



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 25, 2012

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas Hintermister
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FROM: Lisa J. Stevenson *LJS*
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SUBJECT: Proposed Interim Audit Report on Vermont Democratic Party (LRA 917)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("IAR") for the Vermont Democratic Party ("the Committee"). The IAR contains one finding: Recordkeeping for Salaries and Wages.¹ Our comments focus on the issue of the Committee's recordkeeping requirements for employees who are paid and reported as solely 100% federal funds. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a) and (b)(6).

II. RECORDKEEPING FOR SALARIES AND WAGES

The auditors found that the Committee did not maintain a monthly log or any other supporting documentation for any of its paid employees. The proposed IAR recommends that, unless the Committee provides monthly logs, the Committee should implement a plan to maintain monthly payroll logs to track the percentage of time that each employee spends on activities in connection with a federal election.

The monthly logs should have stated the percentage of time that each employee spent on activities in connection with a federal election. 11 C.F.R. § 106.7(d)(1). The Committee paid a total of \$293,071 for payroll from its federal account in 2009 and 2010. Included in this amount was \$48,662 for 13 employees reported as federal election activity ("FEA") on Schedule B, line 30b, and \$40,937 for 16 employees reported as other federal operating expenditures on Schedule B, line 21b.²

The auditors reviewed the Committee's accounts and found that the Committee's payments to those employees that were reported as FEA or federal operating expenditures were paid with 100% federal funds. The proposed finding, therefore, raises the issue of whether state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. We reiterate the informal advice on this issue that we provided in the context of another audit.

A state party committee "must keep a monthly log of the percentage of time each employee spends in connection with a Federal election." 11 C.F.R. § 106.7(d)(1). To determine if a state party committee must allocate the salary, wages, and benefits of its employees, it must examine the percentage of time that the employees spent on federal election activity or activity in connection with federal elections. Salaries and benefits for employees who spend more than 25% of their compensated time on FEA or activities in connection with a federal election in a given month must be paid only from a federal account. 11 C.F.R. § 106.7(d)(1)(ii). Employees who spend less than 25% of their time on FEA or activities in connection with a federal election may be allocated as administrative costs or paid from the federal account. 11 C.F.R. § 106.7(d)(1)(i). Employees who spend none of their compensated time on FEA or activities in connection with a federal election may be paid entirely with funds that comply with State law. 11 C.F.R. §§ 106.7(e)(1) and 106.7(d)(1)(iii).

We conclude that, read literally, the regulations support the conclusion that state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. Based on the disclosure reports filed by the Committee, it appears that of all of the employees that were paid with 100% federal funds, at least

² The reports also disclosed the federal account having paid \$203,472 for 14 employees on Schedule H-4 for Line 21a, as allocated federal/non-federal activity. However, according to the auditors, despite this reporting, all of these expenses appear in fact to have been paid from entirely Federal funds. None of the funds transferred from the committee's non-federal account to its federal account appear to have been to cover payroll; all such funds appear to have been used to pay for the non-federal share of other administrative expenses.

13 of them may have spent 100% of their time on activities in connection with a federal election. Although 100% of the time spent on federal activity represents the whole or complete time spent on federal activity, this is still a percentage, and therefore must be documented.

Whether the Audit Division should pursue findings of this nature, however, raises practical questions. Section 106.7(d) supports the statute's requirement that state and local party committees treat as "federal election activity," payable with 100% federal funds, the salaries and benefits of any employee who spends more than 25% of his or her compensated time during the month on activities in connection with a federal election. 2 U.S.C. §§ 431(20)(A)(iv), 4411(b)(1). Since the Committee paid the employees at issue with 100% federal funds, there is no concern that an inadequate share of federal funds was used to pay these employees. The only difference that could possibly be made by keeping the log for these employees for the time paid with 100% federal funds would be to identify those employees who spent less than 25% of their compensated time during a month on activities in connection with a federal election, but whose salaries and benefits the Committee voluntarily chose to pay with 100% federal funds. Because the salaries and benefits of those employees are not "federal election activity," they would not have been reported as such on line 30(b) of the Detailed Summary Page, but could instead have been reported as federal operating expenses on line 21(b). 11 C.F.R. § 106.7(d)(1); *see* 11 C.F.R. §§ 104.14(b)(1) and 104.17(a)(4). Here, it appears that the Committee recognized this distinction because the Committee reported payroll payments of \$40,937 for 16 employees as other federal operating expenditures on Schedule B, line 21b. If the Audit Division believes that logs (or the equivalent substitute) are needed to verify this reported information, then you should consider whether a recordkeeping finding or a limitation on the scope of the audit is appropriate.

We provide these comments, however, recognizing the Commission's 3-3 split on a similar issue in the Georgia Federal Elections Committee audit involving employees whom the committee asserted spent *no* time on activity in connection with federal elections. In that audit, the Commission split on the issue of whether the Commission could require a committee to keep a log for such employees, notwithstanding that zero (as well as 100) is a percentage. For those employees, presumably, there would be considerably more reason to require the log, to ensure that their salaries were properly paid with 100% non-federal funds. Nevertheless, in a motion that failed 3-3, three Commissioners asserted that "the Commission does not have jurisdiction to impose recordkeeping and documentation requirements on employee activity that a State party committee claims is solely non-Federal." *See* Commission Agenda Document No. 11-10-B (Motion on Audit Division Recommendation memorandum on the Georgia Federal Elections Committee, *considered in Open Session* Mar. 3, 2011). Here, unlike with the Georgia Federal Elections Committee, at least 13 of the Committee's 24 employees may have spent 100% of their time on activities in connection with a federal election and were paid with 100% federal funds, so the three Commissioners' concerns regarding jurisdiction over "solely non-federal" activity may be reduced. Nevertheless, given that there is some uncertainty on a related issue, we recommend that you raise this issue in the memorandum that forwards the report to the Commission.