

Democracy North Carolina

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June 20, 2010

Larry Leake, Chair, and Board Members
State Board of Elections
PO Box 27255
Raleigh, NC 27611

Dear Mr. Leake and Board Members,

I am requesting that the State Board of Elections implement the provisions of N.C. General Statute 163-278.34(b) by imposing a civil penalty of at least \$200,000 against Mr. Russell M. (Rusty) Carter for intentionally using money from his corporation to make at least \$120,000 in illegal campaign contributions to state candidates during the 2008 election cycle.

The recent release of Mr. Carter's affidavit provides additional details about the extent of the contributions that he admits he funneled through family members and associates of his company, Atlantic Corporation. His affidavit states that Attachment A and Attachment C list "contributions made by various individuals with funds provided by Atlantic Corporation to North Carolina political committees and federal political committees through employees of Atlantic Corporation at my direction."

Mr. Carter's attachments describe illegal donations from corporate funds totaling \$266,900 – with \$63,900 sent to Republican and Democratic federal candidates and \$203,000 to Democratic state candidates, including \$64,000 to the 2008 campaign of Gov. Bev Perdue and \$56,000 to the 2008 campaign of N.C. Senator Marc Basnight. Other attachments describe donations totaling \$73,000 that Mr. Carter funneled through family members, using his personal funds; only one is for a 2008 state campaign. The focus of my request is on the contributions that Mr. Carter says he intentionally made to the 2008 Perdue campaign (\$64,000) and the 2008 Basnight campaign (\$56,000) through "straw donors" with money from his corporation – a total of \$120,000.

As you know, it is illegal to use corporate funds or to conduit funds through another person in order to make a political contribution to a state candidate (NC General Statutes 163-278.19 and 163-278.13). Violations are misdemeanor offenses, and through an Alford plea, Mr. Carter has already received a minor sentence of a \$5,000 fine, a suspended 30-day jail term, and a ban on making political donations for two years. By itself, this puny sentence would send a dangerous message that substantial campaign violations are trivial matters in North Carolina. Precisely to correct such a perception, the N.C. General Assembly in 2001 debated whether or not to make violations a felony offense; it ultimately decided instead to extend the statute of limitations and instruct the State Board of Elections to impose civil penalties that could reach three times the amount of money involved in the violation:

N.C.G.S. 163-278.34(b): "If an individual, person, political committee, referendum committee, candidate, or other entity intentionally makes or accepts a contribution or makes an unlawful expenditure in violation of this Article, then that entity shall pay to the

State Board of Elections, in an amount to be determined by that Board, a civil penalty and the costs of investigation, assessment, and collection. The civil penalty shall not exceed three times the amount of the unlawful contribution or expenditure involved in the violation. The State Board of Elections may, in addition to the civil penalty, order that the amount unlawfully received be paid to the State Board by check, and any money so received by the State Board shall be deposited in the Civil Penalty and Forfeiture Fund of North Carolina.” (emphasis added)

N.C.G.S. 163-278.27(a): “. . .The [two-year] statute of limitations shall run from the day the last report is due to be filed with the appropriate board of elections for the election cycle for which the violation occurred.”

The statute of limitations for violations occurring in the 2008 election cycle ends on January 9, 2011, two years after the final report for the 2008 campaign was due. The 2008 election cycle began on January 1, 2005 for the four-year Perdue campaign and began on January 1, 2007 for the two-year Basnight campaign. Mr. Carter’s affidavit lists contributions totaling \$120,000 to those campaigns during those periods which he intentionally made with corporate money. During its debate in 2001, the General Assembly discussed but decided not to require that the state prove that the offender “willfully” or “knowingly” violated the law before imposing a possible triple-sized civil penalty; instead, it decided it was sufficient to show that the offender “intentionally” made the contribution. Mr. Carter has admitted his use of corporate funds was not accidental or inadvertent – it was part of a purposeful and rather complex effort he directed.

Mr. Carter has apparently cooperated with the state’s investigation into his illegal contributions, which deserves note. Given his standing in the community and the legacy of a father who was a crusading newspaper editor in our state (and the founder of the Atlantic corporation), I would hope that Mr. Carter would not contest a substantial civil penalty and assessment for the cost of the investigation. The State Board could levy a penalty of \$360,000 and add investigative costs on top of that, and it could arguable pursue remedial action for other contributions, so a penalty of \$200,000 seems a modest price to pay for these violations and for affirming a belief in the fair administration of justice. Mr. Carter is in a position to send a positive message about the integrity of elections in our state and the importance of obeying the law. Thousands of political donors in North Carolina are playing by the rules. Out of respect for them, the voters, and the many others served by an honest election system, I urge the State Board to take this action.

Thank you for your consideration and your service.

Sincerely,

Bob Hall
Executive Director

cc: Gary Bartlett, State Board of Elections