



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

AUDIT REFERRAL # 18-04

July 13, 2018

MEMORANDUM

TO: Kathleen Guith
Acting Associate General Counsel

Jeff S. Jordan
Assistant General Counsel

THROUGH: Alec Palmer
Staff Director

FROM: Patricia C. Orrock Patricia
Chief Compliance Officer Orrock

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Date: 2018.07.13 14:00:19 -04'00'

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Date: 2018.07.12 16:31:19 -04'00'

SUBJECT: Kelly for Congress (A17-05) – Referral Matters

On June 28, 2018, the Commission approved the Proposed Final Audit Report on Kelly for Congress. The report was released to the public on July 12, 2018. In accordance with the Materiality Thresholds for Authorized Committees, the Final Audit Report of the Commission includes a finding that meets the criteria for referral to the Office of General Counsel. Also, Receipt of Contributions that Exceed Limits – B. Excessive Contributions from Individuals meets the criteria for referral to the Office of Alternative Dispute Resolution however, is being referred to your office in accordance with the policy.

Finding – Receipt of Contributions that Exceed Limits – A. Excessive Contribution by Loan Guarantor: Amount in Violation (\$49,900); Calendar Year (2015)

11030211-10101

Finding – Receipt of Contributions that Exceed Limits – B. Excessive Contributions from Individuals: Amount in Violation (\$25,200); Calendar Years (2015, 2016)

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding these matters, please contact Paula Nurthen or Rickida Morcomb at 694-1200.

Attachments: Finding – Receipt of Contributions that Exceed Limits-A. Excessive Contribution by Loan Guarantor

Finding – Receipt of Contributions that Exceed Limits-B. Excessive Contributions from Individuals

11/10/2016 10:10:10 AM

Receipt of Contributions that Exceed Limits

Summary

During audit fieldwork, the Audit staff reviewed loans received and contributions from individuals to determine if any exceeded the contribution limit. This review indicated that KFC received apparent excessive contributions totaling \$75,100. This amount consisted of a contribution made in connection with a loan received (\$49,900) and contributions from individuals (\$25,200). In response to the exit conference following fieldwork, KFC untimely resolved excessive contributions from individuals, totaling \$25,200. In response to the Interim Audit Report recommendation, KFC noted that the bank loan was made in the ordinary course of business in that it was secured by collateral and guaranteed by an individual. Additionally, KFC stated that while it realized errors were made, that the bank loan was repaid in 30 days and all errors were ultimately resolved. KFC also provided copies of redesignation and reattribution letters, signed by the contributors, which resolved the excessive contributions from individuals totaling \$25,200. In response to the Draft Final Audit Report, KFC stated it did not intentionally break the rules and hoped the Commission would take that into consideration. The Audit staff concluded KFC received excessive contributions totaling \$75,100 and untimely resolved \$25,200 of the excessive contributions.

The Commission approved a finding that KFC received excessive contributions totaling \$75,100 (\$49,900 + \$25,200).

Legal Standard

- A. Authorized Committee Limits.** An authorized committee may not receive more than a total of \$2,700 per election from any one person. 52 U.S.C §30116; 11 CFR §§110.1(a) and (b) and 110.9.
- B. Contribution.** A gift, subscription, loan (except a loan made in accordance with 11 CFR §§ 100.82 and 100.83), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office is a contribution. The term *loan* includes a guarantee, endorsement, and any other form of security. A loan that exceeds the contribution limitations of 52 U.S.C. 30116 and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. 11 CFR § 100.52(a) and (b)(1)-(3).
- C. 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).

D. 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).

E. 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. 11 CFR §110.1(k)(3)(B).

F. 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. 11 CFR §110.1(b)(5).

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)(i)(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. 11 CFR §110.1(b)(5)(ii)(B)(5)-(6).

Facts and Analysis

A. Excessive Contribution by Loan Guarantor

1. Facts

The Candidate obtained a bank loan totaling \$50,000 on behalf of KFC from the First American National Bank (FANB) in Tupelo, Mississippi on May 14, 2015. An associate of the Candidate guaranteed the loan and provided collateral for the loan in the form of two automobiles. KFC provided documentation from FANB showing that the automobiles had a combined National Automobile Dealers Association value of \$52,925, as of the date of the loan. KFC repaid FANB in full for the loan on June 5, 2015 (see Additional Issue, Receipt of Apparent Prohibited Contribution - Bank Loan). Per 11 CFR 100.52(a), a loan that exceeds the contribution limitations of 52 U.S.C. 30116 and 11 CFR part 110 shall be unlawful whether or not it is repaid. The guarantor had already given \$2,600 towards the special run-off election held on June 2, 2015. Therefore, the excessive portion of the loan amount was \$49,900 (\$50,000

less \$100 remaining of the \$2,700 contribution limit for the special run-off election). A daily cash analysis performed by the Audit staff indicated that KFC would have had a negative cash balance from May 18, 2015 through May 25, 2015 without the benefit of the loan.

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff discussed this apparent excessive contribution with KFC representatives and provided a schedule of the identified excessive contribution. The representatives indicated that they would review the schedule.

The Interim Audit Report recommended that KFC provide documentation demonstrating that the guarantor did not make an excessive contribution totaling \$49,900 while the loan was still outstanding and/or provide any comments it deemed relevant to the matter.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, KFC did not provide any documentation demonstrating the guarantor did not make an excessive contribution. However, KFC noted that the error was ultimately resolved in that the bank loan was repaid within thirty days. KFC believed the bank loan was made in the ordinary course of business, including being guaranteed by an individual.

The Audit staff maintained that the guarantor made an excessive contribution totaling \$49,900 while the loan was still outstanding.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged KFC's statement but maintained that the guarantor made an excessive contribution in connection with a loan received totaling \$49,900.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, KFC stated that it did not intentionally break the rules and hoped the Commission would take that into consideration.

Commission Conclusion

On June 7, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that KFC received an excessive contribution from the guarantor totaling \$49,900.

The Commission approved the Audit staff's recommendation.

B. Excessive Contributions from Individuals

1. Facts

During audit fieldwork, the Audit staff utilized a combination of sample testing and other reviews of contributions, not included in the sample population, to identify apparent excessive contributions from individuals. These reviews indicated that KFC received apparent excessive contributions totaling \$25,200.¹ All of the excessive contributions were made by check and were the result of KFC not resolving the excessive portion of contributions by timely forwarding a presumptive letter to its contributors informing them how their contribution had been redesignated or reattributed, with the offer of a refund.

2. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with KFC representatives at the exit conference and provided schedules of the apparent excessive contributions. The representatives indicated that they would review the schedule.

In response to the exit conference, KFC provided copies of redesignation and reattribution letters, signed by the contributors, and untimely resolved all of the excessive contributions, totaling \$25,200.

The Interim Audit Report recommended that KFC demonstrate the excessive contributions were resolved in a timely manner and/or provide any additional comments it deemed relevant to the matter.

3. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, KFC stated that it made some errors and that the contributions in question, totaling \$25,200, were resolved as soon as they were brought to KFC's attention. KFC provided copies of redesignation and reattribution letters, signed by the contributors, which resolved, albeit untimely, all of the excessive contributions totaling \$25,200.

The Audit staff acknowledged that KFC acquired and provided signed redesignation and reattribution letters in response to the audit, which resolved all of the excessive contributions from individuals totaling \$25,200, albeit untimely.

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that KFC had resolved, albeit untimely, all of the excessive contributions from individuals totaling \$25,200.

¹ The sample error estimate (\$2,600) is based on a Monetary Unit Sample with a 95 percent confidence level. A review of other contributions not included in the sample population identified apparent excessive contributions totaling \$22,600. The sample projection estimate of \$2,600 could be as low as \$488 or as high as \$7,370.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, KFC stated that it did not intentionally break the rules and hoped the Commission would take that into consideration.

Commission Conclusion

On June 7, 2018, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that KFC received excessive contributions from individuals totaling \$25,200.

The Commission approved the Audit staff's recommendation.

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