



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

January 19, 2005

MEMORANDUM

TO: Allan Silberman
Director of Alternative Dispute Resolution

THROUGH: James A. Pehrkon *JAP*
Staff Director
Robert J. Costa *RC*
Deputy Staff Director

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division
Wanda J. Thomas *wjt*
Audit Manager
Jeff Spilizewski *js by wjt*
Lead Auditor

SUBJECT: American Federation of State County & Municipal Employees – PEOPLE,
Qualified (A03-50) – Referral Matter

On January 7, 2005, the Commission approved the final audit report on the American Federation of State County & Municipal Employees – PEOPLE, Qualified (AFSCME). The report was released to the public on January 18, 2005. In accordance with the Commission approved materiality thresholds, the final audit report includes matters that meet the criteria for referral to Alternative Dispute Resolution (ADR):

Finding 1. Disclosure of Disbursements; and
Finding 2. Reporting of Debts and Obligations.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Jeff Spilizewski or Wanda Thomas at 694-1200.

Attachments: Finding 1. Disclosure of Earmarked Contributions
Finding 2. Disclosure of Expenditures, Candidate Loans, and Other Debts
Committee Response to Interim Audit Report

cc: Reports Analysis Division

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Part IV

Findings and Recommendations

Finding 1. Disclosure of Disbursements

Summary

The Audit staff identified disbursements totaling \$2,026,926 that were not reported on Schedules B (Itemized Disbursements). These disbursements were made from AFSCME's Non-Federal account and the purpose of these disbursements included federal activity that required disclosure. AFSCME complied with the Audit staff's recommendation by filing amended reports correctly disclosing these disbursements.

Legal Standard

When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(3)(i).

Facts and Analysis

AFSCME's Federal account is funded primarily by payroll deduction contributions from its members. During the period covered by the audit, approximately 58% of all federal funds were transferred from its Federal account to its Non-Federal account. These transfers were reported on Schedule B, Line 22 (Transfers to Affiliated/Other Party Committees) and were the sole source of the Non-Federal account's funding.

During a review of AFSCME's Non-Federal account disbursements, the Audit staff identified expenditures totaling \$2,026,926 that should have been paid from the Federal account. The majority of these disbursements were to Union People Products for "PEOPLE" labeled merchandise used as incentives for the SSF's fundraising (i.e. SSF membership renewal).² As noted above, no impermissible funds were used since the Non-Federal account was funded solely by transfers from the Federal account.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that AFSCME:

- File amended reports, including Schedules B, Line 29, reporting these disbursements as memo entries³; and,

² The audit staff acknowledges that AFSCME could have used treasury funds to pay these fundraising costs and would not have been required to report them to the Commission. 11 CFR §114.1(a)(2).

³ Starting in February of 2003, AFSCME began making these disbursements from its Federal account and included them on Line 21(b) of their disclosure reports.

- For each reporting period containing these memo entries, include a “memo text” entry stating “Per the FEC Audit, the memo entries on Schedule B, Line 29, are disbursements made from the committee’s Non-Federal account. The sources of these disbursements are federal funds transferred to the Non-Federal account and reported on Schedule B, Line 22.”

In response, AFSCME filed amended reports correctly disclosing the disbursements discussed above.

Finding 2. Reporting of Debts and Obligations

Summary

The Audit staff identified debts and obligations totaling \$19,276 that were not reported on Schedules D, Line 10 (Debts and Obligations). AFSCME complied with the Audit staff’s recommendation by filing amended reports correctly disclosing these debts and obligations.

Legal Standard

A. **Continuous Reporting Required.** A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C. §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. **Separate Schedules.** A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

During a review of AFSCME’s operating expenditures, the Audit staff identified invoices from Union People Products totaling \$19,276 that were not reported as debts on Schedules D, Line 10 (Debts and Obligations), as required.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that AFSCME file amended reports, including Schedules D, Line 10 reporting these debts and obligations.

In response, AFSCME filed amended reports correctly disclosing the debts and obligations discussed above.



AFSCME®

American Federation of State, County and Municipal Employees, AFL-CIO

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November 30, 2004

Joseph Stoltz
Assistant Staff Director
Audit Division
Federal Election Commission
Washington, D.C. 20036

Re: FEC Audit of AFSCME PEOPLE Committee (2001-2002)

Dear Mr. Stoltz:

Mr. William Lucy, Treasurer of the AFSCME PEOPLE committee has asked me to respond to your letter of October 27, 2004 and to the accompany Interim Report of the Audit Division. AFSCME PEOPLE has filed amended disclosure reports in accord with the Audit Division's suggestions as to Findings 1 and 2 in the Interim Report.

To the degree that the Interim Audit Report concludes in Finding 1 that AFSCME PEOPLE's failure to report certain disbursements from its non-federal account on the reports of its federal account was a violation of the law and the FEC wishes to institute enforcement actions, as noted in your letter, AFSCME PEOPLE disagrees with that conclusion and will contest any enforcement action. AFSCME PEOPLE did not report these disbursements because they did not come from its federal account. Labor unions and corporations routinely make disbursements from non-federal accounts, specifically from their general treasury funds, to pay for the administrative and operating costs of their affiliated political committees without disclosing them to the FEC. AFSCME PEOPLE believed that a disbursement of permissible funds from the non-federal account in this case similarly entailed no special reporting obligation.

In addition, AFSCME PEOPLE made no effort to hide these disbursements. They were all reported on AFSCME PEOPLE's non-federal account's periodic filings with the IRS, and were available for viewing on the IRS's website in 2001 and 2002. Finally, AFSCME PEOPLE ceased funding these types of expenditures from its non-federal account in the fall of 2002, long before the Commission voted in January of 2004 to begin this audit.

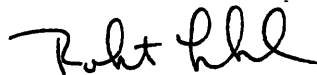
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In the interest of reaching an amicable resolution of this issue, AFSCME PEOPLE has followed the Audit Division's recommendation that it amend its monthly reports from 2001 and 2002 to include itemized disbursements of its non-federal account, and then added a memo item to those reports reflecting that these disbursements were not actually made from the federal account but were made out of the non-federal account instead. Pursuant to discussions with FEC staff, AFSCME PEOPLE has not included these expenditures in reporting "Total Disbursements" on the amended reports, although the disbursements are included as "Itemized Disbursements."

As noted above, AFSCME PEOPLE has not made this type of disbursement from its non-federal account in the past two years and does not plan to make such disbursements in the future. AFSCME PEOPLE appreciates your assistance and the assistance of your staff in the resolution of this audit.

Sincerely,



Robert D. Lenhard

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