



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 30, 2017

MEMORANDUM

TO: Lynn Fraser
Director of Alternative Dispute Resolution

FROM: Thomas Hintermister
Assistant Staff Director
Audit Division

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Audit Manager

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Lead Auditor

SUBJECT: Kind for Congress Committee (A15-02) – Referral Matter

On March 17, 2017, the Commission approved the Proposed Final Audit Report on Kind for Congress Committee. The report was released to the public on March 30, 2017. 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 – Untimely Deposit of Receipts

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

Attachment: Finding – Untimely Deposit of Receipts

Untimely Deposit of Receipts

Summary

During audit fieldwork, a review of contributions from political committees determined that KFCC failed to deposit, within 10 days of receipt, contributions totaling \$581,719 received during the 2014 election cycle. In response to the Interim Audit Report recommendation, KFCC acknowledged the finding and stated that it has taken several measures to ensure future compliance with regard to timely deposit of its receipts. As such, KFCC complied with the Interim Audit Report recommendation. KFCC reiterated its corrective measures in its response to the Draft Final Audit Report.

The Commission approved the finding that KFCC untimely deposited contributions totaling \$581,719.

Legal Standard

- A. Timing of Deposits.** A treasurer of a political committee is responsible for making deposits of contributions. These deposits must be made within 10 days of the receipt of the contribution. 11 CFR §103.3(a).
- B. Receipt of Contributions.** Every person who receives a contribution in excess of \$50 for a political committee which is an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the committee: The contribution, the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution. 52 U.S.C. §30102(b)(1) and 11 CFR §102.8(a).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and focused reviews to identify the untimely deposit of contributions received from political committees. The sample testing and focused reviews identified untimely deposit errors totaling \$581,719.¹ This amount represents approximately 37% of all contributions from political committees. On average, the time between receipt and deposit of these contributions was 26 days, ranging from 14 to 100 days.

During this review, the Audit staff asked KFCC officials which date they used on the FEC disclosure reports. A KFCC representative responsible for the daily input of contributions informed the Audit staff, on more than one occasion, that the receipt date reported in its FEC disclosure filings was the date the contribution was received by KFCC. Based on this affirmation, the Audit staff used the date of receipt provided in KFCC's receipts database (which

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 \$492,045 and as high as \$625,394.

agreed with the date of receipt reported on the disclosure reports) to determine the number of days it took KFCC to deposit its contributions.

However, because KFCC representatives later expressed some uncertainty about the validity of the actual dates of receipt (see discussion below), the Audit staff revised its calculation and used the date of the contributor check (plus three days for mailing) as the date of receipt in determining the number of days from receipt of the contributor check to its deposit.²

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with KFCC representatives during the exit conference at the conclusion of audit fieldwork, and provided them with work papers detailing the untimely deposited contributions. The representatives stated that the contributions from political committees were received by a representative in Washington, D.C. and mailed to their Wisconsin office for deposit.³ According to the representatives, the mail delivery from Washington, D.C. to its office in La Crosse, Wisconsin sometimes took up to 10 days. As a result, KFCC was not able to timely deposit these contributions. Furthermore, the representatives stated that they were uncertain of the actual date of receipt of these contributions and they questioned whether it should be the date the contributions were received in Washington, D.C. or La Crosse, Wisconsin. They added that, in the future, they would look at various ways to ensure contributions were timely deposited. The Audit staff suggested that the representative in Washington, D.C. make the deposits locally since KFCC utilized a national bank with many locations within the city. Then, the representative could email a list of the contributions to KFCC for reporting purposes, etc. The Audit staff also suggested the use of express shipping to reduce the mail delivery time to Wisconsin. The representatives said they would consider these options. No additional information was provided in KFCC's response to the exit conference.

In accordance with 11 CFR §102.8(a), the date of receipt is the day the KFCC representative in Washington, D.C. obtains possession of the contribution.⁴ The representative in Washington, D.C. was an authorized agent of the treasurer who was allowed to accept contributions on behalf of KFCC. Therefore, KFCC must ensure that deposits are made within 10 days of its Washington, D.C. representative's receipt to comply with the requirements of 11 CFR §103.3(a).

The Interim Audit Report recommended that KFCC provide evidence demonstrating that the contributions in question were deposited timely or submit any additional comments relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, KFCC acknowledged the issue and stated that it has proactively taken a number of steps to fix this situation in the future. To ensure that all contributions are deposited in a timely manner, KFCC stated that it had made the following changes.

² This method of determining a receipt date is utilized by the Audit staff when the actual receipt date is unknown. There was a minor decrease in the error total using this method.

³ Contributions from individuals were usually mailed directly to the KFCC office in La Crosse, WI.

⁴ The Act and Commission regulations contemplate that the treasurer will have authorized agents to receive contributions and make expenditures for the committee. 11 CFR §102.9. The receipt of a contribution by an authorized agent is the equivalent of the treasurer's receipt and triggers the 10-day deposit period at 11 CFR §103.3(a). Advisory Opinion 1992-29 (Holtzman).

- It has engaged a professional compliance firm to further ensure compliance with all applicable rules.
- Wisconsin staff now makes deposits of contributions on a weekly basis to ensure timely deposit of all contributions received in its district.
- It has a new campaign treasurer, and campaign staff has received additional training regarding compliance rules.
- When donations are received by campaign staff in Washington, D.C., the contributions are now deposited directly into a D.C. branch of its financial institution.
- Keeping all additional records relevant to when contributions are received, including envelopes and additional paperwork.

KFCC stated "...that the statute and FEC rules are unclear with respect to the timeliness of deposits – they could easily be read to allow 20 days..." KFCC also reiterated that mail delivery to rural areas, such as La Crosse, Wisconsin, can take weeks and that "[t]he FEC's one-size-fits-all policy on timeliness of deposits does not take into account that mail delivery in rural areas is generally much slower than in big cities or on the coasts."

The Audit staff acknowledges the procedural changes that KFCC has made to comply with the requirements of 11 CFR §103.3(a). While there are mail delivery challenges that some committees in rural areas may face, the Commission has addressed this matter by establishing deposit guidance after receipt of the contribution. It is not until after the contribution is received by the treasurer or the treasurer's authorized agent that it must be deposited within 10 days. The Commission established this guidance to promote the timely deposit of contributor checks.

The provisions at issue in the KFCC response are 11 CFR §103.3(a), which requires that all receipts by a political committee be deposited within 10 days of the treasurer's receipt, and 11 CFR §102.8(a), which requires every person who receives a contribution for an authorized political committee to forward the contribution to the treasurer no later than 10 days after receipt.

The Commission's regulations are clear that a committee's contributions must be deposited within 10 days of receipt by the committee's treasurer. 11 CFR §103.3. The Commission has also stated that when a treasurer's agent receives a contribution, the receipt of that contribution is imputed to the committee's treasurer and thus must be deposited within 10 days of the agent's receipt.⁵ Because an agent of KFCC's treasurer received the contributions at issue in this report, KFCC was required to deposit those contributions within 10 days of receipt.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged KFCC's corrective actions in response to the Interim Audit Report recommendation.

E. Committee Response to Draft Final Audit Report

KFCC reiterated its corrective measures in its response to the Draft Final Audit Report.

⁵ Advisory Opinion 1992-29 (Holtzman) – see also footnote 5.

On February 8, 2017, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that KFCC untimely deposited contributions totaling \$581,719.

The Commission approved the Audit staff's recommendation.

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