



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

NOV 12 2015

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas E. Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
Deputy General Counsel - Law *LJS*

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Joshua Blume *JB*
Attorney

SUBJECT: Draft Final Audit Report on the Utah State Democratic Committee (LRA 983)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Draft Final Audit Report ("DFAR") on the Utah State Democratic Committee ("the Committee"). The DFAR contains five findings: Misstatement of Financial Activity (Finding 1); Recordkeeping for Employees (Finding 2); Improper Bank Account Structure (Finding 3); Receipt of Levin Fund Donations that Exceed the Limit (Finding 4); and Receipt of Contributions that Exceed Limits (Finding 5). We agree with all of the findings; however, we provide comment on the Committee's response to the Interim Audit Report on Finding 1. If you have any questions, please contact Joshua Blume, the attorney assigned to this audit.

II. MISSTATEMENT OF FINANCIAL ACTIVITY (Finding 1)

The DFAR concludes that the Committee misstated its cash on hand and receipts at various times during the audit cycle. In particular, the DFAR concludes that the Committee overstated its receipts by \$90,439 due to its having reported transfers between its non-federal and its federal operating accounts that are not corroborated by the available bank records.¹ The Committee contests this conclusion. It argues that because of an unusual bank account structure that the Committee maintained during part of the audit period² in which a "parent" account accepted transfers from both the Committee's non-federal and Federal operating accounts on a daily basis, there was no physical transfer of funds between its non-federal and federal operating accounts. The Committee, therefore, documented the transfers as bookkeeping entries in its internal records.

We agree with the Audit Division's conclusion. Political committees are required to maintain records, including bank records, with respect to matters required to be reported that provide information in sufficient detail so as to facilitate the verification of filed reports and statements. 11 C.F.R. § 104.14(b)(1). Here, while the Committee maintained internal records of the transfers, the available bank records do not corroborate the occurrence of the reported transfers, and thus the Committee's internal accounts alone do not enable the auditors to verify the reports.

In drawing this conclusion, we do not overlook the possibility that a political committee's internal records might suffice for certain kinds of transactions. One such hypothetical case, for example, might involve a committee's maintenance of more than one Federal account and the transfers of funds between a committee's Federal accounts. Because the funds involved in such a case are all Federal funds, neither reporting nor external verification would generally appear to serve any public purpose. Here, however, the transaction involves a transfer from the Committee's non-federal account to its Federal account to fund allocable expenses in accordance with 11 C.F.R. § 106.7(f), and consequently the public interest in the reporting and verification of this transaction is greater. This is because section 106.7(f) is an exception to the general rule that Federal accounts may not accept transfers from non-federal accounts. 11 C.F.R. § 102.5(a)(1)(i). The auditors need to verify that the Committee complied with the rule and the exception in transferring funds from its non-federal account to its federal account.³

¹ The Committee reported such transfers for the months of January, March and June of 2011.

² The Committee maintained two bank accounts at its depository – a Federal operating account and a non-federal operating account. At the same time, the Committee maintained a "parent account," the function of which was to accept daily transfers of funds from both the Federal and the non-federal operating accounts, and to transfer funds in turn to the operating accounts for the payment of Federal and non-federal expenses. Thus, the parent account contained commingled Federal and non-federal funds in violation of 11 C.F.R. § 102.5, as discussed in Finding 3.

³ The account structure that caused the parent account to accept daily transfers of Federal and non-federal funds in the first place is a violation of 11 C.F.R. § 102.5, as noted in Finding 3 of the DFAR.