

REPORTS ANALYSIS DIVISION REFERRAL

TO

OFFICE OF GENERAL COUNSEL

DATE: July 23, 2013

ANALYST: Nicole Miller

- I. COMMITTEE: University of Hawaii Professional Assembly
C00520262
Robert V. Cooney, Treasurer (5/8/13-Present)
Catherine Bye, Treasurer (7/19/12-5/7/13)²
Paulette Feeney, Treasurer (5/1/12- 7/18/12)
1017 Palm Drive
Honolulu, HI 96814
- II. RELEVANT STATUTE: 2 U.S.C. § 434(b)(2)
11 CFR § 104.3(a)

III. BACKGROUND:

Failure to Provide Supporting Schedules (Failure to Disclose All Financial Activity)

The University of Hawaii Professional Assembly ("the Committee") amended its 2012 July Quarterly and 2012 12 Day Pre-Primary Reports to disclose additional receipts totaling \$219,206.68, which were not disclosed on the original reports (Attachment 2).

2012 July Quarterly Report

On July 14, 2012, the Committee filed the original 2012 July Quarterly Report covering the period from April 1, 2012 through June 30, 2012. The report disclosed \$0.00 in receipts on Line 11(a)(i) (Itemized Contributions From Individuals/Persons Other Than Political Committees) of the Detailed Summary Page (Image 12952439067).

² As disclosed on the Miscellaneous Paper Document ("Form 99") filed on 7/19/12.

On December 4, 2012, Linda Sawai, the Committee's custodian of records, called the Reports Analysis Division (RAD) Analyst. Among other issues, Ms. Sawai explained that the original 2012 July Quarterly Report only disclosed disbursements made by the Committee and failed to disclose any receipts received during that time period. The Analyst explained that the report should include all of the Committee's financial activity during the reporting period. The Analyst further explained that Committee may receive a Request for Additional Information (RFAI) as a result of the increase in activity disclosed on the Amended 2012 July Quarterly Report (Attachment 4).

On December 13, 2012, the Committee filed an Amended 2012 July Quarterly Report. The report disclosed \$67,699.68 in receipts on Line 11(a)(i) of the Detailed Summary Page, an increase of \$67,699.68 from the original report (Image 12963739392, Attachment 3).

On February 7, 2013, an RFAI was sent to the Committee referencing the Amended 2012 July Quarterly Report, received December 13, 2012. Among other issues, the RFAI requested clarification regarding the increase in receipts that were not disclosed in the original report (Image 13330022091).³

2012 12 Day Pre-Primary Report

On July 30, 2012, the Committee filed the original 2012 12 Day Pre-Primary Report covering the period from July 1, 2012 through July 22, 2012. The report disclosed \$0.00 in receipts on Line 11(a)(i) (Itemized Contributions From Individuals/Persons Other Than Political Committees) of the Detailed Summary Page (Image 12971836142).

On December 14, 2012, the Committee filed an Amended 2012 12 Day Pre-Primary Report. The report disclosed \$151,507.00 in receipts on Line 11(a)(i) of the Detailed Summary Page, an increase of \$151,507.00 from the original report (Image 12963741455, Attachment 3).

On February 7, 2013, an RFAI was sent to the Committee referencing the Amended 2012 12 Day Pre-Primary Report, received December 14, 2012. Among other issues, the RFAI requested clarification regarding the increase in receipts that were not disclosed on the original report (Image 13330022093).

On March 13, 2013, the Committee filed a Form 99 in response to the RFAI. The Committee stated, in part:

"1. UHPAs political action account had a carried-over balance of \$71,760, coming into the 2012 election cycle, since the account was not spent down in the prior election cycle. To this pre-existing balance, UHPA added \$219,206.68, during the 2012 election cycle, by transfer from its general treasury account. Of this election cycle total of \$290,966.68, \$288,605.79 was used for federal independent expenditures. As stated above, no money was used for federal contributions. The \$151,507 figure you inquire about was deposited into the political action account, from the general treasury account, during the reporting

³ The RFAI references a \$139,459.69 increase in receipts. The actual amount of the total increase is \$67,699.68.

period in question. 2. The reasons the receipts totaling \$290,996.68 were not disclosed on the original report were: a) inadvertence, b) focus on getting the expenditures correct within the time limit, and c) unfamiliarity with the FEC forms and uncertainty, for a first report, about how to correctly represent the facts" (Image 13961150261).

On May 22, 2013, the RAD Analyst called Ms. Sawai. The Analyst explained to Ms. Sawai that the increase in activity disclosed on the Committee's Amended 2012 July Quarterly Report and the Amended 2012 12 Day Pre-Primary Report may be referred for further action by the Commission. The Analyst further stated that the Committee could file a Form 99 to provide an additional explanation of the increased activity at this time, but was not required to do so (Attachment 4).

To date, no further communication has been received from the Committee regarding this matter.

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MISCELLANEOUS TEXT (FEC Form 99)

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re: Identification Number C00520262;
Amended 12 Day Pre-Primary Report received 12/14/2012

We have your letter of February 7, 2013, which requests a response by March 14, 2013.

You request information for two items.

The following information is general background for the two items. Detailed responses follow.

A. General Background

1. The University of Hawaii Professional Assembly is a labor union organized and recognized under Hawaii statutes. It is the exclusive representative of all faculty of the University of Hawaii throughout the State of Hawaii. It has performed this function for over three decades. Faculty of the University of Hawaii are employees of the State of Hawaii. The University of Hawaii is created and governed by Hawaii law.
 2. The University of Hawaii Professional Assembly maintains a general treasury account, Bank of Hawaii Acct. #0017-082426, and a political action account Bank of Hawaii Acct. #0081-974004.
 3. Mandatory statutory dues, owed by bargaining unit members to UHPA pursuant to Hawaii Revised Statutes 89-4, are deducted from the wages of bargaining unit members by the State of Hawaii. These dues are received by UHPA from the State of Hawaii, and are deposited into the general treasury account. Dues revenues are the overwhelmingly predominant source of income for UHPA; other categories would be minor, for example, miscellaneous interest income on deposits.
 4. Pursuant to the policy of the UHPA Board of Directors, general treasury money is moved from the general treasury account to the political action account from time to time. The political action account monies are used exclusively for political action. UHPA has not organized a separate PAC; the political action account, like the general treasury, is under supervision of UHPA's management and directors.
 5. The general treasury money that is moved to the political action account is derived from and is attributed to bargaining unit members who are citizens. No money from individuals who are not citizens goes into the political action account.
 6. Under UHPA Board policy, the amount of money moved from the general treasury to the political action account does not exceed one hundred dollars (\$100) per person, per election cycle.
 7. The political action account has been used over time to support contributions or independent expenditures in Hawaii state elections. It was so used in 2012. All Hawaii reporting requirements have been complied with, to the best of UHPA's knowledge and ability.
 8. UHPA has from time to time endorsed federal candidates. However, at no time, from the founding of UHPA to date, has UHPA ever made a contribution to any federal candidate.
 9. UHPA has made independent expenditures to support or oppose federal candidate(s) on one and only one occasion: the 2012 election cycle.
 10. The candidates UHPA supported via independent expenditures in 2012 were Ed Case, Mazie Hirono, Barack Obama, and Mufi Hanneman.
 11. These expenditures were not discussed, announced, planned, coordinated, produced, or in any way whatsoever
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MISCELLANEOUS TEXT (FEC Form 99)

arranged by or with the candidates, any of their people, via any of UHPAs people, directly or indirectly. They were the result of separate work using separate contractors who had no dealings with the candidates.

12. In anticipation of expending more than ten thousand dollars in independent expenditures in the federal election cycle of 2012, UHPA for the first time registered with the Federal Election Commission in 2012.

13. Each UHPA expenditure that directly or indirectly supported independent expenditures in the federal election in the 2012 election cycle has been reported to the FEC. All errors reported to UHPA are unintentional and have been corrected.

14. Each and every item of independent expenditure, in whatever form or broadcast, was clearly identified as being the work of UHPA, without the approval of any candidate.

15. Each item of independent expenditure was paid for by money from the political action account, that was funded from the UHPA general treasury as above.

B. Letter of February 7, 2013; 1

1. UHPAs political action account had a carried-over balance of \$71,760, coming into the 2012 election cycle, since the account was not spent down in the prior election cycle. To this pre-existing balance, UHPA added \$219,206.68, during the 2012 election cycle, by transfer from its general treasury account. Of this election cycle total of \$290,966.68, \$288,605.79 was used for federal independent expenditures. As stated above, no money was used for federal contributions. The \$151,507 figure you inquire about was deposited into the political action account, from the general treasury account, during the reporting period in question.

2. The reasons the receipts totaling \$290,996.68 were not disclosed on the original report were: a) inadvertence, b) focus on getting the expenditures correct within the time limit, and c) unfamiliarity with the FEC forms and uncertainty, for a first report, about how to correctly represent the facts.

3. UHPA believes that under Citizens United, there should be no obstacle to UHPAs using general treasury money to support independent expenditures. Accordingly, the sole germane question is how to best represent the use of general treasury money (in the political action account), when some of that money is used for federal independent expenditures. UHPA believes that the Amended Report shows the germane facts.

C. Letter of February 7, 2013, 2

1. UHPA believes that under Citizens United, a labor union can make independent expenditures in federal elections directly from its general treasury. This is because UHPA, as a collective entity composed of members, possesses First Amendment rights in its own name. UHPA may or may not choose to create a separate PAC, but UHPA itself possesses First Amendment rights. Independent expenditures, direct from UHPAs general treasury, are a fully-legal exercise of protected political speech provided that the expenditures are truly independent, and do not constitute contributions.

2. As stated above, UHPA has never, on any occasion, from its founding to date, made any contributions to federal candidates. It certainly did not do so in the 2012 period reported.

3. If UHPA had made contributions to federal candidates, the situation might well be different, but that would not be this case. Because UHPA made no contributions, and only independent expenditures, and is entitled to do so direct from its general treasury, UHPA respectfully submits that your advice in 2 misses the mark.

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MISCELLANEOUS TEXT (FEC Form 99)

4. UHPA transferred general treasury monies to its political action account, which, as noted above, is maintained in large part for non-federal activity (i.e., electoral activity in Hawaii) in UHPAs name. As noted above, UHPA has not organized a separate PAC. UHPA itself manages its political action account, which is funded with general treasury monies. UHPA authorized the independent expenditures from the political action account. UHPA conducts all political activities without a separate PAC.

With all respect, UHPA does not believe that 11 CFR 1025(a)(1)(i) applies to this matter. There is no federal account. The political action account has been used for state activity, and, as of 2012, federal independent expenditures. UHPA has engaged in no federal election activity (such as contributions to federal candidates) that requires that there be a federal account. The lone and sole federal activity UHPA has ever undertaken were independent expenditures in 2012, which, per Citizens United, may be made direct from the general treasury (by definition, not a federal account). Accordingly, we believe that no money needs to be returned from any account to any other account; certainly not from the political action account to the general treasury again, because the sole activity was protected First Amendment corporate speech undertaken by UHPA.

The transaction was not an internal transfer of funds from one federal account to another. UHPA appreciates your caution against double counting, and in no way wants to create the impression of excessive receipts or excessive cash on hand.

UHPA understands that the FEC may have questions based on the above response, or may have a different view of regulations and their applicability. UHPA desires to comply with all currently-applicable law. At the same time, UHPA supposes that there is some confusion possible in applying regulations in the post-Citizens United climate. UHPA would be very happy to go over the above facts in whatever detail you may require.

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