

REP. DAVID SCOTT

Rep. David Scott (D-GA) is a third-term member of Congress, representing Georgia's 13th district. Rep. Scott's ethics issues stem from allegations of tax evasion and misuse of official resources for political campaign activity.

Tax Evasion

Rep. Scott and his wife, Alfredia Scott, own Dayn-Mark Advertising.¹ In 2003, the company began missing federal income tax payments that now total nearly \$154,000.² Dayn-Mark Advertising has also failed to pay over \$4,600 in local and state taxes since 1998.³ Since 2003, the Scotts have failed to pay \$23,200 in taxes on their home in Georgia.⁴ At the same time the Scotts were failing to pay their taxes, they increased their stock holdings from \$5,000 to about \$67,000 and bought a \$702,000 rowhouse in Washington D.C.⁵ More than 40 tax liens have been placed against Rep. Scott's home and business.⁶

Personal, Business and Campaign Finances

Since Rep. Scott's first congressional bid in 2002, his wife, two daughters, son-in-law and employees of Dayn-Mark have received disbursements from his campaign committee.⁷ From 2002 through the July 2007 Federal Election Commission reporting period, Rep. Scott's campaign committee paid a total of \$124,795.98 to his wife, two daughters and son-in-law⁸, and \$491,382.00 to Dayn-Mark Advertising and its employees⁹. Dayn-Mark has been paid for rent,

¹ Kenneth P. Vogel, Rep. Scott's Finances Questioned, *The Politico*, May 24, 2007 (Exhibit 1).

² Id.

³ Id.

⁴ Id.

⁵ Rep. David Scott, Personal Financial Disclosures 2003-2006 (Exhibit 2).

⁶ Bob Kemper, Scott Defends Campaign Finances; Taxes Scrutinized, *The Atlanta Journal Constitution*, May 25, 2007 (Exhibit 3).

⁷ Vogel, *The Politico*, May 24, 2007.

⁸ David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 4).

⁹ David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 5).

office supplies, canvassing management and postage.¹⁰ Rep. Scott has reimbursed himself \$98,952.75 for travel, billboards and fund-raising expenses.¹¹ In total, since 2002, Rep. Scott's campaign committee has disbursed \$715,330.17 to his family, his business, and himself.¹² The payments to his family and company became larger and more frequent in 2003, around the same time Rep. Scott was falling behind on his taxes.¹³

Rep. Scott has denied any wrongdoing.¹⁴

Tax Law Violations

Any person who willfully attempts to evade or defeat a tax, in addition to other penalties, may be imprisoned up to 5 years and fined up to \$100,000 (\$500,000 in the case of a corporation).¹⁵ Any person who commits fraud or makes false statements in connection with filing a tax return may be imprisoned up to 3 years and fined up to \$100,000 (\$500,000 in the case of a corporation).¹⁶

Rep. Scott, by failing to pay taxes on his home and business and by failing to pay property taxes on his Georgia home, may have violated federal and state tax laws.

Misuse of official resources

In July 2007, *The Politico* reported that a staff member alleged Rep. Scott misused his federally funded congressional staff and resources to run his political campaigns.¹⁷ The staffer, Robert Merrill, alleged that Rep. Scott had designated certain congressional employees to do only campaign work, that congressional employees often did campaign work on taxpayer time and used government office equipment, that congressional employees on taxpayer-funded time

¹⁰ Id.

¹¹ See David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibit 6).

¹² See David Scott for Congress Committee, FEC Form 3 Reports, 2002-2007 (pages listing contributions attached, Exhibits 4,5,6).

¹³ Vogel, *The Politico*, May 24, 2007.

¹⁴ Kemper, *The Atlanta Journal Constitution*, May 25, 2007.

¹⁵ 26 U.S.C. § 7201.

¹⁶ 26 U.S.C. § 7206.

¹⁷ Kenneth P. Vogel, Scott Aide Cries Foul, Gets Fired, *The Politico*, July 11, 2007 (Exhibit 7).

did political work from Rep. Scott's advertising firm and that these employees' absences compromised the productivity of the congressional office.¹⁸

Mr. Merrill forwarded e-mails to *The Politico* sent by Rep. Scott's staff from their congressional e-mail accounts organizing a political fundraiser.¹⁹ The e-mails included an itinerary that spelled out roles for Rep. Scott's congressional employees such as manning the sign-in table and taking photographs at the fundraiser.²⁰

According to Mr. Merrill, he was fired from his congressional staff position in June of 2007 for contacting the media without approval.²¹ Rep. Scott's office would not comment on Mr. Merrill's departure and issued a statement calling his allegations untrue.²²

Solicitation of Political Contributions from Employees

Federal law prohibits members of Congress from soliciting political contributions from employees.²³ Violations of this section are subject to fines and up to three years imprisonment.²⁴ Federal election law defines "contribution" to include "any gift . . . or anything of value . . ."²⁵ Federal Election Commission regulations define "anything of value" to include all in-kind contributions. Unless specifically exempted under 11 C.F.R. part 100, subpart C, the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services constitutes a contribution.²⁶ To the extent members of Rep. Scott's congressional staff were also performing activities for his political campaign, Rep. Scott illegally solicited contributions, in the form of service, from his employees.

Improper Use of Appropriated Funds

Pursuant to 31 U.S.C. § 1301(a), "[a]ppropriations shall be applied only to the objects for which the appropriations were made." Corresponding regulations of the Committee on House

¹⁸ Id.

¹⁹ Id.

²⁰ Id.

²¹ Vogel, *The Politico*, July 11, 2007.

²² Id.

²³ 18 U.S.C. § 602.

²⁴ Id.

²⁵ 2 U.S.C. § 431(8)(A)(I).

²⁶ 11 C.F.R. § 100.52(d)(1).

Administration provide that “[e]mployees may not be compensated from public funds to perform non-official, personal, political, or campaign activities on behalf of the Member, the employee, or anyone else.”²⁷

In addition, House ethics rules make clear that “[e]mployees of the House are paid from funds of the United States Treasury to perform public duties” that expressly “do not include performing non-official, personal, or campaign duties.”²⁸ Rule XXIII, Clause 8 provides:

A Member, Delegate, Resident Commissioner, or officer of the House may not retain an employee who does not perform duties for the offices of the employing authority commensurate with the compensation he receives.

According to the Campaign Booklet published by the House Committee on Standards of Official Conduct, there is a “basic principle that government funds should not be spent to help incumbents gain re-election.”²⁹ The official allowance of House offices, and the goods and services acquired with those allowances, are to be used for House business and are not to be used for campaign or political purposes.³⁰ The Campaign Booklet clearly states that House offices, including district offices, are supported with official funds and, therefore, are considered official resources.³¹ As a result, they may not be used to conduct campaign or political activities.³²

The Campaign Booklet provides two cases, one in which a Member was criminally prosecuted and another which a staffer was criminally prosecuted, for misusing official resources: in 1993, a former House employee pleaded guilty to a charge of theft of government property after he was found doing campaign work at a time that he claimed he was conducting official business;³³ and in 1979, a former Member pleaded guilty to charges of mail fraud and income tax evasion in a case centering on claims that individuals on the congressional payroll

²⁷ Committee on House Administration, Members’ Handbook, *Staff*.

²⁸ Ethics Manual, Chapter 5, Staff Rights and Duties, citing United States v. Diggs, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 982 (1980).

²⁹ House Comm. on Standards of Official Conduct, *General Prohibition Against Using Official Resources for Campaign or Political Purposes*, Campaign Booklet (citing Common Cause v. Bolger, 574 F. Supp. 672, 683 (D.D.C. 1982), *aff’d*, 461 U.S. 911 (1983)).

³⁰ Campaign Booklet.

³¹ Id.

³² Id.

³³ Campaign Booklet (citing United States v. Bresnahan, Criminal No. 93-0409 (D.D.C. 1993); see Senate Comm. on Rules and Administration, *Senate Election Law Guidebook 2000*, S. Doc. 106-14, 106th Cong., 2d Sess. 250).

were paid not for the performance of official duties, but instead for staffing and operating various campaign headquarters in his re-election campaign.³⁴

By using congressional staff to engage in campaign activity on official time and with the use of official resources, Rep. Scott may have violated the prohibition on soliciting political contributions from employees, the prohibition on using appropriated funds for campaign activity, House ethics rules and the regulations of the Committee on House Administration.

³⁴ Campaign Booklet (*citing* United States v. Clark, Criminal No. 78-207 (W.D. Pa. 1978); *see id.* 249-50).