



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

AUDIT REFERRAL # A0-05

December 7, 2006

MEMORANDUM

TO: Lawrence H. Norton
General Counsel

THROUGH: Patrina M. Clark
Staff Director

FROM: Joseph F. Stoltz
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SUBJECT: Denise Majette for Senate (A05-19) – Referral Matters

On November 21, 2006, the Commission approved the final audit report on Denise Majette for Senate (DMFS). The report was released to the public on December 1, 2006. The following matters included in the final audit report met the criteria for referral to your office:

Recordkeeping for Disbursements: Based on a sample review, approximately 19% of the operating expenditures were not properly documented. The only documentation available was entries on DMFS's electronic database. In response to the interim audit report (IAR), DMFS states it had located and submitted all missing records to the Audit staff. However, since none of the records submitted related to any of the sample errors, the IAR conclusion remains unchanged.

Cash Disbursements: DMFS issued five checks to two individuals totaling \$17,950 which were used to make subsequent cash payments to numerous vendors and individuals, noted as get-out-the-vote (GOTV) costs on DMFS's database. Of these payments, the sum of unreported and unaccounted for cash totaled \$3,462. Sufficient records, for payments in excess of \$200, were not provided for items totaling \$12,349. In addition to not being reported or documented properly, \$15,402 of this total represented cash payments in excess of the \$100 limit. DMFS was also asked to document eleven additional GOTV checks totaling \$34,958 to the same two individuals noted above.

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In response to the IAR, DMFS provided negotiated copies of the five checks totaling \$17,950 and the eleven checks totaling \$34,958. In addition, DMFS stated that they complied with the applicable regulations but offered no comments related to the \$15,402 in excess of the limit.

Attachments:

Finding 2 - Recordkeeping for Disbursements

Finding 4 - Cash Disbursements

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Finding 2. Recordkeeping for Disbursements

Summary

A sample review of operating expenditures indicated that approximately 19% of expenditures were not properly documented.¹ The errors were all for disbursements greater than \$200 for which there were no canceled checks, wire confirmations, or vendor invoices. The Audit staff recommended that DMFS obtain and provide the missing records. In response to the IAR, DMFS stated that it had located and submitted all of the missing documents to the Audit staff; however, the Audit staff notes that no documentation related to any of the errors from the sample review was received.

Legal Standard

A. Required Records for Disbursements. For each disbursement, the treasurer of a political committee must keep records on the:

- Amount;
- Date;
- Name and address of the payee;²
- Purpose (a brief description of why the disbursement was made - see below); and
- If the disbursement was made on behalf of a candidate, the candidate's name and the office sought by the candidate.
- If the disbursement was in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. If the disbursement was by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill.

2 U.S.C. §432(c)(5) and 11 CFR §102.9(b).

B. Preserving Records and Copies of Reports. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 2 U.S.C. §432(d).

Facts and Analysis

The Audit staff reviewed operating expenditures on a sample basis and determined that approximately 19% of operating expenditures were not properly documented. The only documentation available for these expenditures was the entries on DMFS's electronic database. The errors were for disbursements greater than \$200 for which there was no canceled checks, receipts or invoices, and/or expense reports.

DMFS's disbursement records consisted of some check copies supplied by the committee (front only), some invoices and receipts, and committee-prepared vendor cover sheets. See Finding 4 for a discussion of cash disbursements.

¹ The Audit staff's review of cash disbursements revealed similar errors. See Finding 4.

² The payee is usually the person providing the goods or services to the committee. In the case of travel advances, however, the payee is the person receiving the advance. 11 CFR §102.9(b)(2).

At the exit conference, DMFS's representatives were informed of this matter and they stated that they would review their records for additional documentation and would provide any additional documentation located.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DMFS review its disbursement records and identify those payments in amounts greater than \$200 for which there was no canceled check, invoice or bill and obtain and submit the required documentation for the Audit staff's review. In response, the DMFS Comptroller stated that they had located the supporting documentation required for all disbursements and submitted them for the auditors' review. The Audit staff notes that DMFS did submit the copies of canceled checks relative to Finding 4, Cash Disbursements, but that none of the documents submitted related to any of the sample errors for the recordkeeping for disbursements review. As a result, the interim audit report conclusion is unchanged.

Finding 4. Cash Disbursements

Summary

DMFS issued five checks totaling \$17,950, four made payable to an employee and one made payable to a consultant during July 2004 which were used to make subsequent cash payments to numerous vendors and individuals. The Act requires political committees to make all disbursements, except those from a petty cash fund, by check or similar draft drawn on a committee account.

In addition, DMFS failed to maintain sufficient supporting documentation from the recipients of the cash payments. The Audit staff recommended that DMFS demonstrate it had complied with the law regarding cash disbursements, provide any relevant comments and submit the missing disbursement documentation. In response, DMFS submitted copies of the negotiated checks for the transactions in question and stated that it had therefore complied with the law regarding cash disbursements.

Legal Standard

A. Disbursement by Check. A political committee may only make expenditures in cash, not to exceed \$100, from a petty cash fund. A written journal for such cash expenditures is to be maintained by the treasurer. All other disbursements shall be made by check or similar draft drawn on account(s) established at the campaign's depository(ies). 2 U.S.C. §432(h).

B. Petty Cash Fund. A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase per transactions

It is the duty of the treasurer to keep and maintain a written journal of all petty cash disbursements. The written journal shall include:

- Name and address of every person to whom any disbursement is made,
- Date,
- Amount,
- Purpose, and

● If disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate. 11 CFR §102.11.

C. Required Records for Disbursements. For each disbursement, the treasurer of a political committee must keep records on the:

- Amount,
- Date,
- Name and address of the payee,³
- Purpose (a brief description of why the disbursement was made),
- If the disbursement was made on behalf of a candidate, the candidate's name and office sought by the candidate; and,
- If the disbursement was in excess of \$200, the records must include a receipt or an invoice from payee, or a cancelled check or share draft to the payee. If the disbursement was made by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 2 U.S.C. §432(c)(5) and 11 CFR §102.9(b).

D. Preserving Records and Copies of Records. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 2 U.S.C. §432(d).

Facts and Analysis

A. Unreported Cash Disbursements

The examination of bank records and the disbursements database revealed that DMFS issued five checks totaling \$17,950 during July 2004 which were used to make subsequent cash payments to numerous vendors and individuals. Four of the checks were made payable to an employee and one was made payable to a committee consultant. According to its accounting database, 123 cash payments totaling \$16,490 were made to numerous individuals and vendors through November 2004. Two of these cash payments totaling \$2,002 were not included in report totals.

Using DMFS's database, the Audit staff identified the items associated with each check and determined the difference between the five cashed checks (\$17,950), and the database records of the corresponding payments (\$16,490), was \$1,460. This amount was not reported. The database provided no information as to the treatment of this unaccounted for cash.

When the Audit staff reconciled DMFS's bank activity to its reported activity, an adjustment in the amount of \$3,462⁴ was necessary to account for unreported and unaccounted for cash payments.

³ The payee is usually the person providing the goods or services to the committee. In the case of travel advances, however, the payee is the person receiving the advance. 11 CFR §102.9(b)(2)

⁴ The sum of unreported and unaccounted for cash in 2004 (\$2,002 + \$1,460)

B. Excessive Cash Disbursements

The Audit staff reviewed the disbursements database to assess the nature of these cash disbursements. According to database descriptions, the cash payments were primarily used to pay get-out-the-vote (GOTV) costs.⁵ The Audit staff concluded that payments in the amount of \$15,402 are excessive cash disbursements; 32 cash payments in excess of \$100 totaling \$13,942 and \$1,460 in unaccounted for cash.

C. Recordkeeping for Cash Disbursements

DMFS failed to maintain sufficient supporting documentation relating to the cash disbursements. Committee officials were unable to confirm the use of a petty cash fund and a review of DMFS's disbursement records did not yield any evidence to show that DMFS ever established or maintained a formal petty cash fund. DMFS did keep a record of most cash payments related to the five checks in its computerized accounting system. That record is adequate for cash disbursements of less than the \$100 cash limit, but most of the cash was disbursed in amounts greater than \$100. For those disbursements, DMFS presented copies of only the front sides of two of the five cashed checks. DMFS also provided internally generated vendor cover sheets. The cover sheets along with statements by DMFS established that the cash was used to make subsequent disbursements. Except for one \$502 item, DMFS presented no other supporting documentation for the cash payments such as receipts, invoices, contemporaneous memoranda, etc. As a result, sufficient records (for payments in excess of \$200) were not available for \$12,349⁶ in cash payments.

The Audit staff's review of the committee's disbursements database yielded eleven additional checks issued between July and August 2004 totaling \$34,958 that were recorded as "GOTV" expenditures and made payable to the same two individuals as the five checks discussed above. Due to the lack of documentation associated with these disbursements, the Audit staff was unable to determine whether the designated payees provided goods or services in return for payment or whether the funds were used to reimburse multiple payees as discussed above in Section A. None of the checks appears to be salary or consulting payments.

This matter was presented to DMFS representatives at the exit conference. They stated that they were not aware of the requirements relating to cash payments at the time these payments were made.

Interim Audit Report Recommendation

The Audit staff recommended that DMFS:

- Demonstrate it complied with the provisions of 2 U.S.C. §432(h) regarding cash disbursements;
- Provide any comments it deemed relevant regarding the cash disbursements;
- Obtain and submit the missing disbursement documentation to support the \$12,349, noted above; and,
- Provide the missing disbursement documentation to support the \$34,958, noted above.

⁵ Examples of such costs included GOTV salaries, travel reimbursements, food purchases for GOTV volunteers, etc. However, routine vendor payments, for example office supplies, were also noted

⁶ This figure includes an unreported and unaccounted for amount of \$1,460 discussed above in Section A

Committee Response and Audit Staff's Assessment

In response, DMFS provided copies of the five negotiated checks issued in July 2004, totaling \$17,950, which were used to make subsequent cash payments to numerous vendors and individuals. DMFS also provided copies of the eleven negotiated checks issued in July and August 2004, totaling \$34,958, that were made payable to the same two individuals noted above and were recorded as "GOTV" expenditures. The Comptroller stated that payment was made from DMFS to the payees in accordance with 2 U.S.C. §432(h) for all of these checks.

She offered the following:

In many cases, as noted in the IAR, the original payees acted as intermediaries, further disbursing funds individually. As would be required of secondary and tertiary disbursements made, for example, through a commercial credit card, the Committee made every best effort to obtain and report name, address, date, amount and purpose for every secondary and tertiary transaction.

For every transaction, the Committee endeavored to obtain complete invoices and receipts from payees. However, during the fast-paced, statewide primary and primary runoff in 2004, full documentation was sometimes only obtained for the primary transaction, not any secondary or tertiary transaction that may have occurred. In these instances, the Committee's good faith efforts to completely document the flow of funds are seen in the presence of vendor cover sheets, receipts, service memorandums and other bank records, all of which have been transmitted to the FEC, as requested, at various points throughout this audit. These documents, specifically the service memorandums, make apparent that at no point was there a material misrepresentation of the flow of funding, nor was anything other than the enormous pressure Committee staff were operating under responsible for the now-realized potential omissions in obtaining certain documentation.

The Comptroller acknowledged that the individuals who received the 11 GOTV payments acted merely as intermediaries further disbursing the funds. While she did not explicitly confirm that these payments were made in cash, by referring to 2 U.S.C. 432 (h), she pointed out DMFS's compliance with this regulation. The Audit staff therefore reasonably concluded that these disbursements were made in cash.

While DMFS contended that it exercised best efforts to obtain and report the secondary transactions, it failed to document them beyond the general statement in its response. DMFS did not provide any agreements with the persons who received the funds. Further, it did not provide any documentation reflecting the accounting treatment of either the petty cash disbursements or disbursements greater than \$100. DMFS provided no documents to prove that it made necessary follow-up requests with the ultimate payees in order to document the disbursement process. DMFS also failed to explain why the best efforts failed to produce even partially complete records relative to the 11 GOTV payments. Regarding the five payments supported in detail in DMFS's database, DMFS did not elaborate as to why this detail information was not disclosed on its FEC reports.

Finally, the DMFS Comptroller did not address the issue of the 32 cash payments in excess of \$100 totaling \$13,942.

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