



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**MEMORANDUM**

October 19, 2020

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Chief Compliance Officer

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SUBJECT: Draft Final Audit Report on Dr. Raul Ruiz for Congress (LRA 1120)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report (“DFAR”) on Dr. Raul Ruiz for Congress. The DFAR contains two findings: Misstatement of Financial Activity (Finding 1) and Personal Use of Campaign Funds (Finding 2). We concur with the findings but provide additional analysis of Finding 2. If you have any questions, please contact Danita Alberico, the attorney assigned to this audit.

**II. PERSONAL USE OF CAMPAIGN FUNDS**

The Committee’s bank statements show that it made disbursements totaling \$5,899 for vehicle-related expenditures. The disbursements were for gasoline (\$5,861), parking (\$22), and insurance (\$16). The Committee stated that the disbursements were campaign-related expenditures that were incurred

when Committee staff used their own vehicles while performing work for the Committee. The Audit Division found that the disbursements were a personal use of campaign funds and recommends that the Committee submit a contemporaneous log or other record for the vehicles documenting the dates and expenses related to the personal use of campaign funds, rather than for campaign or officeholder expenses, or demonstrating that the personal use expenses for the vehicles were of a *de minimis* amount.

Commission regulations provide that if a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or officeholder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities. 11 C.F.R. § 113.1(g)(1)(ii)(D). For those uses of campaign funds that involve both personal use and either campaign or officeholder use, a contemporaneous log or other record must be kept to document the dates and expenses related to the personal use of funds. *Id.* § 113.1(g)(8). The log must be updated whenever campaign funds are used for personal expenses rather than for campaign or officeholder expenses. *Id.* In addition, the Committee must maintain records, including bank records, with respect to matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. *Id.* § 104.14(b)(1).

The Committee contends that the Audit finding is not supported by law or facts for four reasons. First, the Committee states that the vehicle-related disbursements are not *per se* personal use and present no “special issue” of personal use since federal campaigns commonly incur expenses for fuel – the bulk of the expenses at issue here – to engage in campaign activity. Second, the Committee states that there is no general requirement that campaigns keep records to support individual fuel expenses. The Committee contends that such recordkeeping requirements apply only in circumstances involving campaign-owned vehicles, referencing Advisory Opinion 2001-03 (Meeks). Relatedly, the Committee also argues that the Commission has not given any notice that the recordkeeping requirement at 11 C.F.R. § 113.1(g)(8) would apply to all gas purchases that a campaign committee incurs, including those that may be exclusively campaign related. Third, the Committee argues that even though the auditors acknowledge that the vehicle-related disbursements are not *per se* personal use, they incorrectly required the Committee to prove that the disbursements were not personal use. Fourth, the Committee asserts that the auditors wrongly rejected the declaration from its campaign manager attesting that the disbursements for gasoline were for campaign-related travel.

We concur with the Audit finding that vehicle-related disbursements are not *per se* personal use. The critical fact here, however, is that the vehicles involved were the personal vehicles of Committee staff. The Commission has made clear that expenses associated with personal vehicles generally are personal use “[b]ecause the expenses associated with a personal vehicle usually exist irrespective of the candidacy or the officeholder’s duties.” Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995).

The Commission’s recordkeeping requirements are unambiguous regarding vehicle expenses involving a mix of personal use and either campaign or officeholder use. For such mixed use expenses,

the Committee must keep a contemporaneous log or other record documenting the dates and expenses related to the personal use of funds rather than for campaign or officeholder expenses, 11 C.F.R. § 113.1(g)(8), and the Committee must maintain sufficiently detailed records for reporting purposes, including vouchers, receipts and bills, *id.* § 104.14(b)(1).

The Committee's second point that section 113.1(g)(8) does not apply because it pertains only to vehicles purchased with campaign funds is without merit. In support of this second point, the Committee cites Advisory Opinion 2001-03 (Meeks), which involved the use of campaign funds to purchase a vehicle for campaign related purposes and *de minimis* personal use of the vehicle. The issue is not whether a committee owns a vehicle, but whether a committee disburses campaign funds for vehicle-related expenses that are partly personal use. *Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds* 67 Fed. Reg. 76,962, 76,974 (Dec. 13, 2002). Here, Committee funds were used to pay for vehicle-related expenses involving a mix of personal use and campaign use. Such mixed use vehicle expenses are subject to the recordkeeping requirements of section 113.1(g)(8). Logs help the Commission determine to what extent case-by-case expenses are personal in nature (including logs for expenses such as vehicle, legal, meals, and travel) when campaign funds are used for disbursements that may include a mix of personal use and either campaign or officeholder use. *Id.* Logs help the Commission distinguish personal uses from uses related to a federal officeholder's duties. *Id.*

We concur with the Audit Division's decision not to accept the campaign manager's declaration as a record documenting the personal use of campaign funds. The declaration does not document the dates and expenses related to personal use of funds for the vehicle-related disbursements or provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness. 11 C.F.R. § 104.14(b)(1).