



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

April 14, 2021

TO: Patricia C. Orrock
Chief Compliance Officer

Dayna C. Brown
Acting Assistant Staff Director
Audit Division

FROM: Neven F. Stipanovic *NFS*
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Policy Division

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Assistant General Counsel
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SUBJECT: Interim Audit Report on Ute PAC (LRA 1104)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“Proposed IAR”) on Ute PAC (“UTEPA”). The IAR contains five findings: Misstatement of Financial Activity (Finding 1), Cash Disbursements (Finding 2), Recordkeeping for Disbursements (Finding 3), Recordkeeping for Communications (Finding 4), and Disclosure of Disbursements (Finding 5).¹ We concur with the findings, and comment on the commingling of funds which the Auditors raise in their cover memorandum. If you have any questions, please contact Jennifer G. Waldman, the attorney assigned to this audit.

¹ We recommend that the Commission consider this document in Executive Session because the Commission may eventually decide to pursue an investigation of matters contained in the proposed IAR. 11 C.F.R. §§ 2.4(a), (b)(6).

II. COMMINGLING OF FUNDS

UTEP is a nonconnected political action committee. During the period the audit covers, the Treasurer was Robert Lucero. During the same time frame, Mr. Lucero was also the sole owner of American System Group (“ASG”),² a limited liability company treated as a partnership for tax purposes.³ ASG and UTEP entered into a written contract allowing Mr. Lucero to manage the fundraising, advertising, and bookkeeping as Treasurer for UTEP through ASG. Mr. Lucero told the auditors that he was instructed, by his personal accountant and counsel, to use the ASG account to pay UTEP’s vendors from funds that ASG received from UTEP, thereby using ASG as an intermediate vehicle for the payment of some of UTEP expenses. The Auditors, however, found \$115,555 of UTEP’s funds in the ASG account that they were unable to determine to whom they were ultimately disbursed.

By routing expenditures from its designated depository account through the LLC account, the Committee may have violated 52 U.S.C. § 30102(h) and 11 C.F.R. § 103.3(a), which require committees to make all disbursements, except those for petty cash, through checks drawn on a designated depository account. Because the Committee’s funds were routed through the LLC account before being disbursed to the vendors, and the composition of funds in the LLC account is unknown, the Committee also may have impermissibly commingled its funds with the personal funds of an individual. Political committees are forbidden from commingling their funds with the personal funds of an individual. 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15. We do not know whether the ASG account contained any personal funds of an individual. We note, however, that if the ASG account contained such funds, routing Committee funds through ASG may have resulted in impermissible commingling of funds.

² While the audit was pending, UTEP terminated Mr. Lucero and named a new treasurer. [REDACTED]

³ Because ASG is an LLC that has opted for tax treatment as a partnership, it is a partnership under Commission regulations. 11 C.F.R. § 110.1(g)(2).