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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463


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October 25, 2002

MEMORANDUM

TO: The Commissioners

THROUGH: James A. Pehrkon 
Staff Director

Robert J. Costa 
Deputy Staff Director

FROM: Joseph F. Stoltz 
Assistant Staff Director
Audit Division

Martin L. Favin 
Audit Manager

Thomas E. Hintermister 
Lead Auditor

SUBJECT: Report of the Audit Division on Committee to Elect Lindsey Graham
(A01-09)

AGENDA ITEM
For Meeting of: 11-14-02

Attached for your review and approval is the subject final audit report.

Recommendation

The Audit staff recommends that the report be approved on a tally vote 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 Tom Hintermister or Marty Favin at extension 1200.

Attachment:

Report of the Audit Division on Committee to Elect Lindsey Graham

At the exit conference, the Audit staff provided a list of these contributions to CELG officials. In a subsequent written response, the assistant treasurer of CELG stated that:

“[t]he PAC contributions have been matched to their respective deposit tickets and check copies have been furnished. Many of these PACs were identified on deposit tickets by “PAC” only, which makes it difficult at best to match to deposit tickets. In preparing this response, the most effective method we found to match checks to deposits was to contact each PAC in question to obtain the date each check cleared. We then traced the check to the appropriate deposit.”

Regarding the itemization of these contributions, the CELG stated that:

“ ...amendments are being prepared to reflect necessary changes to 1999 and 2000 Summary pages and Schedules A's.”

The CELG also noted that in some cases the contribution checks were not received from the political committee in a timely manner and that may have delayed the CELG's deposit of the contributions.

In the interim audit report, the Audit staff recommended that CELG file amended Schedules A and Detailed Summary Pages for each reporting period to correct the deficiencies noted above. In addition, it was recommended that CELG provide evidence (i.e., contribution check copies and corresponding bank deposit tickets) showing if each contribution was included in report totals.

In response to the interim audit report, CELG filed amended Schedules A that materially corrected the public record for the itemization of contributions received from other political committees. CELG also provided contribution check copies for the majority of the contributions questioned and some of the corresponding bank deposit tickets as verification of its reported totals.

its treasurer is Mr. Neil Byerley, who also served as Treasurer during the period covered by the audit.

To manage its financial activity, CELG maintained a checking account, an investment account and a petty cash fund. From these accounts, approximately 728 disbursements were made, totaling \$729,535. CELG's receipts, as recorded in its contributions database, consisted of approximately 9,174 contributions from individuals, totaling \$805,385 and 327 contributions from political committees, totaling \$342,951. In addition, a petty cash fund with a balance of \$8,000 was maintained by the CELG. This fund appears to have been inactive during the period covered by the audit (see Finding II.B.). Accounting and recordkeeping functions were performed by paid campaign staff, which utilized commonly available campaign management software. The CELG did not file its disclosure reports electronically during the period covered by the audit.³ A CELG representative attended an FEC reporting seminar several years ago.

D. AUDIT SCOPE AND PROCEDURES

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result the scope of the audit included the following general categories:

1. the receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of receipts from individuals, political committees and other entities, to include the itemization of contributions or other receipts when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.C.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.B.);
7. adequate recordkeeping for campaign transactions; and
8. other audit procedures that were deemed necessary in the situation.

³ CELG did file several 48-Hour Notices electronically prior to the 2000 General election.

contributions counted at 1998-year's end were also counted in 1999 deposits for the year."

The assistant treasurer's statement does not explain the reported cash balance discrepancy. Of the \$40,000 in withdrawals from the investment account noted above, \$30,000 occurred in December of 1998 and were transfers to the checking account and petty cash fund. As inter-account transfers, these transactions are not reportable and do not affect the reported cash balance. In addition, the CELG's explanation is not supported by activity disclosed on the 1998 Year End report. Therefore, the cash discrepancy is the result of other reporting errors in the 1998 Year End Report or earlier disclosure reports.

The Audit staff notes that these prior period discrepancies (pre-1999) affected the cash on hand balances for the entire period covered by the audit and since no workpapers showing the derivation of the report figures were provided, we were unable to explain the differences.

CELG understated its 1999 reported disbursements by the net amount of \$3,294, primarily due to not reporting disbursements totaling \$23,468 (including \$1,758 of in-kind contributions) and over-reporting disbursements totaling \$20,273. The over reported disbursements include voided checks and disbursements that were reported twice. There was also an unexplained understatement of \$99. CELG understated its 1999 receipts by the amount of \$7,624 (including investment income of \$1,584 not reported).

The beginning cash on hand balance at January 1, 2000, was overstated by \$61,196 primarily due to CELG carrying forward the pre-1999 discrepancies and the 1999 receipt and disbursement differences discussed above. Additionally, CELG understated its 2000 reported disbursements by the net amount of \$14,217, primarily due to not reporting disbursements totaling \$36,707 and over-reporting disbursements totaling \$50,261. The over reported disbursements include voided checks, amounts that should have been reported as memo entries, and disbursements made in 2001 that were reported on both the 2000 Year End report and 2001 Mid Year report. There was also an unexplained overstatement of \$663. Finally, 2000 receipts are overstated by \$23,691, but without a record of the derivation of the CELG's reported receipts total, we were unable to explain the misstatement. Ending cash for the year was overstated by \$70,672.

The assistant treasurer was informed of the identified discrepancies included in reported activity. She submitted a written response that stated that some of the disbursement reporting errors resulted from combining handwritten figures with computer-generated figures when the reports were prepared. She added that corrections would be made to the disbursements database and that amendments to all reports affected by these mistakes were being prepared. In regards to the reporting of voided checks, the assistant treasurer stated the errors would have been discovered had the CELG balanced

accepted under the net debts outstanding provisions of 11 CFR §110.1(b)(3);

- the contribution was not designated in writing for a particular election, and the contribution exceeds the limitation on contributions set forth in 11 CFR §110.1(b)(1); or
- the contribution was not designated in writing for a particular election, and the contribution was received after the date of an election for which there are net debts outstanding on the date the contribution is received.

Further, a contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation and, within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing and if a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor.

If a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR §110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution, and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(l)(5) Of Title 11 of the Code of Federal Regulations states that if a political committee does not retain the written records concerning redesignation or reattribution, the redesignation or reattribution shall not be effective, and the original designation or attribution shall control.

intent irrelevant and deprives the individual(s) of exercising his/her right to participate in the political process by contributing to political campaigns.”

Regarding several other contributions, the assistant treasurer explained that certain contributors were members of the same family and were adequately notified of the contribution limitations when the funds were solicited and that the CELG followed the contributors’ instructions concerning the designation of their contribution.

The Commission’s regulations, as cited above, provide instruction and documentation requirements for contributions that are to be attributed to more than one person or to more than one election. CELG’s records did not meet those requirements with respect to the contributions at issue. Since the CELG did not provide documentation to support the contributors’ election designations, the Audit staff maintains that these funds are excessive. Contribution refunds were subsequently issued by CELG to these individuals.

The assistant treasurer also explained a willingness to “...abide by the audit staff’s suggestions” with respect to the final outcome of this matter. She added that contribution refund checks that are returned to CELG or not cashed by the contributor within sixty days would be voided and those funds forwarded to the United States Treasury. CELG included in its response Schedules B supporting Line 20a (Contribution Refunds) for some of the above-mentioned refunds.

In summary, of the \$54,401 in excessive contributions identified by the Audit staff in the interim audit report, CELG documented that:

- Contributions totaling \$44,235 were refunded untimely;⁹
- Contributions totaling \$8,466 were correctly designated by the contributors to the proper election; and
- Contributions totaling \$1,700 were the result of discrepancies in CELG’s receipts database.

⁹ This figure includes \$26,035 in contribution refunds issued by CELG that have not cleared the campaign account as of September 30, 2002.

window. After the audit fieldwork, twenty of these letters were submitted; however, only one letter was dated. This letter, dated November 16, 2001, was signed beyond sixty days of receipt of the apparent excessive contribution. The Audit staff did not consider these letters because the timeliness could not be verified or it was received beyond the allowed time period.

In addition, the assistant treasurer provided a list of refunds totaling \$5,430⁴ made to 18 contributors, and explained that:

“...[r]efunds as indicated in this list were not made within the contribution years affected [emphasis in original], but were made following an audit of our records earlier this year [2001] and more refunds were made in response to these present findings. While we understand that refunds made this year are not timely enough to mitigate the audit findings, we do not want to hold funds that we are not entitled to hold in the campaign account. Further refunds will be made if deemed necessary.”

Prior to the interim audit report, no documentation was submitted to substantiate these refunds and none of the 18 listed refunds were included by CELG on disclosure reports covering activity through March 31, 2002.⁵ Without evidence that these refund checks were negotiated by the contributors, the Audit staff considered these 18 items as unresolved.

In summary, CELG accepted excessive contributions totaling \$54,401 from 60 individuals. No separate account was maintained by CELG relative to questionable contributions but the CELG consistently maintained a sufficient balance to cover the refund of these contributions during the period in question.⁶

In the interim audit report, the Audit staff recommended that CELG provide evidence demonstrating that the \$54,401 in contributions was not excessive. Absent such evidence, it was further recommended that CELG refund the excessive contributions to the contributors and submit evidence of the refunds (photocopies of the

⁴ The assistant treasurer stated that three of these refunds, totaling \$1,060, were either returned for insufficient address or the refund check was not cashed by the contributor. No documentation was provided to verify this statement.

⁵ The CELG reported the transfer of all remaining campaign funds to the Lindsey Graham for Senate Committee on January 10, 2001. After that date, the CELG has disclosed no financial activity on its FEC reports. Therefore, the Audit staff also reviewed FEC reports of the Lindsey Graham for Senate Committee for the disclosure of the contribution refunds noted above.

⁶ Based on an analysis of the contribution and disbursement databases provided by the CELG, the 2000 Primary activity was not funded by contributions designated for the 2000 General.