



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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OFFICE OF GENERAL
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MEMORANDUM

TO: Lawrence Noble
General Counsel

THROUGH: James A. Pehrkon
Staff Director

FROM: Robert J. Costa
Assistant Staff Director
Audit Division

Rick Halter *re 4-17-2000*
Dep. Asst. Staff Director

Wanda J. Thomas
Audit Manager *wjt*

Leroy Clay *LC*
Lead Auditor

SUBJECT: Missouri Democratic State Committee — Referral Matters

On April 5, 2000 the Commission approved the Final Audit Report on Missouri Democratic State Committee. The report was released to the public on April 14, 2000. The attached findings - II.A., Receipt of Apparent Excessive Contributions and II.B., Allocation of Federal and Non-federal Expenses from the audit report are being referred to your office.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Leroy Clay or Wanda Thomas at 694-1200.

Attachment:

Finding II.A., FAR pp. 3 - 5
Finding II.B., FAR pp. 5 - 9

Audit Referral 0005

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II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(C) of Title 2 of the United States Code and Section 110.1(d) of Title 11 of the Code of Federal Regulations state that no person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.


Section 441a(a)(2)(C) of Title 2 of the United States Code and Section 110.2 (d) of Title 11 of the Code of Federal Regulations state that no multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 CFR 110.1 and 110.2 when aggregated with other contributions from the same contributor ... may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 110.1(k)(3)(i)(ii)(A) and (B) of Title 11 of the Code of Federal Regulations states that if a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if - the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be reattributed to each contributor if equal attribution is not intended.

The Audit staff's review of contributions revealed that the Committee received contributions from sixteen individuals and two political action committees (PAC's), which exceeded the limitation by \$80,250. For 9 of the contributions, the excessive portions totaling \$50,000 were transferred timely (within sixty days of their

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receipt) into a non-federal account. The excessive portions of 5 of the 9 remaining contributions from individuals, totaling \$25,000, were reattributed to spouses of the contributors. Evidence that the Committee requested permission from the contributors to either make the transfers to the Committee's non-federal account or reattribute the excessive portions of the contributions was not presented. Nor was evidence presented to document that the Committee informed the contributors that they may request refunds of the excessive contributions. As of the close of audit fieldwork, no information had been provided for the remaining 4 contributions totaling \$5,250.

The Audit staff provided schedules of the excessive contributions to Committee representatives during the audit fieldwork and at the exit conference and asked them to present evidence that the contributions were not excessive. The Committee was informed that absent such evidence, refunds to the contributors would be required. The Committee representatives agreed to refund the excessive contributions.

In the Interim Audit Report the Audit staff recommended the Committee present evidence that the \$72,250 in contributions from individuals and the \$8,000 in contributions from PACs were not excessive contributions. Absent such evidence, the Audit staff recommended that the Committee refund the excessive contributions to the contributors and submit evidence of the refunds (copies of the front and back of the negotiated refund checks).

The Committee stated in its response to the interim audit report that neither the regulations nor any Federal Election Commission guidance prohibits the transfer of the excessive portions of contributions to its non-federal account. In addition the Committee stated that the rules governing the treatment of excessive contributions are intended to prevent the use of funds in excess of the limits in federal election activity. It further stated that while not required, the Committee requested and received written authorization from eight contributors confirming their consent to redesignate their contributions to its non-federal account. The Committee requested and received written authorization from five contributors to reattribute the excessive portions of their contributions to spouses. Three contributors requested refunds of their contributions which totaled \$25,250 and two contributions were not addressed.

Regarding the Committee's statement that there is no regulation or Federal Election Commission guidance that prohibits the transfer of excessive contributions to its non-federal account, 11 CFR 103.3(b) states that if an excessive contribution is deposited, the treasurer may request redesignation or reattribution of the contribution and if the redesignation or reattribution is not obtained the treasurer shall, within sixty days of receipt of the contribution, refund the contribution to the contributor.

Although requests for redesignations and reattributions from contributors have been received, this remedy is not available to the Committee because the requests were not made within 60 days of the Committee's receipt of the contributions. The redesignation and reattribution letters are dated October 28 and November 9, 1999.

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Of the \$80,250 in excessive contributions identified by the Audit staff, the Committee has refunded \$25,250. Thus, excessive contributions totaling \$55,000 have not been refunded as recommended.

B. ALLOCATION OF FEDERAL AND NON-FEDERAL EXPENSES

Section 106.5(g)(1) (i) and (ii) (A) of Title 11 of the Code of Federal Regulations states, in part, that committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows: the committee shall pay the entire amount of an allocable expenses from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense, or the committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

Section 106.5(a)(2) (i) and (ii) of Title 11 of the Code of Federal Regulations states that committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity: Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate; and Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations states that a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

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Section 104.3(a)(4)(v) of Title 11 of the Code of Federal Regulations states, in part, that unauthorized committees must report the identification of each contributor and the aggregate year to date total for such contributor including each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such receipt.

If a committee receives a refund or a rebate of an allocable expense, the refund or rebate must be deposited in the federal account or allocation account. The refund or rebate must then be allocated between the federal and non-federal accounts according to the same allocation ratio used to allocate the original disbursement. The federal account must transfer the non-federal portion to the non-federal account. Advisory Opinion (AO) 1995-22 discusses methods for reporting refunds and rebates of allocable expenses.

1. Payment of Allocable Expenses From the Non-Federal Accounts

The Committee maintained separate federal and non-federal accounts and did not utilize a separate allocation account. Under this account structure, the regulations require that all allocable activity be paid initially from a federal account and reimbursements may be made from a committee's non-federal accounts solely to cover the non-federal share of the allocable expense.

According to the Commission's Disclosure Database approximately \$4.3 million in shared expenses for Administrative/Voter Drive activity were identified; the federal share of this activity was \$942,531 and the non-federal share was approximately \$3.3 million. In addition, \$242,547 in disbursements for exempt activity were identified; the federal share was \$79,671 and the non-federal share was \$169,456. The exempt activity included payments for yards signs and direct mail pieces which addressed issues and support for Bill Clinton and Democratic nominees for State offices. The Committee reported direct contributions to federal candidates totaling \$5,500. No coordinated expenditures to federal candidates were reported.

The Audit staff reviewed disbursements from the non-federal accounts during the audit period and identified 115 disbursements totaling \$223,458 which were for allocable expenses. The disbursements were for administrative and generic voter drive expenses such as contract services, travel reimbursements, salaries, bonuses, printing and voter registration. In some cases the same payee received payment from the Committee's federal account for the same type of expenses. Based on the ballot composition ratio, the correct allocation percentage for these expenses for the audit period was 22% federal and 78% non-federal. As a result, the federal share of these allocable expenditures made from the non-federal accounts was \$49,161.

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During the fieldwork and the exit conference, the Audit staff provided a schedule of these payments to the Committee representatives. In addition, the Audit staff requested that the Committee provide documentation such as contracts, memoranda or other information to demonstrate that the expenses at issue did not require allocation and were, therefore, properly paid from the non-federal accounts. The Committee representatives had no comment at the exit conference.

In response to the exit conference the Committee provided phone scripts, invoices, radio and television advertisement scripts, affidavits and statements from vendors which demonstrated that \$419,119 of the \$642,577 in expenses initially at issue during fieldwork were attributable directly to non-federal races such as state representative, secretary of state, lieutenant governor and governor as well as for the development of strategies to elect non-federal candidates, state legislative issues and referendum initiatives on the ballot in the spring of 1996. No documentation or other evidence was provided for the remaining \$223,458 in expenses.

In the Interim Audit Report, the Audit staff recommended the Committee:

- provide evidence that the aforementioned \$223,458 in expenses paid from the non-federal accounts related solely to non-federal activities; or absent such a demonstration, reimburse the non-federal account \$49,161, representing the federal portion of the allocable expenses paid for by the non-federal account.

In response to the Interim Audit Report, the Committee stated that there were three special non-federal elections in 1995 and that many of the expenses incurred by the Committee were exclusively non-federal. The Committee stated further that it was unable to document every expense, to obtain affidavits or statements from every vendor to document the content of their work. The Committee believes that the regulations do not require a committee to make this demonstration, but that the regulations simply require that a committee allocate the payment of joint federal and non-federal expenses. It is the opinion of the Committee that the Audit staff has simply presumed, without stating a basis, that certain expenses were allocable unless the Committee can prove otherwise.

The Committee did not provide any documentation in its response to the Interim Audit Report which demonstrated that any of the \$223,458 in expenses were exclusively non-federal, and thereby not allocable; the recommended reimbursement of \$49,161 was not made to the Committee's non-federal account. As noted above these expenses were for administrative and generic voter drive costs, which pursuant to 11 CFR 106.5(a)(2)(i) & (iv) are allocable expenses. Therefore, absent sufficient, competent, relevant evidence to support the Committee's position, the Committee's response is not persuasive and it remains our opinion that the Committee

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must reimburse the non-federal account the federal portion of the allocable expenses paid by the non-federal account.

2. Allocation of Refunds and Rebates

The Audit staff's review of offsets to operating expenditures (refunds/rebates) revealed that the Committee received and deposited into a federal account 61 allocable refunds/rebates from vendors totaling \$39,584. The refunds/rebates were related to payments of shared federal/non-federal expenses. The non-federal share of this amount was \$30,662 which consisted of \$2,172 for 11 refunds/rebates traced to the 1994 election cycle, and \$28,490 for the refunds/rebates related to the 1996 election cycle.⁴ The Committee did not reimburse or otherwise make any adjustments to account for the non-federal share of these receipts.

During the fieldwork and also at the exit conference the Audit staff provided a schedule of the refunds and rebates to the Committee representatives and asked them to provide evidence that \$30,662 was reimbursed to the non-federal account, representing its share. The Committee representatives had no comment.

In the Interim Audit Report, the Audit staff recommended the Committee:

- provide evidence that the non-federal account received its share of the \$39,584 in refunds/rebates; or absent such a demonstration, transfer to the non-federal account \$30,662, representing the non-federal share of the refunds/rebates deposited into the Committee's federal accounts.

In its response to the Interim Audit Report the Committee stated,

"...It is extremely difficult to track the refunds and rebates to the original expenditures. Therefore, clerical errors are often made in redepositing these funds... While the Committee takes the position that this transfer is not required, it has in effect already been made. From the period January through May 1999, the Committee allocated expenditures on the following percentages: federal 51%, non-federal 49%. Based on the ballot composition formula, the actual allocation should have been federal 30% and non-federal 70%. As a consequence of this error, the Committee expended approximately \$25,000 more in federal funds than was required under the regulations. Therefore, an amount almost equivalent to any

⁴ During the 1994 election cycle, the Committee's non-federal allocation was 71% (\$3,059 x 71% = \$2,172). During the 1996 election cycle, the Committee's non-federal allocation was 78% (\$36,525 x 78% = \$28,490).

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transfer that may be required based on the Audit staff's recommendation has, in effect, already been made by the Committee. "

The Committee did not provide sufficient, competent, relevant evidence to support this allocation error or to support that the federal account expended approximately \$25,000 more in federal funds than required. It remains our position that the Committee must transfer \$30,662 to the non-federal account, for the non-federal share of the refunds/rebates deposited into the Committee's federal accounts.

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