



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 9, 2011

**MEMORANDUM**

To: Christopher Hughey  
Acting General Counsel

Through: Alec Palmer  
Acting Staff Director *AP*

From: Patricia Carmona *PC*  
Chief Compliance Officer

**AUDIT REFERRAL # 11-02**

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Subject: Kansas Republican Party (A08-02) - Referral Matters

On May 26, 2011, the Commission approved the final audit report on the Kansas Republican Party. The final audit report includes the following matters that are referable:

Finding 1 - Misstatement of Financial Activity (Receipts only for 2007 and both Receipts and Disbursements for 2008)

Finding 2 - Receipt of a Prohibited Contribution.

All work papers and related documentation are available for review in the Audit Division. Should you have any questions regarding these matters, please contact Jim Miller or Alex Boniewicz at 694-1200.

Attachments: Finding 1 – Misstatement of Financial Activity  
Finding 2 – Receipt of a Prohibited Contribution

cc: Lorenzo Holloway

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## Finding 1. Misstatement of Financial Activity

### Summary

During audit fieldwork, a comparison of KRP's reported figures with bank records indicated a misstatement of receipts, disbursements and cash on hand in both 2007 and 2008. For 2007, KRP overstated beginning cash on hand by \$4,628, overstated receipts by \$11,885, understated disbursements by \$11,370 and overstated ending cash-on-hand by \$27,883. In 2008, excluding KRP's National Convention account (See Additional Issue 1. below), KRP overstated receipts by \$137,625, disbursements by \$71,812 and the ending cash on hand by \$93,696. In response to the Interim Audit Report, KRP amended its reports to materially correct the misstatements presented in that report. The Commission approved this finding.

### Legal Standard

**Contents of Reports.** 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;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

### Facts and Analysis

#### A. Facts

The Audit staff reconciled reported activity to bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements and ending cash balances for each year. Succeeding paragraphs address the reasons for the misstatements.

2007 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash Balance @ January 1, 2007	\$19,054	\$14,426	\$4,628 Overstated
Receipts	\$184,566	\$172,681	\$11,885 Overstated
Disbursements	\$172,457	\$183,827	\$11,370 Understated
Ending Cash Balance @ December 31, 2007	\$31,163	\$3,280	\$27,883 Overstated

The beginning cash on hand was overstated by \$4,628 and is unexplained, but likely resulted from prior period discrepancies.

The overstatement of receipts was the result of the following:

- Contribution amount incorrectly reported (see details below) \$ 8,220

• Non-federal caucus receipts reported in error	(25,000)
• Transfer of funds from non-federal account not reported	2,599
• Unexplained difference	2,296
<b>Net Overstatement of receipts</b>	<b><u>\$ (11,885)</u></b>

The understatement of disbursements was the result of the following:

• Transfer to non-federal account not reported (see details below)	\$ 8,220
• Disbursements not reported	3,150
<b>Understatement of disbursements</b>	<b><u>\$ 11,370</u></b>

KRP received a \$15,000 contribution from an individual and deposited the funds to its federal account on October 24, 2007. KRP reported the amount of this contribution as \$6,780, which represented the \$10,000 contribution limit for individuals less \$3,220, the amount of contributions already received from the individual prior to October 24, 2007, thus understating receipts by \$8,220 (\$15,000-\$6,780). In addition, KRP transferred \$8,220, the excess portion of the contribution, from its federal account to its non-federal account on October 25, 2007, but did not include the disbursement on its November 2007 monthly report.

The \$27,883 overstatement of the closing cash on hand was the result of the misstatements described above.

In 2008, KRP partially disclosed activity from its National Convention account. The Audit staff included all activity from this account in deriving the misstatement presented in the Interim Audit Report. Nearly all receipts and expenditures of this account related to attendance at the Republican National Convention. The Commission did not approve by the required four votes the Audit Staff recommendation that the National Convention account was a Federal account and required disclosure (See Additional Issue 1. below). As a result, the Audit staff has excluded all activity from this account and revised the presentation of the misstatements of financial activity for 2008 in the chart and explanations of differences below.

<b>2008 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2008	\$31,163	\$3,280	\$27,883 Overstated
Receipts	\$495,005	\$357,380	\$137,625 Overstated
Disbursements	\$427,635	\$355,823	\$71,812 Overstated
Ending Cash Balance @ December 31, 2008	\$98,533	\$4,837	\$93,696 Overstated

The overstatement of receipts resulted from the following:

• Reported receipts deposited into National Convention account	\$ (173,636)
• Refund received from Paychex but not reported	2,846

• Receipts deposited into various federal accounts not reported	25,822
• Permissible cash deposit for sale of yard signs but not reported	13,236
• Reported non-federal caucus receipts in error	(10,000)
• Transfers from the non-federal account but not reported	5,236
• Unexplained difference	<u>(1,129)</u>
<b>Net Overstatement of receipts</b>	<b><u>\$ (137,625)</u></b>

The overstatement of disbursements resulted from the following:

• Transfers to the non-federal account not reported	\$ 3,400
• Reported disbursements from the National Convention account	(132,708)
• Disbursements reported not supported by a check or debit	(10,285)
• Other disbursements not reported	<u>67,781</u>
<b>Net Overstatement of disbursements</b>	<b><u>\$ (71,812)</u></b>

The \$93,696 overstatement of the closing cash on hand was the result of the misstatements described above.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the misstatements for 2007 and 2008 with a KRP representative during the exit conference and provided copies of relevant workpapers. The KRP representative stated that corrective amended reports would be filed.

The Audit staff recommended that KRP amend its reports to correct the misstatements for 2007 and 2008. It was also recommended that KRP amend its most recently filed report to correct the cash balance with an explanation that the change resulted from a prior-period audit adjustment and that KRP reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may impact the adjustment recommended by the Audit staff.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, KRP amended its reports correcting the misreporting.

#### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged that KRP amended its reports to materially correct the misstatements presented in the Interim Audit Report.

#### **Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP misstated its financial activity for both 2007 and 2008, including the National Convention account.

The Commission approved the Audit Staff recommendation with the exception of the National Convention account, but concluded that KRP is not required to take any additional corrective action with respect to the amended reports it filed. (See Additional Issue 1. below)

## **Finding 2. Receipt of a Prohibited Contribution**

### **Summary**

During audit fieldwork, a review of contributions received by KRP identified a contribution of \$10,000 that appeared to be from a prohibited source. In response to the Interim Audit Report, KRP indicated it had transferred sufficient funds from its federal to its non-federal account to resolve this contribution. The Commission approved this finding.

### **Legal Standard**

**A. Definition of Limited Liability Company.** A limited liability company (LLC) is a business entity that is recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

**B. Application of Limits and Prohibitions to LLC Contributions.** A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors as explained below:

1. **LLC as Partnership.** The contribution is considered to be from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules or if it makes no choice about its tax status. A contribution by a partnership is attributed to each partner by his or her share of the partnership profits. 11 CFR §110.1 (e)(1) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
3. **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

**C. Limited Liability Company's Responsibility to Notify Recipient Committee.** At the time it makes a contribution, an LLC must notify the recipient committee:

- That it is eligible to make the contribution; and
- In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

**D. 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).

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3. The committee must keep a written record explaining why the contribution may be prohibited and 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**

### **A. Facts**

The Audit staff reviewed contributions received by KRP and identified one contribution (\$10,000) that was determined to be from a limited liability company, which may choose a corporate tax filing status. As such, the limited liability company was required to affirm to KRP that it was eligible to make the contribution based on its tax filing status being other than corporate. Records provided by KRP did not contain any such affirmations or any follow-up by KRP to verify eligibility.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff presented this matter to a KRP representative during the exit conference. The KRP representative stated that a letter requesting the tax filing status would be sent to the limited liability company and that KRP would refund the contribution if it was prohibited.

In the Interim Audit Report, the Audit staff recommended that KRP provide documentation establishing the tax filing status of the limited liability company. Absent such evidence, it was recommended that KRP refund the \$10,000 to the contributor or transfer the funds to a non-federal account and provide documentation of such refund (i.e., copy of the negotiated refund check, front and back) or transfer. If funds were not available, then the refund or transfer should have been disclosed on Schedule D (Debts and Obligations) until funds became available to make the refund or transfer.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report, KRP acknowledged that this contribution was received from a company taxed as a corporation and deposited into its Federal account rather than its non-federal account. KRP transferred sufficient funds on January 25, 2010, from its federal account to its non-federal to resolve this contribution.

### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged KRP's transfer of funds to resolve the prohibited contribution.

**Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP had received prohibited contributions.

The Commission approved the Audit Division recommendation with respect to this \$10,000 prohibited contribution. (See Additional Issue 2. below)

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