FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 10, 2011

MEMORANDUM

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SUBJECT: Draft Final Audit Report for Los Angeles County Democratic Central Committee (LRA 816)

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report ("DFAR") for the Los Angeles County Democratic Central Committee (the "Committee").[1] We comment on the payment of $7,700 for delayed credit card proceeds to the Committee by the Committee's accounting firm, Durkee & Associates (D&A). We concur that this transaction was not a contribution by D&A.[2] We also concur with the remaining findings not specifically discussed in this memorandum. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

The Interim Audit Report ("IAR") recommended that the Committee provide information to demonstrate that an apparent $7,700 advance to the Committee was in the

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1 We recommend that the Commission consider this document in open session as there is no legal basis to justify a closed Commission meeting.

2 D&A is an accounting and business management firm operated by the Committee's treasurer, Kinde Durkee. The firm handles the Committee's accounting, recordkeeping, and reporting and acts as its credit card processor. D&A used a merchant account to process credit card transactions for the Committee and other clients including political committees. The Committee explained in response to the IAR that D&A is a single principal limited liability company, and the sole owner is Kinde Durkee, who reports D&A's income on a Schedule C of her individual tax return.

ordinary course of business. The Committee's federal account received payments from D&A totaling $7,700 for delayed credit card proceeds. D&A apparently became aware of a delay in transmission from the credit card company to D&A's merchant account of funds for credit card contributions to the Committee. However, it apparently was not aware of the actual amount of contributions that were delayed. It estimated the amount of the delayed credit card proceeds and paid the Committee $7,700 from the merchant account on December 22 (in a check of $5,700) and December 26 (in a check of $2,000), 2008. Checks in the same amounts from the Committee to repay D&A were prepared on the same dates but did not clear the bank until February 17, 2009.[3] D&A provided the auditors a list of credit card contributions associated with these transactions, which totaled $5,887. The auditors, however, determined that the net credit card proceeds that should have been transferred from D&A to the Committee amounted to $5,424.

In response to the IAR, the Committee contends that the $7,700 payment was an extension of credit by D&A in the ordinary course of business and provided the following information, along with a signed declaration from Ms. Durkee. The Committee explained that D&A reviews credit card contribution transactions, and if the transactions are approved by the contributor's credit card company but payment is not received within a reasonable period of time, D&A transfers the funds to the client and repays itself when the payment is received from the credit card company. D&A charges clients a 3% fee for each credit card transaction and considered the "advance to its clients as one of the client benefits encompassed by its 3% credit card transaction fee." IAR Response at 2. D&A said it considered the cost of this benefit as minimal compared to the fee received because it was unusual for credit card companies to delay forwarding funds. The Committee further explained that D&A offers similar terms to non-political customers of similar size and risk of obligations. The Committee provided a list of 45 advances to non-political customers over a ten year period (March 27, 2001 to April 13, 2011) for amounts ranging from $20 to $15,000. Based on the Committee's response, the auditors conclude in the DFAR that the Committee demonstrated that the payment from D&A was in the ordinary course of business.

We conclude that, at a minimum, $5,424 of this transaction was not a contribution. A contribution includes any gift, subscription, loan, advance, deposit of money, or anything of value made by any person for the purpose of influencing a federal election. 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.52(a). Anything of value includes goods and services provided without charge or at less than the normal charge. 11 C.F.R. § 100.52(d).

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[3] The Committee stated that the repayment was on February 17, 2009 because the last batch of delayed credit card proceeds was received from the credit card companies at that time. The auditors, however, conclude that the last batch of credit card funds included in the payment was received later than that date.

In our comments on the IAR, we stated that additional information was necessary to clarify whether this transaction was an advance that resulted in an excessive or prohibited contribution or an extension of credit in the ordinary course of business. *See* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. §§ 100.55, 116.1(e), 116.3. Having considered the matter further, we are of the opinion that the transaction does not precisely fit the definition of either an advance or an extension of credit. While we do believe that D&A provided the Committee with something of value, we do not believe the facts indicate that the provision of something of value was made for the purposes of influencing a federal election. Thus, at a minimum, $5,424 of the transaction was not a contribution.

The Commission's regulations define "extension of credit" as including, but not being limited to,

> (1) any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee
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> (2) any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and
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> (3) the failure of the political committee to make full payment to the creditor by a previously agreed to due date.

11 C.F.R. § 116.1(e). The facts here do not show that there was an extension of *credit* from D&A to the Committee in the sense of D&A providing goods or services for which it accepted a delayed payment. Rather, it was the *Committee* that was owed money by the credit card company, through D&A.

The transaction here was closer to being an advance of funds by D&A to the Committee. Unlike "extension of credit," "advance" is not defined by the Act or regulations. However, the transaction was not an "advance" in the sense of being an early payment of money due at a later time; contributors had made contributions to the Committee which were supposed to be forwarded to the Committee between 10 and 30 days after receipt, *see* 2 U.S.C. § 432(b)(2), so the funds appear to have been due and payable to the Committee. They simply had not yet made their way to the Committee due to delay on the part of the credit card company.

But however the transaction is characterized, the D&A funds provided to the Committee constituted *something of value*. To be a contribution, it is necessary not merely that the funds constituted something of value, but that they have been provided "for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

The information submitted in response to the IAR suggests that D&A did not provide this service for the purpose of influencing a federal election. Rather, it was treating the Committee in the same way that it treats its other non-political clients who are in a similar situation. The Committee demonstrated that D&A has provided 45 similar payments for delayed credit card funds to non-political clients over a period of ten years ranging from $20 to $15,000. D&A considers these payments as one benefit paid for by its 3% charge on its clients' credit card transactions. Thus, we conclude that the payment had a business purpose, consistent with D&A's services for its other clients, and was not for the purpose of influencing a federal election. Therefore, this transaction was not a contribution.

We note that D&A's estimated $7,700 payment to the Committee exceeded the net delayed credit card proceeds that should have been transferred of $5,424. The Committee has not provided any information clarifying whether the amounts paid to other non-political clients were estimated and similarly exceeded the amounts of delayed credit card proceeds to those clients. Nevertheless, given the fact that D&A could have contributed the estimated excess of $2,276 to the Committee within Durkee's limitation, we do not believe this aspect of the transaction is worth pursuing further. *See* 2 U.S.C. § 441a(a)(1)(C).