

SANDLER, REIFF & YOUNG, P.C.

April 8, 2010

Mr. Terry O'Brien
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. O'Brien:

This letter will serve as the response of the Georgia Federal Elections Committee ("GFEC") to the Draft Final Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the GDP's financial activities for 2005 and 2006.

In accordance with Commission procedures, the committee would like to request an oral hearing to discuss an issue raised in the draft report. Specifically, the GFEC would like to address the Draft opinion's conclusion in Finding 1 that the non-federal activity that passed through a payroll escrow account must be disclosed on the committee's federal report.

By way of background, subsequent to the passage of the Bipartisan Campaign Reform Act and the passage of Commission regulations regarding the payment of payroll expenses, the GFEC, like many other party committees were required to comply with new and onerous requirements regarding payroll expenses. One of many new requirements required state committees to pay payroll expenses either 100% directly from a federal account or 100% directly from a non-federal account depending on the federal campaign activity of each employee. At the time of passage of the BCRA, the GFEC approached its payroll company, Paychex, to determine the best way to comply with the new Commission regulations. During this process, the GFEC was informed by Paychex that they could not debit multiple bank accounts in connection with collecting payroll from the GFEC. Similar to all other professional payroll companies, Paychex automatically deducts payroll from its client's bank accounts and does not accept checks from its clients to process payroll. Since the new BCRA regulations required the GFEC to make payroll payments from both its federal and non-federal accounts, it was required to establish a separate escrow account in which it combined its federal and non-federal payments to Paychex.¹

¹ During the 2005-2006 election cycle, the Commission amended its regulations to add a third category of employees who were allocable between federal and non-federal accounts in accordance with 11 C.F.R. § 106.7.

During the exit conference and Interim Audit Report, the Audit Division informed the GFEC, amongst other issues, that it believed that the escrow account was, in fact, a federal account and required full disclosure of its activities. Although the GFEC did not object to, and complied with all other aspects of the Interim Audit Report, it objected to, and continues to object to this conclusion. Our response to the Interim Audit Report is attached to this response and clearly sets forth our position on this issue.

The GFEC strongly disagrees with both the Audit Division and General Counsel's Office memorandum that concludes that this account served as the "functional equivalent" of an allocation account. To be sure, an allocation account is an account established pursuant to FEC regulation to combine the federal and non-federal share of allocable expenses to be disbursed by party committees in connection with expenses that are split between federal and non-federal funds pursuant to the formulas set forth in 11 C.F.R. § 106.7. Although it has been our experience that few committees choose this option, the allocation account permits a committee to pass through the non-federal share of allocable expenses through this federal account instead of a mere reimbursement of a federal account for the non-federal share of allocable expenses. During the enactment of the allocation regulations in 1990, the Commission determined that the entire share of an allocable expense must be disclosed, including the non-federal share of each expense. Of course, these expenses include a federal and non-federal component for each expense.

Unlike the allocation process, the GFEC's payroll account merely remitted payroll expenses that were either federal, allocable or purely non-federal directly to one vendor, its payroll company. The first two categories of expenses that passed through the payroll transmittal account were fully disclosed and the allocable share of payroll was transmitted and reported in accordance with federal regulations regarding allocable expenses. The GFEC does not agree with OGC's conclusions that the FEC has an interest in tracking and disclosing these 100% non-federal transactions. The OGC memorandum even acknowledges that it would not be permissible for the GFEC to transfer a 100% non-federal expense to a federal or allocation account. Of course, nothing in the Commission's Audit suggests that the GFEC abused or otherwise mishandled the remittal of non-federal funds during the payroll process through this escrow account.

It should be noted that, due to the time, expense and uncertainty created by disputing this issue, the GFEC has chosen to change payroll companies to one that can accommodate the transmittal of payroll separately from federal and non-federal accounts. This decision was not made lightly based upon the long and trusted relationship between GFEC and Paychex for several years. Nevertheless, the GFEC believes that it properly handled disclosure of the remittal of payroll expenses and that the Commission should not require the GFEC to amend its reports to include the payment of 100% non-federal payroll expenses on its federal report.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

A handwritten signature in black ink, appearing to read 'NR', written in a cursive style.

Neil Reiff
Counsel to the Georgia Federal Elections
Committee