



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SECTION
COMMISSION
SECRETARIAT

2014 APR 23 A 10:24

April 23, 2014

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *[Signature]*
Staff Director

From: Patricia C. Orrock *[Signature]*
Chief Compliance Officer

Thomas E. Hintermister *[Signature]*
Assistant Staff Director
Audit Division

Kendrick Smith *[Signature]*
Audit Manager

Zuzana O. Pacious *[Signature]*
Audit Manager

By: Nicole Burgess *[Signature]*
Lead Auditor

For Meeting of 4-23-14

SUBMITTED LATE

Subject: Proposed Final Audit Report on the State Democratic Executive Committee of Alabama (A11-22)

Attached for your approval is the subject report. The report has been revised to incorporate proposed edits. The revised report is being circulated for placement on the April 23, 2014 Commission Open Session agenda. Documents related to this audit report can be viewed in the Voting Ballot Matters folder.

If you have any questions, please contact Nicole Burgess or Kendrick Smith at 694-1200.

Attachment:
Proposed Final Audit Report on the State Democratic Executive Committee of Alabama



Proposed Final Audit Report on the State Democratic Executive Committee of Alabama

(January 1, 2009 - December 31, 2010)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to the matter discussed in this report.

About the Committee (p. 2)

The State Democratic Executive Committee of Alabama is a state party committee headquartered in Montgomery, Alabama. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 342,232
○ Transfers from Affiliated Committees	413,892
○ Contributions from Other Political Committees	225,377
○ Transfers from Non-federal Accounts	316,171
○ All Other Receipts	173,243
Total Receipts	\$ 1,470,915
• Disbursements	
○ Operating Disbursements	\$ 950,626
○ Federal Election Activity	456,345
○ All Other Disbursements	72,274
Total Disbursements	\$ 1,479,245

Commission Finding (p. 3)

- Recordkeeping for Employees

Additional Issue (p. 3)

- Recordkeeping for Employees

¹ 2 U.S.C. §438(b).

Proposed Final Audit Report on the State Democratic Executive Committee of Alabama

(January 1, 2009 - December 31, 2010)



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Part I

Background

Authority for Audit

This report is based on an audit of the State Democratic Executive Committee of Alabama (SDA), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine whether the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the disclosure of independent expenditures;
6. the completeness of records; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," SDA requested early consideration of a legal question raised during the audit. SDA questioned whether the monthly time logs required under 11 C.F.R. §106.7(d)(1) applied to employees paid with 100 percent federal funds. (See Finding, page 5.)

The Commission concluded, by a vote of 5-1, that 11 C.F.R. §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed SDA Counsel of the Commission's decision on SDA's request. The finding presented in this audit report, Recordkeeping for Employees, does not include SDA employees paid with 100 percent federal funds and reported as such.

Audit Hearing

SDA declined the opportunity for a hearing before the Commission on the matter presented in this report.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 10, 1976
• Audit Coverage	January 1, 2009 - December 31, 2010
Headquarters	
Montgomery, Alabama	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Three Federal, Two Non-federal, One Levin
Treasurer	
• Treasurer When Audit Was Conducted	Mr. Edgar C. Gentle, III (1/31/11 – 7/18/12) Mr. James B. Davidson (7/19/12 – 12/5/12) Mr. James D. Turner (12/6/12 – 6/19/13) Mr. Edgar C. Gentle, III (6/20/13 – Present)
• Treasurer During Period Covered by Audit	Mr. Brannon Walden (5/22/08 – 1/30/11)
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 13,139
Receipts	
○ Contributions from Individuals	342,232
○ Transfers from Affiliated Committees	413,892
○ Contributions from Other Political Committees	225,377
○ Transfers from Non-federal Accounts	316,171
○ All Other Receipts	173,243
Total Receipts	\$ 1,470,915
Disbursements	
○ Operating Disbursements	\$ 950,626
○ Federal Election Activity	456,345
○ All Other Disbursements	72,274
Total Disbursements	\$ 1,479,245
Cash-on-hand @ December 31, 2010	\$ 4,809

Part III

Summaries

Commission Finding

Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that SDA did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429, for whom SDA did not maintain monthly payroll logs. This consisted of \$248,930, for which payroll was allocated between federal and non-federal funds, and \$30,499, for which payroll was exclusively non-federal. Prior and subsequent to the exit conference, SDA representatives provided the Audit staff with affidavits for most of the employees attesting to the percentage of time spent on federal election activity.

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid all or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. The Audit staff considers this matter resolved.

The Commission approved a finding that SDA failed to keep monthly time-logs for the \$248,930 in payroll allocated between federal and non-federal funds. The Commission did not approve a finding for the payroll paid exclusively with non-federal funds and, as such, these expenses are presented as an “Additional Issue.” (For more detail, see p. 5.)

Additional Issue

Recordkeeping for Employees

As detailed in the Finding above, SDA did not maintain monthly payroll logs, as required, to track the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429, for whom SDA did not maintain monthly payroll logs. This consisted of \$248,930, for which payroll was allocated between federal and non-federal funds, and \$30,499, for which payroll was exclusively non-federal during certain months.

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid all or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets.

The Commission did not approve by the required four votes the Audit staff's recommended finding that SDA failed to keep monthly time logs for the \$30,499 in payroll paid from an exclusively non-federal account during certain months.

Pursuant to Commission Directive 70², this matter is discussed in the "Additional Issue" section and the payroll expenditures of \$30,499 are not included in the Finding. (For more detail, see p. 7.)

² Available at http://www.fec.gov/directives/directive_70.pdf.

Part IV

Commission Finding

Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that SDA did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429, for whom SDA did not maintain monthly payroll logs. This consisted of \$248,930, for which payroll was allocated between federal and non-federal funds, and \$30,499, for which payroll was exclusively non-federal. Prior and subsequent to the exit conference, SDA representatives provided the Audit staff with affidavits for most of the employees attesting to the percentage of time spent on federal election activity.

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid all or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. The Audit staff considers this matter resolved.

The Commission approved a finding that SDA failed to keep monthly time-logs for the \$248,930 in payroll allocated between federal and non-federal funds. The Commission did not approve a finding for the payroll paid exclusively with non-federal funds and, as such, these expenses are presented as an “Additional Issue.”

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
 - employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and
 - employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law.
- 11 C.F.R. §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. SDA did not maintain any monthly payroll logs or equivalent records to document the percentage of time its employees spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employees. For 2009 and 2010, logs were not maintained for \$279,429 in payroll.³ All of these individuals were disclosed as having been paid with an allocation of federal and non-federal funds (\$248,930) or exclusively non-federal funds (\$30,499).

The Audit staff requested that SDA provide documentation to verify the time employees spent on federal election activity. In response, SDA provided signed affidavits for five of the 11 employees noted above. The affidavits stated the employee name, job title and responsibilities, the time period covered by the affidavit and the funding used. They also included a brief statement concerning the time spent on federal election activity.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter again with SDA representatives at the exit conference. SDA did not provide the requested monthly time logs during the response period; SDA did, however, submit additional affidavits from three employees and another after the response period. Each of these affidavits stated the employee name, job title and responsibilities, the time period covered by the affidavit and the funding used, and included a brief statement regarding the time spent on federal election activity. The affidavits provided by SDA, prior to and subsequent to the exit conference, did not preclude this matter from the audit report because SDA did not create and maintain these documents prior to the audit notification letter. Instead, the affidavits were prepared during fieldwork after requests from the Audit staff for verification documentation.

The Interim Audit Report recommended that SDA provide evidence that it maintained monthly time logs to document how much time each employee spent on federal election activity or a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid entirely or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. Such action is consistent with Commission guidance with respect to payroll logs. The Audit staff considers this matter resolved.

³ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1). Payroll is stated net of taxes and benefits.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that SDA plans to implement procedures to make sure all employees, paid entirely or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets.

E. Committee Response to the Draft Final Audit Report

SDA's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On March 18, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that SDA failed to maintain logs to document the time employees spent on federal election activity for employees totaling \$279,429.

The Commission approved a finding that SDA failed to keep monthly time-logs for the \$248,930 in payroll allocated between federal and non-federal funds. The Commission did not approve a finding for the payroll totaling \$30,499 and paid exclusively with non-federal funds during a given month and, as such, the matter is presented as an "Additional Issue."

Part V Additional Issue

Recordkeeping for Employees

Summary

As detailed in the Finding above, SDA did not maintain monthly payroll logs, as required, to track the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429, for whom SDA did not maintain monthly payroll logs. This consisted of \$248,930, for which payroll was allocated between federal and non-federal funds, and \$30,499, for which payroll was exclusively non-federal during certain months.

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid all or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets.

The Commission did not approve by the required four votes the Audit staff's recommended finding that SDA failed to keep monthly time logs for the \$30,499 in payroll paid from an exclusively non-federal account during certain months.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issue" section and the payroll expenditures of \$30,499 are not included in the Finding.

Legal Standard

The legal standard in the Finding above is incorporated herein.

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. SDA did not maintain any monthly payroll logs or equivalent records to document the percentage of time its employees spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay employees. For 2009 and 2010, logs were not maintained for \$279,429 in payroll.⁴ All of these individuals were disclosed as having been paid with an allocation of federal and non-federal funds (\$248,930) or exclusively non-federal funds (\$30,499).

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The Interim Audit Report recommended that SDA provide evidence that it maintained monthly time logs to document how much time each employee spent on federal election activity or a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid entirely or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. Such action is consistent with Commission guidance with respect to payroll logs. The Audit staff considers this matter resolved.

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D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that SDA plans to implement procedures to make sure all employees, paid entirely or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets.

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SDA's response to the Draft Final Audit Report provided no additional comments.

Commission Conclusion

On March 18, 2014, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission adopt a finding that SDA failed to maintain logs to document the time employees spent on federal election activity for employees totaling \$279,429.

The Commission did not approve by the required four votes the Audit staff's recommended finding that SDA failed to keep monthly time-logs for the \$30,499 in payroll paid exclusively from the non-federal funds. Some Commissioners voted to approve the Audit Division's recommendation. Others did not, citing the position of three Commissioners in prior audits, including the Final Audit Report of the Commission on the Georgia Federal Elections Committee and the Final Audit Report of the Commission on the Republican Party of Iowa, in support of the proposition that the Commission lacks jurisdiction to impose recordkeeping and documentation requirements on exclusively non-federal activity.

This matter is discussed in this "Additional Issue" section pursuant to Commission Directive 70.