

**AUDIT REFERRAL # 03-08**



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

October 15, 2003

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2003 OCT 16 A 10:07

**MEMORANDUM**

TO: Lawrence H. Norton  
General Counsel

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

Erica D. Lee  
Lead Auditor

SUBJECT: Americans For Sound Energy Policy (A01-20)

On June 19, 2003, the Commission approved the final audit report (FAR) on the Americans For Sound Energy Policy. The FAR was released to the public on June 30, 2003 and includes two findings that meet the criteria for referral to your office for possible compliance action (see attachment).

With respect to Finding 1 (Receipt of Apparent Prohibited Contributions), AFSEP does not believe the cost of the dinners is a contribution and therefore did not refund the money back to the corporations that paid for the dinners. Furthermore, AFSEP did not report the cost of the dinners on FEC disclosure reports as recommended in Finding 2 (Misstatement of Financial Activity).

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Erica D. Lee or Marty Favin at 694-1200. /

**Attachment:**

- FAR Finding 1 (Receipt of Apparent Prohibited Contributions)
- FAR Finding 2 (Misstatement of Financial Activity)

## **Finding 1. Receipt of Apparent Prohibited Contributions**

### **Summary**

The Audit staff identified ten contributions totaling \$19,302 that appear to be illegal. Subsequent to the exit conference, AFSEP submitted copies of non-negotiated checks totaling \$10,500 to refund eight of these contributions. In response to the interim audit report, AFSEP contended that the remaining transactions (\$8,802) were not contributions. The Audit staff disagrees with this assessment.

### **Legal Standard**

**Receipt of Prohibited Contributions – General Prohibition.** Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
  - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
  - Labor Organizations;
  - National Banks;
  - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
  - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §§441b, 441c, 441e, and 441f.

to be  
included  
- action  
to be on  
11/25/02

**Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).

5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

### **Facts and Analysis**

The review of AFSEP's receipt records identified:

- Six contributions totaling \$8,000 from incorporated businesses,
- One check made payable to the Friends of Senator Frank Murkowski Committee for \$1,000 and deposited into the AFSEP bank account and,
- Three in-kind contributions totaling \$10,302 from corporations.

Corporations paying for dinners associated with AFSEP fundraising events made two of the prohibited in-kind contributions totaling at least \$8,802. AFSEP contends that these dinners were not committee events rather they were community events. As a result, they believe corporations could sponsor these dinners and they are not corporate in-kind contributions.

### **Information about the Dinners:**

#### **1999 Dinner**

The AFSEP 1999 solicitation stated that AFSEP would "plan a dinner and reception" to be held the night before the AFSEP fundraising cruise. The Treasurer argued that this dinner was not political and not an AFSEP event. He stated "[t]his is a community dinner for the visiting members of Congress and those who have arrived in Ketchikan for the PAC event along with members of the local community..." The Audit staff disagrees that the dinner and reception were not AFSEP events because the AFSEP solicitation specifically identified "a dinner and reception" for the participants and gave no indication that another entity sponsored this event or that the event might have been a joint activity.

#### **2000 Dinner**

The AFSEP 2000 solicitation invited the possible participants to join Senator Murkowski who invited "Senate Majority Leader Trent Lott and House Speaker Dennis Hastert and Senators Kit Bond and Phil Gram ... for dinner in Ketchikan Friday evening and a special brunch Saturday morning." AFSEP does not acknowledge this dinner as political and argues that in order to participate in the AFSEP-sponsored brunch the following day it was necessary for attendees to arrive in Alaska the night before.

The solicitation specifies the necessary arrangements needed to ensure participation for both the dinner and the brunch; it makes no distinction between the two events. The Audit staff is of the opinion that the dinner is an AFSEP event for the same reasons mentioned above.

The Audit staff asked AFSEP numerous times to document the costs associated with these events. Subsequent to the exit conference, AFSEP submitted documentation of the total costs of each of the events and the corporations who paid for them. They did not submit information detailing what makes up the total costs.

AFSEP did not maintain a separate account for all the questionable contributions, nor did it maintain a sufficient bank balance to cover the refund of these contributions throughout the election cycle.

At the exit conference and in subsequent communications, the Audit staff detailed the possible prohibited contributions.

Following the exit conference, AFSEP submitted copies of non-negotiated refund checks totaling \$10,500.

#### **INTERIM AUDIT REPORT RECOMMENDATIONS**

The Audit staff recommended:

- That AFSEP submit documentation detailing the expenses of the 1999 and the 2000 Dinners;
- That AFSEP demonstrate that the \$8,802 (or other amount documented in response to the item above) paid by corporations for expenses associated with the 1999 and 2000 Dinners do not represent contributions or that AFSEP refund these contributions and provide evidence of the refunds (copies of the front and back of the negotiated refund check);
- If funds are not currently available to make the necessary refunds, that AFSEP disclose those contributions requiring refunds as debts on Schedule D (Debts and Obligations) until such time that funds become available to make the refunds; and
- That AFSEP supply copies of the front and back of the negotiated refund checks issued to date (\$10,500).

#### **COMMITTEE RESPONSE TO RECOMMENDATIONS AND AUDIT STAFF'S ASSESSMENT**

In response to the recommendation:

- AFSEP submitted copies (front and back) of refund checks totaling \$9,000.
- AFSEP did not submit the negotiated refund check for one \$1,500 check.
- AFSEP did not refund the cost of the dinners (\$8,802) to the corporations. It believes the cost of the dinners are not contributions to the committee. According to AFSEP, Senator Murkowski and his wife have hosted a charity fundraiser for Breast Cancer in Ketchikan, Alaska since 1993 and these dinners have occurred the night before the charity event since its inception in 1993. Furthermore, they assert participants had to arrive in Alaska the night before in order to participate in the events the following day. Lastly, AFSEP contends that only one-third (approximately) of those who attended the 1999 and the 2000 Dinners were participants in the AFSEP events that occurred the proceeding day, the rest were members of the local community or members of Congress and had these AFSEP participants not attended, the Dinners would have still been held.

The AFSEP solicitation is the only invitation or reference to the Dinners in any of the materials submitted to date. The solicitations suggest that AFSEP was the sponsor of the Dinners and no documentation has been submitted demonstrating that any other entity played a role. Those attending the Dinners did include members of the Ketchikan community along

with members of Congress and individuals associated with AFSEP. Many of those individuals were representatives of the energy industry. None of these facts establishes that the Dinners were other than what the solicitation suggests, AFSEP events. The cost of the Dinners (\$8,802) is still considered a prohibited in-kind contribution to AFSEP. Finally, AFSEP did not provide the requested breakdown of the expenses that make up the \$8,802.

## **Finding 2. Misstatement of Financial Activity**

### **Summary**

A comparison of AFSEP's reported figures with its bank records revealed that AFSEP misstated its receipts and disbursements on its disclosure reports for calendar years 1999 and 2000, and its cash balances in 2000. In response to the interim audit report, AFSEP filed amended reports but substantial differences remain.

### **Legal Standard**

Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year; and
- The total amount of disbursements for the reporting period and for the calendar year. 2 U.S.C. §434(b)(1), (2) and (4).

### **Facts and Analysis**

A comparison of AFSEP's reported financial activity to its bank records for calendar years 1999 and 2000 revealed misstatements of reported receipts, disbursements and ending cash on hand. The chart below explains the misstatements in more detail.

<b>Calendar Year</b>	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Cash on Hand at 01/01/99	\$575	\$575	0
1999 Receipts	\$40,962	\$46,489	\$5,527 Understated
1999 Disbursements	\$7,056	\$12,583	\$5,527 Understated
2000 Receipts	\$103,275	\$112,618	\$9,343 Understated
2000 Disbursements	\$129,365	\$135,708	\$6,343 Understated
Cash on Hand at 12/31/00	\$8,391	\$11,391	\$3,000 Understated

### **EXPLANATION OF DISCREPANCIES**

**RECEIPTS AND DISBURSEMENTS-1999**

The understatement of receipts and disbursements was the result of in-kind contributions reported as neither receipts nor disbursements.

**RECEIPTS-2000**

The understatement of receipts was the result of the following transactions:

• Contribution Not Reported	2,000
• Contribution under Reported	1,000
• In-kind Contributions Not Reported as a Receipt	<u>6,343</u>
• Net Understatement	\$9,343

**DISBURSEMENTS-2000**

The understatement of disbursements was the result of the following transactions:

• In-kind Contributions Not Reported As an Expenditure	\$6,343
--	---------

**CLOSING CASH ON HAND**

The understatement of the closing cash on hand resulted from the understatement (\$3,000) of receipts.

The unreported in-kind contributions relate primarily to expenses for the AFSEP dinners discussed in Finding 1.

The Audit staff provided AFSEP representatives with a schedule explaining the misstatements.

**Interim Audit Report Recommendations and Committee Response**

In response to recommendations in the interim audit report, AFSEP filed amended reports for calendar years 1999 and 2000. However, as discussed in Finding 1 above, AFSEP disputes that the Dinners were AFSEP events and did not include the in-kind contributions associated with them in the amended reports.