

AUDIT REFERRAL # 19-04**Finding 1. Misstatement of Financial Activity – Increased Activity****Summary**

A comparison of SDDP's bank activity with its original reports filed with the Commission revealed that disbursements were understated by \$2,500,147 for calendar years 2015 and 2016. In response to the Interim Audit Report recommendation, SDDP stated that it overlooked filing procedures, required better training on reporting to the Commission and that there was no intent to understate disbursements on the original reports filed. In response to the Draft Final Audit Report, SDDP reiterated that there was no intent to understate disbursements on the original reports filed.

The Commission approved a finding that SDDP understated disbursements by \$2,500,147 on the original reports filed over the two year period ending on December 31, 2016.

Legal Standard

Contents of Federal Reports. Each report must disclose:

- the amount of cash on hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the calendar year;
- the total amount of disbursements for the reporting period and for the calendar year; and
- certain transactions that require itemization on Schedule B (Itemized Disbursements). 52 U.S.C. 30104 (b) (4) and (5).

Facts and Analysis**A. Facts**

During audit fieldwork, in addition to examining SDDP's most recent reports filed prior to audit notification, the Audit staff also compared its originally filed reports with its bank records. The purpose of this additional reconciliation was to identify the degree to which SDDP had misstated its original filings.

The Audit staff calculated that SDDP understated disbursements by \$2,500,147 on the original reports filed over the two year period ending December 31, 2016. Most of the disbursements that were understated (\$2,494,000) related to transfers to the Democratic National Committee which were not disclosed on the originally filed reports.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the SDDP representative during the exit conference and provided the relevant work paper. In response to the exit conference, SDDP stated that the increased activity was due to reporting changes.

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

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, SDDP stated that it overlooked filing procedures and required better training on reporting to the Commission. SDDP added that there was no intent to understate disbursements on the original reports filed.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged SDDP's statement in response to the Interim Audit Report that there was no intent to understate disbursements on the original reports filed.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, SDDP reiterated that there was no intent to understate disbursements on the original reports filed.

Commission Conclusion

On August 22, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that SDDP understated disbursements by \$2,500,147 on the original reports filed over the two year period ending on December 31, 2016.

The Commission approved the Audit staff's recommendation.

Finding 2. Contributions from Unregistered Organizations**Summary**

During audit fieldwork, the Audit staff identified 144 contributions from unregistered organizations totaling \$67,182 that may have been made with impermissible funds. In response to the Interim Audit Report recommendation, SDDP submitted statements from the unregistered organizations attesting to the permissibility of 52 contributions, totaling \$19,190. In response to the Draft Final Audit Report, SDDP submitted documentation attesting to the permissibility of 61 contributions, totaling \$24,165. Based on all of the documentation submitted, the Audit staff determined that 31 contributions totaling \$23,827 remained impermissible.

The Commission approved a finding that SDDP received impermissible contributions totaling \$23,827.

Legal Standard

- A. Party Committee Limits.** A party committee may not receive more than a total of \$10,000 per year from any one individual. This limit is shared by the state, district, and local party committees. 52 U.S.C. §30116(a)(1)(D) and 11 CFR §110.9.
- B. Organizations Not Registered With the Commission.** Any organization that makes contributions and expenditures, but that does not qualify as a political committee under 11 CFR §100.5, must keep records of receipts and disbursements and, upon request, must make such records available for examination by the Commission. The organization must demonstrate through a reasonable accounting method that, whenever such an organization makes a contribution or expenditure, the organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution or expenditure. 11 CFR §102.5(b).
- C. Questionable Contributions.** It is the Treasurer's responsibility to ensure that all contributions are lawful. 11 CFR §103.3(b). If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:
1. within 10 days after the treasurer receives the questionable contribution, the committee must either:
 - return the contribution to the contributor without depositing it; or
 - deposit the contribution (and follow steps below). 11 CFR §103.3(b)(1).
 2. if the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3 (b)(4).
 3. the committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
 4. within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
 5. within these 30 days, the committee must either:
 - confirm the legality of the contribution; or
 - refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff identified 144 receipts, totaling \$67,182, from unregistered organizations, which SDDP reported as follows:

- 129 receipts, totaling \$62,062, on Line 11 (Contributions) of Schedule A (Itemized Receipts) from individuals and political committees;
- 14 receipts, totaling \$3,620, that were not itemized on Schedule A; and
- 1 receipt, in the amount of \$1,500, on Line 17 (Other Federal Receipts) of Schedule A.

SDDP received eight contributions, noted above, totaling \$12,175 from three unregistered political organizations which appear to be state political action committees (state PACs). These state PACs could have accepted corporate and union contributions under South Dakota state law which may have been federally impermissible.

The Audit staff considered the receipts noted above to be contributions. SDDP did not have any records available to show that these contributions from unregistered organizations were made with permissible funds or other evidence to show they were not contributions. These contributions were not refunded to the contributors, as of this report.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter with the SDDP representative during the exit conference and provided a schedule of the receipts noted above. In response to the exit conference, SDDP stated it was in the process of collecting letters from the contributors regarding the permissibility of the funds.

The Interim Audit Report recommended that SDDP:

- Provide evidence that the 144 receipts in question were made from permissible funds, including information on how it was determined that sufficient permissible funds were on hand when eight contributions from three state PACs were made; or
- Provide evidence to show the receipts were not contributions; or
- Refund the impermissible funds and provide evidence of such refunds (copies of front and back of the refund check); or
- Transfer the impermissible funds to the non-federal account; or
- Disgorge the impermissible funds to a governmental entity (federal, state or local) or to a qualified charitable organization described in 26 U.S.C. §170c and provide evidence of such disgorgement; or
- If funds were not available to make the necessary refunds or disgorgement, disclose the contributions requiring refunds on Schedule D (Debts and Obligations) until funds become available to make such refunds.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, SDDP submitted the following documentation:

Contributions for which permissibility was demonstrated for unregistered organizations (\$19,190)

Statements were provided from 26 unregistered organizations attesting to the permissibility of 52 contributions, totaling \$19,190.

Contributions for which sufficient permissibility documentation was not provided for state PACs (\$11,500)

Statements were provided from two state PACs attesting to the permissibility for six contributions, totaling \$11,500. However, these statements did not include information on how it was determined that sufficient permissible funds were on hand when the contributions were made.

Contributions for which documentation was not provided in response to the Interim Audit Report (\$36,492)

- 84 contributions, totaling \$35,817, from unregistered organizations
- Two contributions, totaling \$675, from state PACs

As a result, SDDP did not demonstrate that 92 contributions, totaling \$47,992, were made from permissible funds.²

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged that statements were provided from 26 unregistered organizations attesting to the permissibility of 52 contributions, totaling \$19,190 and that SDDP did not demonstrate that 92 contributions, totaling \$47,992, were made from permissible funds.

E. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, SDDP submitted the following additional permissibility documentation from unregistered organizations relating to the 92 contributions, totaling \$47,992, still considered unresolved after the Interim Audit Report response:

Contributions for which permissibility was demonstrated for unregistered organizations (\$24,165)

Statements were provided from 17 unregistered organizations attesting to the permissibility of 61 contributions, totaling \$24,165.

Contributions for which sufficient permissibility documentation was not provided for state PACs (\$11,500)

Statements were provided from two state PACs attesting to the permissibility for six contributions, totaling \$11,500. However, these statements did not include information on how it was determined that sufficient permissible funds were on hand when the contributions were made.

² \$47,992 = \$11,500 + \$36,492.

No documentation was received for the following contributions:

Contributions for which documentation was not provided in response to the Draft Final Audit Report (\$12,327)

- 23 contributions, totaling \$11,652, from unregistered organizations
- Two contributions, totaling \$675, from state PACs

Thus, the amount of contributions that were from impermissible sources was reduced from \$47,992 to \$23,827.³

Commission Conclusion

On August 22, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that SDDP received impermissible contributions totaling \$23,827.

The Commission approved the Audit staff's recommendation.

³ \$23,827 = \$11,500 + \$12,327.



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The abovenamed individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

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