SANDLER, REIFF, YOUNG & LAMB, P.C.

June 1, 2012

Mr. Thomas Hintermeister
Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Hintermeister:

We are in receipt of the Draft Final Audit Report ("DFAR") regarding the Minnesota Democratic-Famer-Labor Party ("MDFL") for the 2007-2008 cycle. This letter is to confirm my conversation last week with Gary Hache that the MDFL does not wish to request a hearing in connection with consideration of the DFAR. However, the MDFL does disagree with some of the conclusions in the DFAR as outlined below:

Finding #1

The DFAR's first finding involves the correction of the disclosure of financial activities for the committee's reports for calendar years 2007 and 2008. The finding stems from two types of issues. First, the Audit Report requests correction of certain items and cash on hand amounts due to errors made in committee reports during the 2008 election cycle. As noted in the DFAR, the committee has filed amendments to correct these errors.

The other portion of the Audit Reports finding involves the Audit Division's view that the MDFL's use of an escrow account to transmit payroll from both its federal and non-federal accounts should disclose both federal and non-federal activity on the committee's federal reports. The MDFL believes that its use of a payroll escrow account is, for all intents and purposes, indistinguishable from the escrow account used by the Georgia Federal Elections Committee ("GDP") that was at issue in its Audit for the 2006 election cycle.

Notwithstanding any historic timing or motivations for establishing the account, the MDFL payroll account functioned essentially the same way as the GDP, except for the fact that the MDFL manages its own payroll, as opposed to running the payroll through a third party vendor. Of course, the necessity for creating this escrow account is all the more necessary due to the fact that MDFL needed a single escrow account to handle IRS reporting and tax payments. Thus, we believe that the escrow account was neither a federal or non-federal account of the committee and required inclusion of non-federal payroll in the MDFL's reports does not serve any informational purposes to those reading the disclosure reports of the MDFL. In addition, the inclusion of this activity would significantly and incorrectly inflate the appropriate level of reportable financial activity of the MDFL.

The General Counsel does point out some distinctions between this matter and the GDP Audit. However, none of these distinctions should lead to a different conclusion.

First, the MDFL established the payroll account for the same reasons that the GDP established an account, the need to pay employees and the Internal Revenue Service from one account. It should be noted that, contrary to the DFAR's assertion, the GDP did not set up the payroll account at the request of the payroll vendor but in response to the vendor's refusal to debit more than one account for payroll.

Second, the MDFL has acknowledged that it apparently and inadvertently overfunded non-federal payroll by $102,663 during the 2008 election-cycle. However, this overfunding was ameliorated by the fact that the MDFL had underfunded the non-federal share of overall expenses during the 2008 cycle. Furthermore, the MDFL believes that these were funds in-transit, and were ultimately used only for non-federal payroll activity. In addition, the MDFL does not believe that any of these funds were used to subsidize any federal payroll activity.

Third, the DFAR notes that the MDFL amended its reports to disclose non-federal benefits that were initially unreported by the MDFL. However, these payments were made from the regular federal accounts of the MDFL and not from the payroll account. Therefore, the two issues are distinct and non-comparable as the MDFL acknowledges that any payments from its regular federal accounts, even for non-federal benefits, should have been disclosed by the MDFL and were unrelated to the committee's need to administer payments for payroll and payroll taxes. Finally, it should be noted that, similar to the GDP, the MDFL has discontinued the transfer of both federal and non-federal payroll through the use of one payroll escrow account in response to the issues raised during the Audit.

Based upon the above, the MDFL and GDP present the same basis for the Commission to conclude that the forced disclosure of these non-federal payroll expenses serve no legitimate or information purpose and the Commission should not compel the MDFL to further amend its reports to disclose this non-federal activity that merely passed through the payroll escrow account.

In addition, the DFAR references the potential in-kind contribution in the amount of $10,000.00 in connection with a $10,000 credit on an invoice for the Four Points Sheraton in Denver, CO in September 2008, which was noted in the IAR. The IAR characterized this credit as an impermissible in-kind contribution from the holding company that owns the Four Points Sheraton. However, based upon information provided to the Audit Division obtained by the MDFL, the DFAR now states that the MDFL received a "permissible" in-kind contribution from the Denver 2008 Convention Host Committee. While our research does show that the credit on the hotel bill may have derived from funds that were paid by the Denver 2008 Convention Host Committee to the hotel, it is not clear, and in our view, unlikely, that this payment was, in fact, an in-kind contribution.

Although we have had oral discussions with representatives of the Host Committee, we have not been able to obtain any documentation from the Host Committee that either refutes or confirms the DFAR's conclusion. Ultimately, the MDFL does not believe that the payment to the hotel was intended as a contribution from the Host Committee, nor do we believe that the Host Committee would have remitted funds to the MDFL with the intent of making a contribution to the MDFL.

Ultimately, based upon information that it could gather, the MDFL believes that the payment most likely represents a refund for a cancellation of an event honoring the Minnesota delegation in Denver that was originally scheduled to be paid for directly by the Host Committee. After the cancellation of that event, it appears that the Host Committee refunded monies to the hotel and the hotel credited the refund to the MDFL's hotel portfolio. However, the MDFL cannot determine if this credit was intentional or accidental, nor can it determine the true source of these funds. In addition, it is possible that these funds were ultimately used for a fundraising event or meeting that was not required to be paid for with federal funds. Since the Host Committee terminated its activities and ceased operation some time ago, the MDFL has been unable to obtain any written documentation or confirmation on the circumstances or source of funds from the Host Committee. Based upon the above, the MDFL believes that it would be inappropriate to require the MDFL to report the receipt of an in-kind contribution from the 2008 Denver Host Committee.

Finding #2

. The DFAR concludes that the MDFL had a net underfunding of joint federal and non-federal activity by its non-federal account during the 2008 cycle. This conclusion is in contrast to the IAR's conclusion that there was a net over-funding of non-federal activity. This change is due to additional documentation and analysis provided by the MDFL in connection with its response to the IAR and the MDFL supports the Audit Division's conclusion in the DFAR that there was no overfunding of the federal account by the non-federal account.

It should be noted that the DFAR and MDFL's calculations differ by $136,145. However, since both the DFAR and MDFL concluded that there was an underfunding by the non-federal account, the MDFL does not seek any specific review of this finding.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

Neil Reiff
Counsel to the Minnesota Democratic-Farmer-Labor Party