



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 18, 2008

MEMORANDUM

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SUBJECT: Interim Audit Report on the Committee to Elect William J. Jefferson (LRA # 751)

I. INTRODUCTION

The Office of General Counsel has reviewed the Interim Audit Report (“Proposed Report”) on the Committee to Elect William J. Jefferson (“Committee”). We concur with the findings in the Proposed Report and offer the following comments regarding Finding 1 (Receipt of Impermissible Candidate Loans). If you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this audit.¹

¹ The Office of General Counsel recommends 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 Report. 11 C.F.R. §§ 2.4(a) and (b)(6).

II. FUNDS LOANED TO COMMITTEE WERE PROHIBITED OR EXCESSIVE (FINDING 1)

Jeffco Services, the corporation or limited liability company ("LLC") of Congressman Jefferson's sister, directly transferred funds to the Committee.² However, the Committee claims that these funds were a personal loan from Congressman Jefferson to the Committee, comprising proceeds from a loan to the Congressman from his sister. The loan from the sister supposedly was evidenced by a separate promissory note executed after the transfer of funds from the Jeffco entities to the Committee. The Audit Division previously submitted a query to this Office asking: 1) whether there is any way Congressman Jefferson would be able to claim the funds as personal funds; and 2) what evidence he or his Committee could submit to show that the loans were proper. We have answered these questions informally, but we incorporate our responses into the following comments.

Regarding the first question, Congressman Jefferson would not be able to claim the loan as personal funds because the funds originated directly from his sister's corporation or LLC rather than from his own personal funds. Given that the loan proceeds flowed directly from the Jeffco entities to the Committee, this may have been a transaction between the Jeffco entities and the Committee. However, even assuming that the promissory note between Congressman Jefferson and his sister covered the funds paid out by the Jeffco entities such that the sister can be considered to have made the loan to him in her personal capacity, loans received by a candidate for use in connection with his or her campaign are considered to have been received by the candidate as an agent of the authorized committee. See 2 U.S.C. § 432(e)(2). These funds in the amount of \$320,000 were transmitted directly to the Committee's account and were used for campaign purposes. Therefore, the indications are that, 1) To the extent funds were transferred from Jeffco Services, Inc. to the Committee, the Committee received a prohibited contribution from Jeffco Services, Inc. in violation of 2 U.S.C. § 441b(a); 2) To the extent funds were transferred from Jeffco Services, LLC to the Committee, the Committee either a) received a prohibited contribution from Jeffco Services, LLC if it is treated as a corporation for tax purposes, or b) received an excessive contribution from Jeffco Services, LLC (and potentially from its members) if Jeffco Services, LLC is a multi-member LLC treated as a partnership for tax purposes, or c) received an excessive contribution from the Congressman's sister if Jeffco Services, LLC is a single member LLC.

As to the second question, we do not believe there is anything the Committee could provide to show that the funds did not originate with the sister or the Jeffco entities. The Committee and/or Congressman Jefferson and/or his sister should provide bank records showing

² The Committee deposited checks with the imprinted names of Jeffco Services, LLC and Jeffco Services, Inc. While the candidate's sister is a principal for both of these entities according to the Louisiana Secretary of State, the candidate has not provided any information regarding the precise nature of the relationship between the sister and the Jeffco entities. It is not known whether Jeffco Services, LLC is taxed as a corporation or a partnership.

that the funds did not originate with the corporation (or LLC taxed as a corporation) in order to avoid a finding that the contribution was prohibited (as opposed to excessive).

The Audit Division notes that the loan from the sister was for a larger amount than what was loaned to the Committee, in which case the difference between the funds transferred to the Committee and her total loan to him also may be an excessive or prohibited contribution. A payment made to a candidate, even if used for personal expenditures, is a contribution "unless the payment would have been made irrespective of the candidacy." 11 C.F.R. § 113.1(g)(6). The Explanation and Justification states, "If a third party pays for the candidate's personal expenses, but would not ordinarily have done so if that candidate were not running for office, the third party is effectively making the payment for the purpose of assisting that candidacy." *Explanation and Justification for 11 C.F.R. 113.1(g)(6)*, 60 Fed. Reg. 7862, 7871 (Feb. 9, 1995). If the parties can show that the sister's loan to Congressman Jefferson would have been received even in the absence of the candidacy, then the loan amount received by the Congressman in excess of what was loaned to the Committee would not be treated as a contribution. In any case, the amount loaned to the Committee was prohibited or excessive.