
4 account; (3) amending five years of disclosure reports;²¹ and (4) implementing additional
5 training and processes to ensure that future receipts are transferred into the proper account.²²

6 The Submission also details the preventive measures that Respondents made to avoid
7 committing these errors in the future. Specifically, ICSC PAC states that it has revised its online
8 membership renewals to clarify the individual or corporate status of the contributor.²³
9 Additionally, "all voluntary contributions from a mailed-in renewal response now are
10 automatically designated for the PAC's administrative account — *i.e.*, no ICSC employee needs
11 to decide whether a mailed-in check comes from an individual or corporation."²⁴ The
12 Submission further notes that ICSC retained another accounting professional to serve as a
13 consultant, and trained or re-trained staff to be more knowledgeable of FEC-related processes.²⁵

²⁰ *Id.* at 2, 8, 10-11. ICSC PAC disclosed transferring \$35,740 on July 28, 2017, and \$308,599 on March 23, 2018. *See* ICSC PAC 2017 Year-End Report at 19 (Jan. 31, 2018); ICSC PAC 2018 April Quarterly Report at 19 (Apr. 15, 2018). These transfers total \$344,339, \$360 more than the transferred amount referenced in the Submission, \$343,979. In light of the small size of the difference and the fact that the transfer exceeds the referenced amount, the Commission will apply the latter unless it obtains corrective information. *See* Second Supplemental *Sua Sponte* Submission of ICSC and ICSC PAC at 2 (Feb. 8, 2019) ("Second Supplemental Submission").

²¹ Submission at 10. *See* ICSC PAC Amended 2013 February Monthly Report (Jan. 31, 2018) through Amended 2017 Mid-Year Report (Jan. 31, 2018).

²² Submission at 11.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 12.

1 Additionally, ICSC personnel and ICSC PAC's FEC reporting vendor will confirm that the bank
2 account balances match the cash-on-hand numbers before filing FEC reports.²⁶

3 **III. LEGAL ANALYSIS**

4 **A. Prohibited Contributions and Reporting Violations**

5 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits
6 corporations from making contributions to political committees other than independent-
7 expenditure-only political committees ("IEOPCs"), in connection with a Federal election, and it
8 prohibits political committees other than IEOPCs from knowingly accepting or receiving such
9 contributions.²⁷ However, the Act excludes from the definition of "contribution" a corporation's
10 payment of the costs incurred in the establishment, administration, and contribution solicitations
11 to an SSF utilized for political purposes.²⁸ The corporation may pay these costs directly or
12 deposit funds in a special separate administrative account used only to pay the SSF's
13 establishment, solicitation and administration costs, provided that it does not transfer corporate
14 funds into its SSF's federal account.²⁹

15 A political committee's disclosure reports must disclose the amount of cash-on-hand at
16 the beginning of each reporting period.³⁰ A political committee's disclosure reports must also

²⁶ *Id.*

²⁷ 52 U.S.C. § 30118. Advisory Op. 2010-11 (Commonsense Ten) at 2-3.

²⁸ 52 U.S.C. § 30118(b)(2)(C); 11 C.F.R. § 114.1(a)(2)(iii). The Commission's regulations define the terms "establishment, administration, and solicitation costs" as the costs of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising, and other expenses incurred in setting up and running an SSF established by a corporation. 11 C.F.R. § 114.1(b).

²⁹ *See* 52 U.S.C. § 30118(b)(2)(C); *see also* 11 C.F.R. §§ 114.1(b) and 114.5(b).

³⁰ *See* 52 U.S.C. § 30104(b)(1).

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1 disclose all receipts and disbursements.³¹ Committee treasurers are responsible for the timely
2 and complete filing of disclosure reports and for the accuracy of the information contained
3 therein.³²

4 Respondents admit that ICSC PAC's federal account received impermissible
5 contributions from corporate sources totaling \$343,979. Further, the PAC acknowledges that its
6 reporting resulted in an incorrect cash-on-hand amount reported on each of ICSC PAC's
7 disclosure reports beginning with its 2013 February Monthly Report and continuing through its
8 2017 Year-End Report.³³ Accordingly, the Commission has found reason to believe that the
9 International Council of Shopping Centers, Inc. made, and the International Council of Shopping
10 Centers, Inc. Political Action Committee and Betsy R. Laird in her official capacity as treasurer,
11 accepted, corporate contributions in violation of 52 U.S.C. § 30118(a), and that International
12 Council of Shopping Centers, Inc. Political Action Committee and Betsy R. Laird in her official
13 capacity as treasurer violated 52 U.S.C. § 30104(b) by misreporting its cash-on-hand.³⁴

³¹ See 52 U.S.C. § 30104(b)(2) and (4).

³² See 11 C.F.R. § 104.14(d).

³³ See Submission at 10.

³⁴ See MUR 6922 (ACA International) (the Commission found reason to believe ACA International violated 52 U.S.C. § 30118(a) by using \$23,419 in corporate funds to make contributions to its SSF via transfer).

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1 **B. Untimely Transfers**

2 Every person who receives a contribution of \$50 or less for a political committee that is
3 not an authorized committee shall forward such contribution to the treasurer of the political
4 committee no later than 30 days after receipt.³⁵ Every person who receives a contribution in
5 excess of \$50 for a political committee that is not an authorized committee shall, no later than 10
6 days after receipt of the contribution, forward to the treasurer of the political committee the
7 contribution along with other information about the contributor.³⁶ A corporation that collects
8 and transmits contributions to its SSF is acting as a "collecting agent" under Commission
9 regulations.³⁷ The collecting agent has certain obligations with respect to the transmittal of
10 contributions. Specifically, the full amount of each contribution collected shall be transmitted to
11 that fund within 10 or 30 days as required.³⁸ For contributions over \$200, the contributor's
12 occupation and employer must also be forwarded with the contribution.³⁹ The date of receipt of
13 the contribution is the date that the collecting agent obtains possession.⁴⁰

14 SSFs are responsible for ensuring that collecting agents meet recordkeeping, reporting,
15 and transmittal requirements.⁴¹ As an SSF of ICSC, ICSC PAC was responsible for ensuring

³⁵ 52 U.S.C. § 30102(b)(2); 11 C.F.R. § 102.8(b)(1).

³⁶ 52 U.S.C. § 30102(b)(2); 11 C.F.R. § 102.8(b)(2).

³⁷ 11 C.F.R. § 102.6(b)(1)(ii). A collecting agent may be either: (i) a committee, whether or not it is a political committee, which is affiliated with the SSF; (ii) the SSF's connected organization; (iii) a parent, subsidiary, branch, division, department, or local unit of the connected organization; or (iv) a local, national, or international union collecting contributions on behalf of the SSF of any federation with which the union is affiliated. 11 C.F.R. § 102.6(b)(1)(i)-(iv).

³⁸ See 11 C.F.R. § 102.6(b)(1), (c)(4) and 11 C.F.R. § 102.8.

³⁹ 11 C.F.R. § 102.6(b)(1), (c)(4) and (5), and 11 C.F.R. § 102.8(b)(2); 52 U.S.C. § 30102(b)(2)(B).

⁴⁰ 11 C.F.R. § 102.8(b)(2).

⁴¹ 11 C.F.R. § 102.6(c)(1).

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1 that ICSC, its collecting agent for contributions stemming from membership renewals, timely
2 transferred such deductions to ICSC PAC within 10 or 30 days, whichever applied.⁴²

3 According to the *sua sponte* Submission, ICSC discovered that \$9,850 that it collected
4 from individual members designated for ICSC PAC's federal account was not transferred along
5 with other receipts.⁴³ While these funds were part of receipts processed from July 2013 through
6 February 2014, none were transferred to the appropriate account at those times.⁴⁴ Instead, these
7 monies were not transferred to ICSC PAC until January 30, 2018, nearly four years after the last
8 contribution was placed in ICSC's general ledger account, long after the 10- and 30-day transfer
9 time periods expired. Therefore, the Commission has found reason to believe that the
10 International Council of Shopping Centers, Inc. violated 52 U.S.C. § 30102(b)(2) and 11 C.F.R.
11 §§ 102.6(c)(4) and 102.8(b) by failing to transmit funds from its general ledger account within
12 the appropriate timeframes.

13 Similarly, ICSC PAC did not ensure that ICSC forwarded contributions within the
14 required timeframes. Therefore, the Commission has found reason to believe that the
15 International Council of Shopping Centers, Inc. Political Action Committee and Betsy R. Laird
16 in her official capacity as treasurer violated 52 U.S.C. § 30102(b)(2) and 11 C.F.R. § 102.6(c)(1)
17 by failing to ensure that its collecting agent, International Council of Shopping Centers, Inc.,

⁴² See 52 U.S.C. § 30102(b)(2) and 11 C.F.R. §§ 102.6(c)(4) and 102.8.

⁴³ Submission at 10.

⁴⁴ *Id.*

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- 1 complied with the Act's transmittal requirements with regard to the funds transferred from the
- 2 general ledger account to ICSC PAC.⁴⁵

⁴⁵ See MUR 6468 (Empire State Regional Council of Carpenters) (the Commission found reason to believe against both the collecting agent and the SSF where the union, acting as the collecting agent, failed to timely transfer funds, and the SSF failed to ensure that the collecting agent complied with the law.).

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