

# SANDLER, REIFF & YOUNG, P.C.

January 14, 2010

Mr. Joseph F. Stoltz  
Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Stoltz:

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

The response to each of the Audit Division's three findings is as follows:

## Finding #1

The Commission's first finding involves the correction of the disclosure of financial activities for the committee's reports for calendar years 2005 and 2006. The finding stems from two types of issues. First, the Audit Report requests correction of a small number of items and cash on hand amounts due to errors made in committee reports during the 2006 election cycle. The committee has filed amendments to correct these errors.

The other portion of the Audit Reports finding involves the Audit Division's view that the GFEC's use of an escrow account to transfer payroll from both its federal and non-federal accounts should be fully disclosed on the committee's federal reports. For the reasons stated below, the GFEC does not believe that the escrow account is a federal account and does not intend, at this time, to amend its reports to reflect the non-federal portion of the escrow account's activities on its federal report.

With the enactment of the Bipartisan Campaign Reform Act of 2002, the process of paying payroll expenses by state party committees was significantly altered. Many state parties struggled to work with their payroll companies to accommodate the needs of the payroll company and the new requirements placed upon the committees by new FEC regulations. In 2002, the FEC promulgated regulations that required committees to either pay employees entirely with federal funds, or entirely with non-federal funds. This determination was based upon new 2 U.S.C. § 431(20)(A)(iv) which requires that any employee who spend in excess of 25% of any given month

on activities in connection with a federal election be paid exclusively with federal funds. In promulgating regulations to comply with this provision, the Commission provided that those employees who did not meet this 25% threshold should be paid exclusively with non-federal funds. Former 11 C.F.R. § 300.33(c)(2) (The committee modified these requirements to provide for allocation of most such employees in late 2005).

Many state parties encountered difficulty in creating systems to comply with this new requirement. The requirement created two distinct challenges for the GFEC. First, the committee would be required to estimate each employee's activities in the given month so that their payroll would be drawn from the appropriate funds for payroll. Second, the GFEC encountered problems with their existing payroll company, Paychex, with respect to the arrangement of debiting two different bank accounts for payroll. It was not feasible for GFEC to create two distinct companies for payroll since it expected employees to bounce back and forth between the 25% threshold. Furthermore, the GFEC did not believe it feasible, nor did it desire, to switch payroll companies in order to search for one who could accommodate the debiting of two separate accounts.

In order to solve these dilemmas, the GFEC established a pass through escrow account for the sole purpose of transmitting federal and non-federal funds to Paychex from one account per Paychex's requirements. The account was intended to be a zero balance account for which the only cash that would remain in the account would be un-cashed payroll expenses. Under this arrangement, the federal account reported all funds transmitted into the escrow account as payments directly to the employees and appropriate tax authorities in the same way that other committees that use payroll companies report such activities.

The GFEC did not, and does not believe that is required, under these circumstances, to report the transmittal of the non-federal amounts paid to Paychex through this transmittal account. In short, the GFEC did not intend, nor does it believe, that this transmittal account is a federal account of the committee. To require disclosure of these amounts would result in an artificial increase in the disclosure of its federal activity, which it believes would be burdensome for the committee and confusing to the readers of the GFEC's reports. To be sure, these funds are derived solely from non-federal accounts, represent exclusively non-federal activity and were never commingled with other federal accounts of the GFEC.

Furthermore, it should be noted that this account was not intended to be an allocation account in accordance with 11 C.F.R. § 106.7(f)(i)(ii). Of course, until the Commission's changes to section 300.33 in 2005, none of the expenses that passed through the account were allocable in nature.

Based upon the above, the GFEC believes that the payroll escrow account was not a federal account but rather a transmittal account for both federal and non-federal funds that were established for the sole purpose of transmitting funds to Paychex from one source account per the company's requirements. Therefore, the GFEC believes that the disclosure of the non-federal portion of funds transmitted through the account, including the activity and cash-on-hand of the account is incorrect and unnecessary. The GFEC will only amend the reports, if necessary, based upon the Commission's conclusions in the final audit report.

It should be noted that the amendments that have been filed, including all financial activity and cash on hand fully comply with all other recommendations in Finding #1.

Finding #2

In this finding, the Audit Division has requested documentation regarding six employees with respect to whether less than 25% or no time had been spent on activities in connection with a federal election or federal election activities.

Attached, please find sworn declarations by those six employees that attest, as appropriate, that those employees spent either less than or no time on those activities, as appropriate, in the relevant months in which all or a portion of their payroll was paid with non-federal funds.

It should be noted, as it is pointed out in the Audit Report, that the Commission's regulations regarding payment of payroll for those employees did not meet the 25% threshold changed in January 2006. The committee correctly amended its payroll procedures to comply with these new requirements.

Finding #3

With respect to Finding #3, the GFEC has been unable to locate any documentation as to whether it had exercised best efforts at the time that the contributions were received.

In response to the Audit Report, the GFEC has contacted those individuals for whom it did not have occupation and employer and has filed amended reports for those donors that it has obtained this information with respect to 2005 and 2006. For those donors for whom the committee has been unable to obtain this information, the committee has attached documentation to demonstrate that it has made attempts to contact those donors to obtain this information.

The GFEC has now obtained most of the requested information and believes that it is now in material compliance with the requirements outlined in this Finding.

It should be further noted that the GFEC has undertaken procedural changes to its operations to ensure ongoing compliance with the Commission's Best Efforts regulations.

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

Sincerely,



Neil Reiff  
Counsel to the Georgia Federal Elections  
Committee