



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 22, 2015

MEMORANDUM

TO: Lynn Fraser
Director of Alternative Dispute Resolution

FROM: Thomas Hintermister
Assistant Staff Director
Audit Division

Thomas Hintermister
Digitally signed by Thomas Hintermister
DN: cn=Thomas Hintermister, o=Federal Election
Commission, ou=Office of the
Inspector General, email=thintermister@fec.gov
Date: 2015.06.22 13:15:07 -0400

Kendrick Smith
Audit Manager

Kendrick Smith
Digitally signed by Kendrick D. Smith
DN: cn=Kendrick D. Smith, o=Federal
Election Commission, ou=Office of the
Inspector General, email=kendrick.smith@fec.gov
Date: 2015.06.22 13:15:07 -0400

Brenda Wheeler
Lead Auditor

Brenda Wheeler
Digitally signed by Brenda Wheeler
DN: cn=Brenda Wheeler, o=Federal Election
Commission, ou=Office of the
Inspector General, email=bwheeler@fec.gov
Date: 2015.06.22 13:22:25 -0400

SUBJECT: Kevin McCarthy for Congress (A13-02) – Referral Matter

On June 9, 2015, the Commission approved the Proposed Final Audit Report on Kevin McCarthy for Congress. The report was released to the public on June 18, 2015. In accordance with the Materiality Thresholds for Authorized Committees, the Final Audit Report of the Commission includes a matter that meets the criteria for referral to the Office of Alternative Dispute Resolution.

Finding – Receipt of Contributions in Excess of the Limit

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Brenda Wheeler or Kendrick Smith at 694-1200.

Attachments: Finding – Receipt of Contributions in Excess of the Limit
Designation of Counsel

Finding 1. Receipt of Contributions in Excess of the Limit

Summary

During audit fieldwork, the Audit staff reviewed contributions from individuals to determine if any exceeded the contribution limit. This review indicated that KMFC received apparent excessive contributions totaling \$77,094. These errors occurred as a result of KMFC not resolving the excessive portions of contributions by forwarding a presumptive letter to the contributor or issuing a refund in a timely manner. In response to the exit conference following fieldwork, KMFC provided copies of presumptive letters that were sent to the contributors. As a result, KMFC has resolved the excessive contributions, albeit in an untimely manner. In response to the Interim Audit Report recommendation, KMFC stated that it believes that presumptive letters were sent to its contributors in a timely manner; however, it cannot prove such action was taken with a degree of acceptable certainty. KMFC reiterated its position in its response to the Draft Final Audit Report.

The Commission approved a finding that KMFC received excessive contributions totaling \$77,094.

Legal Standard

- A. Authorized Committee Limits.** During the election cycle for which this audit is being completed, the relevant contribution limits were \$2,500 per election from any one person or \$5,000 per election from a multicandidate political committee. 52 U.S.C. §30116(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).
- B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:
- Return the questionable check to the donor; or
 - Deposit the check into its federal account and:
 - Keep enough money in the account to cover all potential refunds;
 - Keep a written record explaining why the contribution may be illegal;
 - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
 - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in the Commission regulations (see below for explanations of reattribution and redesignation); and
 - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).
- C. Joint Contributions.** Any contribution made by more than one person (except for a contribution made by a partnership must include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A joint contribution is attributed equally to each donor unless a statement indicates that the funds should be divided differently. 11 CFR §110.1(k)(1) and (2).

D. Reattribution of Excessive Contributions. The Commission regulations permit committees to ask donors of excessive contributions (or contributions that exceed the committee's net debts outstanding) whether they had intended their contribution to be a joint contribution from more than one person and whether they would like to reattribute the excess amount to the other contributor. The committee must inform the contributor that:

- The reattribution must be signed by both contributors;
- The reattribution must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount.

11 CFR §110.1(k)(3).

Within 60 days after receiving the excessive contribution, the committee must either receive the proper reattribution or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(k)(3)(ii)(B). Further, a political committee must retain written records concerning the reattribution in order for it to be effective. 11 CFR §110.1(l)(5).

Notwithstanding the above, any excessive contribution that was made on a written instrument that is imprinted with the names of more than one individual may be attributed among the individuals listed unless instructed otherwise by the contributor(s). The committee must inform each contributor:

- How the contribution was attributed; and
- The contributor may instead request a refund of the excessive amount.

E. Redesignation of Excessive Contributions. When an authorized candidate committee receives an excessive contribution (or a contribution that exceeds the committee's net debts outstanding), the committee may ask the contributor to redesignate the excess portion of the contribution for use in another election. The committee must inform the contributor that:

- The redesignation must be signed by the contributor;
- The redesignation must be received by the committee within 60 days after the committee received the original contribution; and
- The contributor may instead request a refund of the excessive amount.

Within 60 days after receiving the excessive contribution, the committee must either receive the proper redesignation or refund the excessive portion to the donor. 11 CFR §§103.3(b)(3) and 110.1(b)(5)(ii)(A). Further, a political committee must retain written records concerning the redesignation in order for it to be effective. 11 CFR §110.1(l)(5).

When an individual makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 11 CFR §110.1(b)(5)(ii)(B)(1)-(4).

The committee is required to notify the contributor of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and focused reviews to identify apparent excessive contributions from individuals totaling \$77,094.¹ All the excessive contributions (\$77,094) were the result of KMFC not resolving the excessive portion of contributions by timely forwarding a presumptive letter to its contributors informing them how their contribution had been redesignated and/or reattributed, or refunding the excessive contribution.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference at the conclusion of fieldwork and provided KMFC representatives with a schedule of the apparent excessive contributions. The representatives asked questions regarding the presumptive reattribution and/or redesignation letters that could be issued based on the sample projection.

In response to the exit conference, the representatives submitted presumptive reattribution and redesignation letters that were sent to the contributors relative to the apparent excessive contributions. In total, the representatives provided evidence that it had sent more presumptive letters to its contributors than identified in the sample projection. As a result, KMFC has resolved the excessive contributions, albeit untimely.

The Interim Audit Report recommended that KMFC provide any comments it deemed relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, KMFC disagreed with the Audit staff's conclusion that the presumptive letters were issued untimely. KMFC believes that it did timely forward presumptive letters to its contributors informing them how their contributions had been redesignated and/or reattributed. KMFC further stated that, because the issuance and tracking of the presumptive letters would have been handled by its prior treasurer, it could not prove with a degree of acceptable certainty that these letters were timely sent to contributors.

D. Draft Final Audit Report

The Draft Final Audit Report maintained that, absent records to substantiate the presumptive letters were sent timely to its contributors, the corrective action taken by KMFC was untimely.

¹ The sample error amount was projected using a Monetary Unit Sample with a 95 percent confidence level plus the result of a focused review of contributions not included in the sample population. The sample estimate could be as low as \$53,334 and as high as \$130,427.

E. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, KMFC reiterated its position that it believes presumptive letters were sent to its contributors in a timely manner.

Commission Conclusion

On May 21, 2015, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that KMFC received excessive contributions totaling \$77,094.

The Commission approved the Audit staff's recommendation.