

AGENDA DOCUMENT NO. 15-12-A



FEDERAL ELECTION COMMISSION
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February 3, 2015

MEMORANDUM

AGENDA ITEM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

For Meeting of 3-5-15

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Kendrick Smith *KS*
Audit Manager

Zuzana O. Pacious *by MLEF*
Audit Manager

By: Scott Dotzler *SD*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the Kentucky State Democratic Central Executive Committee (KDC) (A12-05)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendation below and discusses the finding in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendation.

Recordkeeping for Employees

For the period covered by the audit, KDC did not maintain any monthly payroll logs or equivalent records, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, KDC did not maintain monthly logs for \$833,262 in payroll. This amount includes payroll paid to KDC employees as follows.

- A. Employees reported on Schedule H4 (Payments for Allocable Expenses) and paid with a mixture of federal and non-federal funds during the same month (totaling \$820,979).

- B. Employees paid exclusively with non-federal funds in a given month and not reported by KDC (totaling \$12,283).

Subsequent to the exit conference at the conclusion of audit fieldwork, KDC amended its reports to disclose \$503,149 of the employee salaries, previously reported as allocated expenses on Schedule H4, as 100 percent federal expenses on Schedule B, Line 30b (Federal Election Activity Paid Entirely with Federal Funds); thus, leaving \$317,830 still on Schedule H4. The Audit staff verified that KDC had not made the transfers from its non-federal account to cover the \$503,149 now reported as 100 percent federal election activity. As such, no further action was necessary with respect to the payroll totaling \$503,149 and paid with 100 percent federal funds.

In response to the Interim Audit Report recommendation, KDC stated that it does not have any specific documents to supplement the information that had already been provided to the Commission. KDC further added that it had implemented procedures to track and document, to the extent they are paid all or in part with non-federal funds, employees that work 25 percent or less of their time in connection with federal elections and federal election activities. KDC did not provide any additional information or documentation in its response to the DFAR.

The Audit staff recommends that the Commission find that KDC failed to maintain monthly payroll logs totaling \$833,262, as required, to document the percentage of time each employee spent in connection with a federal election.

KDC did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Scott Dotzler or Kendrick Smith at 694-1200.

Attachment:

Draft Final Audit Report of the Audit Division on the Kentucky State Democratic Central Executive Committee

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the Kentucky State Democratic Central Executive Committee (January 1, 2011 - December 31, 2012)

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 Act¹ (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.² 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 Kentucky State Democratic Central Executive Committee is a state party committee headquartered in Frankfort, Kentucky. For more information, see chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts

○ Contributions from Individuals	\$ 3,284,010
○ Contributions from Political Committees	233,585
○ Transfers from Affiliates	1,337,724
○ Transfers from Non-federal Accounts	160,055
○ All Other Receipts	261,284
Total Receipts	\$ 5,276,658

• Disbursements

○ Operating Expenditures	\$ 2,517,459
○ Transfers to Affiliates	404,050
○ Transfers to Non-federal Accounts	1,507,682
○ Coordinated Expenditures	9,953
○ Contribution Refunds	6,150
○ Federal Election Activity	700,805
○ All Other Disbursements	87,212
Total Disbursements	\$ 5,233,311

Finding and Recommendation (p. 3)

- Recordkeeping for Employees

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (“the Act”), was transferred from Title 2 of the United States Code to new Title 52 of the United States Code.

² 52 U.S.C. §30111(b) (formerly 2 U.S.C. §438(b)).

Draft Final Audit Report of the Audit Division on the Kentucky State Democratic Central Executive Committee

(January 1, 2011 - December 31, 2012)



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Part I

Background

Authority for Audit

This report is based on an audit of the Kentucky State Democratic Central Executive Committee (KDC), 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 52 U.S.C. §30111(b) (formerly 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 52 U.S.C. §30104 (formerly 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. 52 U.S.C. §30111(b) (formerly 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 completeness of records; and
6. 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," several state party committees unaffiliated with KDC requested early consideration of a legal question raised during audits covering the 2010 election cycle. Specifically, the Commission addressed whether monthly time logs under 11 CFR §106.7(d)(1) were required for employees paid with 100 percent federal funds.

The Commission concluded, by a vote of 5-1, that 11 CFR §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 KDC representatives of the payroll log requirement and of the Commission's decision not to pursue recordkeeping violations for failure to keep payroll logs for salaries paid and correctly reported as 100 percent federal. This audit report does not include any findings or recommendations with respect to KDC employees paid with 100 percent federal funds and reported as such.

Part II

Overview of Committee Committee Organization

Important Dates	
• Date of Registration	July 12, 1975
• Audit Coverage	January 1, 2011 - December 31, 2012
Headquarters	Frankfort, Kentucky
Bank Information	
• Bank Depositories	One
• Bank Accounts	Three Federal, Two Non-federal
Treasurer	
• Treasurer When Audit Was Conducted	Frederick A. Higdon (5/12/2011- 4/11/2013) M. Melinda A. Karns (4/12/2013 - Present)
• Treasurer During Audit Period	David Tandy (3/23/2000 –5/11/2011) Frederick A. Higdon (5/12/2011- 4/11/2013)
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, 2011	\$ 144,014
Receipts	
○ Contributions from Individuals	3,284,010
○ Contributions from Political Committees	233,585
○ Transfers from Affiliates	1,337,724
○ Transfers from Non-federal Accounts	160,055
○ All Other Receipts	261,284
Total Receipts	\$ 5,276,658
Disbursements	
○ Operating Expenditures	2,517,459
○ Transfers to Affiliates	404,050
○ Transfers to Non-federal Accounts	1,507,682
○ Coordinated Expenditures	9,953
○ Contribution Refunds	6,150
○ Federal Election Activity	700,805
○ All Other Disbursements	87,212
Total Disbursements	\$ 5,233,311
Cash-on-hand @ December 31, 2012	\$ 187,361

Part III

Summary

Finding and Recommendation

Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that KDC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to KDC employees totaling \$833,262, for which KDC did not maintain monthly payroll logs. This consisted of \$820,979, for which payroll was allocated with federal and non-federal funds, and \$12,283, for which payroll was exclusively non-federal. Subsequent to the exit conference, KDC amended its reports to disclose \$503,149 of the employee salaries, previously reported as allocated expenses, as 100 percent federal expenses. The amended reports did not preclude this matter from the audit report because the amendments were filed after notification of the audit.

The Audit staff verified the accuracy of KDC's amended reports, and in light of the Commission's guidance with respect to recordkeeping for employees paid with 100 percent federal funds and reported as such, the Audit staff concluded that no further action was necessary with respect to recordkeeping for the \$503,149 in employee salaries.

In response to the Interim Audit Report recommendation, KDC addressed the recordkeeping for the remaining \$330,113 by stating it has implemented procedures to track and document, to the extent they are paid all or in part with non-federal funds, employees that work 25 percent or less of their time in connection with federal elections and federal election activities. (For more detail, see p. 4.)

Part IV

Finding and Recommendation

Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that KDC did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent in connection with a federal election. For 2011 and 2012, the Audit staff identified payments to KDC employees totaling \$833,262, for which KDC did not maintain monthly payroll logs. This consisted of \$820,979, for which payroll was allocated with federal and non-federal funds, and \$12,283, for which payroll was exclusively non-federal. Subsequent to the exit conference, KDC amended its reports to disclose \$503,149 of the employee salaries, previously reported as allocated expenses, as 100 percent federal expenses. The amended reports did not preclude this matter from the audit report because the amendments were filed after notification of the audit.

The Audit staff verified the accuracy of KDC's amended reports, and in light of the Commission's guidance with respect to recordkeeping for employees paid with 100 percent federal funds and reported as such, the Audit staff concluded that no further action was necessary with respect to recordkeeping for the \$503,149 in employee salaries.

In response to the Interim Audit Report recommendation, KDC addressed the recordkeeping for the remaining \$330,113 by stating it has implemented procedures to track and document, to the extent they are paid all or in part with non-federal funds, employees that work 25 percent or less of their time in connection with federal elections and federal election activities.

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 CFR §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. KDC did not maintain any monthly payroll logs or equivalent records to document the percentage of time each employee spent in connection with a federal election. These logs are required to document the proper allocation of federal and non-federal funds used to pay employee salaries and wages. For 2011 and 2012, KDC did not maintain logs for \$833,262 in payroll.³ This amount includes payroll paid as follows to KDC employees.

- A. Employees reported on Schedule H4 (Payments for Allocable Expenses) and paid with a mixture of federal and non-federal funds during the same month (totaling \$820,979); and
- B. Employees paid exclusively with non-federal funds in a given month and not reported by KDC (totaling \$12,283).

The Audit staff requested that KDC provide documentation to verify the time employees spent on federal election activity. In response, KDC provided signed affidavits for seven employees who worked in 2012. 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. KDC provided no affidavits for employees who worked in 2011.

The affidavits provided by KDC did not resolve the recordkeeping finding because they were prepared after notification of the audit.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the recordkeeping requirements with KDC representatives during audit fieldwork and at the exit conference. KDC's counsel stated that, even though payroll was reported as an allocable expense on Schedule H4, KDC did not make the necessary transfer of non-federal funds to cover its portion of the expense. Thus, counsel contended that time logs were not required since the payroll had been paid with 100 percent federal funds. At the exit conference, counsel asked whether amending the disclosure reports by moving the payroll disclosed on Schedule H4 to Schedule B, Line 30b (Federal Election Activity Paid Entirely with Federal Funds) would negate the finding. The Audit staff responded that the finding would remain in the audit report regardless of any such amendments, since KDC, at the time of the audit, disclosed these transactions as allocable expenses on Schedule H4. Subsequent to the exit conference, KDC filed amended reports to disclose \$503,149 in payroll on Schedule B, Line 30b; thus, leaving \$317,830 still on Schedule H4. The Audit staff verified that KDC had not made the transfers from its non-federal account to cover the \$503,149 now reported as 100 percent federal election activity. As such, no further action was necessary with

³ This total includes payroll for employees paid with 100 percent federal funds and reported as such. Subsequent to the exit conference, KDC filed amended reports which disclosed payroll transactions, previously disclosed as allocable expenses on Schedule H4, as 100 percent federal expenses on Schedule B, Line 30b. Payroll amounts are stated net of taxes and benefits.

respect to the recordkeeping for payroll totaling \$503,149 and paid with 100 percent federal funds.

The Interim Audit Report recommended that, for the remaining payroll reported on Schedule H4 (\$317,830) and payroll paid exclusively with non-federal funds (\$12,283), KDC provide evidence that it maintained monthly time logs to document the percentage of time each employee spent in connection with a federal election or implement a plan to maintain monthly payroll logs in the future.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, KDC's counsel stated that KDC does not have any specific documents to supplement the information that has already been provided to the Commission. Counsel further added that KDC has implemented procedures to track and document, to the extent they are paid all or in part with non-federal funds, employees that work 25 percent or less of their time in connection with federal elections and federal election activities.