



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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March 3, 2017

**MEMORANDUM**

To: The Commission

Through: Alec Palmer *swt for*  
Staff Director

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

Thomas E. Hintermister *by MLI*  
Assistant Staff Director  
Audit Division

Kendrick Smith *[Signature]*  
Audit Manager

By: *for* Rosa Crussiah *[Signature]*  
Lead Auditor

Subject: Proposed Final Audit Report on Kind for Congress Committee (A15-02)

Attached for your approval is the subject report. The report has been written in accordance with Directive 70. Documents related to this audit report can be viewed in the Voting Ballot Matters folder.

This report is being circulated on a 72 hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Kendrick Smith or Rosa Crussiah at 694-1200.

Attachment:  
Proposed Final Audit Report on Kind for Congress Committee



## **Proposed Final Audit Report on Kind for Congress Committee**

(January 1, 2013 - December 31, 2014)

### **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.<sup>1</sup> 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 Campaign** (p. 2)

Kind for Congress Committee is the principal campaign committee for Ronald Kind, Democratic candidate for the United States House of Representatives from the state of Wisconsin, 3<sup>rd</sup> Congressional District, and is headquartered in La Crosse, Wisconsin. For more information, see the Campaign Organization chart, p.2.

### **Financial Activity** (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 602,932
○ Contributions from Political Committees	1,564,507
○ Offsets to Operating Expenditures	5,001
○ Other Receipts	1,316
<b>Total Receipts</b>	<b>\$ 2,173,756</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 1,180,511
<b>Total Disbursements</b>	<b>\$ 1,180,511</b>

### **Commission Finding** (p. 3)

- Untimely Deposit of Receipts

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<sup>1</sup> 52 U.S.C. §30111(b).

# **Proposed Final Audit Report on Kind for Congress Committee**

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(January 1, 2013 - December 31, 2014)



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of Kind for Congress Committee (KFCC), 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), 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. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

### **Scope of Audit**

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

1. the receipt of excessive contributions and loans;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the consistency between reported figures and bank records;
6. the completeness of records; and
7. other committee operations necessary to the review.

### **Audit Hearing**

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

## Part II

### Overview of Campaign

#### Campaign Organization

<b>Important Dates</b>	
• Date of Registration	January 30, 1996
• Audit Coverage	January 1, 2013 - December 31, 2014
<b>Headquarters</b>	
La Crosse, WI	
<b>Bank Information</b>	
• Bank Depositories	Seven
• Bank Accounts	One checking, Six savings
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Brent Smith (February 10, 2016 - present) Charles Marx (January 30, 2009 - February 9, 2016)
• Treasurer During Period Covered by Audit	Charles Marx
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash-on-hand @ January 1, 2013</b>	<b>\$ 458,874</b>
<b>Receipts</b>	
○ Contributions from Individuals	602,932
○ Contributions from Political Committees	1,564,507
○ Offsets to Operating Expenditures	5,001
○ Other Receipts	1,316
<b>Total Receipts</b>	<b>\$ 2,173,756</b>
<b>Disbursements</b>	
○ Operating Expenditures	1,180,511
<b>Total Disbursements</b>	<b>\$ 1,180,511</b>
<b>Cash-on-hand @ December 31, 2014</b>	<b>\$ 1,452,119</b>

## **Part III**

### **Summary**

#### **Commission Finding**

##### **Untimely Deposit of Receipts**

During audit fieldwork, a review of contributions from political committees determined that KFCC failed to deposit, within 10 days of receipt, contributions totaling \$581,719 received during the 2014 election cycle. In response to the Interim Audit Report recommendation, KFCC acknowledged the finding and stated that it has taken several measures to ensure future compliance with regard to timely deposit of its receipts. As such, KFCC complied with the Interim Audit Report recommendation. KFCC reiterated its corrective measures in its response to the Draft Final Audit Report.

The Commission approved the finding that KFCC untimely deposited contributions totaling \$581,719. (For more detail, see p. 4.)

## Part IV

# Commission Finding

### Untimely Deposit of Receipts

#### Summary

During audit fieldwork, a review of contributions from political committees determined that KFCC failed to deposit, within 10 days of receipt, contributions totaling \$581,719 received during the 2014 election cycle. In response to the Interim Audit Report recommendation, KFCC acknowledged the finding and stated that it has taken several measures to ensure future compliance with regard to timely deposit of its receipts. As such, KFCC complied with the Interim Audit Report recommendation. KFCC reiterated its corrective measures in its response to the Draft Final Audit Report.

The Commission approved the finding that KFCC untimely deposited contributions totaling \$581,719.

#### Legal Standard

- A. Timing of Deposits.** A treasurer of a political committee is responsible for making deposits of contributions. These deposits must be made within 10 days of the receipt of the contribution. 11 CFR §103.3(a).
- B. Receipt of Contributions.** Every person who receives a contribution in excess of \$50 for a political committee which is an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the committee: The contribution, the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution. 52 U.S.C. §30102(b)(1) and 11 CFR §102.8(a).

#### Facts and Analysis

##### A. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and focused reviews to identify the untimely deposit of contributions received from political committees. The sample testing and focused reviews identified untimely deposit errors totaling \$581,719.<sup>2</sup> This amount represents approximately 37% of all contributions from

<sup>2</sup> The sample error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the result of a focused review of contributions not included in the sample population. The sample estimate could be as low as \$492,045 and as high as \$625,394.



political committees. On average, the time between receipt and deposit of these contributions was 26 days, ranging from 14 to 100 days.

During this review, the Audit staff asked KFCC officials which date they used on the FEC disclosure reports. A KFCC representative responsible for the daily input of contributions informed the Audit staff, on more than one occasion, that the receipt date reported in its FEC disclosure filings was the date the contribution was received by KFCC. Based on this affirmation, the Audit staff used the date of receipt provided in KFCC's receipts database (which agreed with the date of receipt reported on the disclosure reports) to determine the number of days it took KFCC to deposit its contributions.

However, because KFCC representatives later expressed some uncertainty about the validity of the actual dates of receipt (see discussion below), the Audit staff revised its calculation and used the date of the contributor check (plus three days for mailing) as the date of receipt in determining the number of days from receipt of the contributor check to its deposit.<sup>3</sup>

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with KFCC representatives during the exit conference at the conclusion of audit fieldwork, and provided them with work papers detailing the untimely deposited contributions. The representatives stated that the contributions from political committees were received by a representative in Washington, D.C. and mailed to their Wisconsin office for deposit.<sup>4</sup> According to the representatives, the mail delivery from Washington, D.C. to its office in La Crosse, Wisconsin sometimes took up to 10 days. As a result, KFCC was not able to timely deposit these contributions. Furthermore, the representatives stated that they were uncertain of the actual date of receipt of these contributions and they questioned whether it should be the date the contributions were received in Washington, D.C. or La Crosse, Wisconsin. They added that, in the future, they would look at various ways to ensure contributions were timely deposited. The Audit staff suggested that the representative in Washington, D.C. make the deposits locally since KFCC utilized a national bank with many locations within the city. Then, the representative could email a list of the contributions to KFCC for reporting purposes, etc. The Audit staff also suggested the use of express shipping to reduce the mail delivery time to Wisconsin. The representatives said they would consider these options. No additional information was provided in KFCC's response to the exit conference.

In accordance with 11 CFR §102.8(a), the date of receipt is the day the KFCC representative in Washington, D.C. obtains possession of the contribution.<sup>5</sup> The

<sup>3</sup> This method of determining a receipt date is utilized by the Audit staff when the actual receipt date is unknown. There was a minor decrease in the error total using this method.

<sup>4</sup> Contributions from individuals were usually mailed directly to the KFCC office in La Crosse, WI.

<sup>5</sup> The Act and Commission regulations contemplate that the treasurer will have authorized agents to receive contributions and make expenditures for the committee. 11 CFR §102.9. The receipt of a contribution by an authorized agent is the equivalent of the treasurer's receipt and triggers the 10-day deposit period at 11 CFR §103.3(a). Advisory Opinion 1992-29 (Holtzman).

representative in Washington, D.C. was an authorized agent of the treasurer who was allowed to accept contributions on behalf of KFCC. Therefore, KFCC must ensure that deposits are made within 10 days of its Washington, D.C. representative's receipt to comply with the requirements of 11 CFR §103.3(a).

The Interim Audit Report recommended that KFCC provide evidence demonstrating that the contributions in question were deposited timely or submit any additional comments relevant to this matter.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, KFCC acknowledged the issue and stated that it has proactively taken a number of steps to fix this situation in the future. To ensure that all contributions are deposited in a timely manner, KFCC stated that it had made the following changes.

- It has engaged a professional compliance firm to further ensure compliance with all applicable rules.
- Wisconsin staff now makes deposits of contributions on a weekly basis to ensure timely deposit of all contributions received in its district.
- It has a new campaign treasurer, and campaign staff has received additional training regarding compliance rules.
- When donations are received by campaign staff in Washington, D.C., the contributions are now deposited directly into a D.C. branch of its financial institution.
- Keeping all additional records relevant to when contributions are received, including envelopes and additional paperwork.

KFCC stated "...that the statute and FEC rules are unclear with respect to the timeliness of deposits – they could easily be read to allow 20 days..." KFCC also reiterated that mail delivery to rural areas, such as La Crosse, Wisconsin, can take weeks and that "[t]he FEC's one-size-fits-all policy on timeliness of deposits does not take into account that mail delivery in rural areas is generally much slower than in big cities or on the coasts."

The Audit staff acknowledges the procedural changes that KFCC has made to comply with the requirements of 11 CFR §103.3(a). While there are mail delivery challenges that some committees in rural areas may face, the Commission has addressed this matter by establishing deposit guidance after receipt of the contribution. It is not until after the contribution is received by the treasurer or the treasurer's authorized agent that it must be deposited within 10 days. The Commission established this guidance to promote the timely deposit of contributor checks.

The provisions at issue in the KFCC response are 11 CFR §103.3(a), which requires that all receipts by a political committee be deposited within 10 days of the treasurer's receipt, and 11 CFR §102.8(a), which requires every person who receives a contribution for an authorized political committee to forward the contribution to the treasurer no later than 10 days after receipt.

The Commission's regulations are clear that a committee's contributions must be deposited within 10 days of receipt by the committee's treasurer. 11 CFR §103.3. The Commission has also stated that when a treasurer's agent receives a contribution, the receipt of that contribution is imputed to the committee's treasurer and thus must be deposited within 10 days of the agent's receipt.<sup>6</sup> Because an agent of KFCC's treasurer received the contributions at issue in this report, KFCC was required to deposit those contributions within 10 days of receipt.

#### **D. Draft Final Audit Report**

The Draft Final Audit Report acknowledged KFCC's corrective actions in response to the Interim Audit Report recommendation.

#### **E. Committee Response to Draft Final Audit Report**

KFCC reiterated its corrective measures in its response to the Draft Final Audit Report.

#### **Commission Conclusion**

On February 8, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that KFCC untimely deposited contributions totaling \$581,719.

The Commission approved the Audit staff's recommendation.

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<sup>6</sup> Advisory Opinion 1992-29 (Holtzman) – see also footnote 5.