



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 24, 2011

MEMORANDUM

TO: Joseph F. Stoltz
Assistant Staff Director

FROM: Christopher Hughey *pch*
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SUBJECT: Draft Final Audit Report for Chris Dodd for President, Inc. (LRA 744)

The Office of the General Counsel has reviewed the Draft Final Audit Report ("DFAR") for Chris Dodd for President, Inc. ("Committee"). We generally concur with the findings in the DFAR and have specific comments on Finding 2: Receipt of Prohibited Contribution and Contributions that Exceed Limits and Finding 3: Misstatement of Financial Activity. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

I. COMMITTEE RECEIVED APPARENT PROHIBITED IN-KIND CONTRIBUTION FROM IAFF (Finding 2)

We concur that the Committee received an apparent prohibited in-kind contribution of \$15,423 from the International Association of Firefighters ("IAFF"), a labor organization. The IAFF apparently paid \$15,423 for the rental of a bus that the Committee used between December 17, 2007 and January 4, 2008, at the end of the Iowa campaign. The Committee explained that the IAFF initially paid for the bus rental for transportation to IAFF events, and the Committee later obtained use of the bus for its campaign. The IAFF sent the Committee a February 12, 2008 invoice for the bus, which stated that "as advised by our election law legal counsel the campaign has 60 days from the conclusion of the Iowa caucus to reimburse the IAFF for the rental cost as it is considered a transportation cost." The invoice continued that the Committee should reimburse the IAFF's separate segregated fund, IAFF FIREPAC ("FIREPAC")

by March 4, 2008.¹ But the Committee did not pay FIREPAC for the bus rental until October 21, 2009, more than a year and a half later, when it paid \$32,233.²

The Committee has not demonstrated that it did not receive a prohibited in-kind contribution or that the IAFF did not pay for the bus rental. See 2 U.S.C. § 441b. In response to the Preliminary Audit Report (“PAR”), the Committee contends that the 60 day timetable for reimbursement of other means of transportation in 11 C.F.R. § 100.93 should not apply because the bus was primarily a form of advertising. It argues that since the “primary purpose of the wrapped bus was not to transport people from place to place, but rather to serve as an unusual form of campaign visibility, like the C-Span bus or the Ron Paul blimp,” the question should be whether the campaign paid for the bus within a commercially reasonable time, and it cites 11 C.F.R. § 114.9(d). The Committee asserts that it did not receive a prohibited contribution because the invoice instructed it to pay FIREPAC, not IAFF. Finally, it contends that the payment was delayed because it was in a deficit position with competing obligations and that it paid the full cost of the bus rental and decoration “in an abundance of caution.”

The Committee’s arguments are not persuasive. The Committee paid for the bus more than a year and a half after both the invoice date and the payment due date listed on the invoice. This delayed payment was neither within the section 100.93 standard for reimbursement of other means of transportation nor within a commercially reasonable time. Because the bus was used, at least in part, for transportation, there would have been no contribution if the Committee had timely reimbursed IAFF for the bus rental cost. The Committee could have properly paid the cost of the bus rental as an other means of transportation not operated for commercial passenger service within 30 days of receipt of the invoice or 60 days after the travel began. See 11 C.F.R. § 100.93(d). The Committee’s failure to make timely reimbursement resulted in a prohibited in-kind contribution. See 11 C.F.R. § 100.93 (b)(2). Alternatively, if the bus rental cost is considered a form of campaign advertising like a blimp or rolling billboard that was provided by a vendor or as a labor organization facility used by the Committee, the Committee should have paid for the bus rental cost within a commercially reasonable time. See 11 C.F.R. § 114.9(d), see also 11 C.F.R. § 116.3. Yet it failed to do so. The invoice directed the Committee to pay by March 4, 2008, but the Committee paid a year and half later. The fact that the Committee was in a deficit position and had other debts does not make the delayed payment of this debt commercially reasonable. Moreover, the amount at issue relates only to the cost of bus rental and not to the decoration of the bus, which would be more clearly related to an advertising purpose. Further, the fact that the Committee was instructed to pay FIREPAC rather than IAFF does not change the fact

¹ The IAFF billed the Committee \$12,087.54 for 18 days of the 48 day total that the IAFF and the Dodd campaign used the bus. The Committee, however, paid the \$32,233 total cost of the bus rental and decoration. We note that the \$16,810 cost of decorating the bus was apparently paid by FIREPAC and is not at issue in the DFAR.

² Both the Committee and FIREPAC disclosed the full \$32,233 cost of the bus as a debt owed by the Committee to FIREPAC beginning with the March 2008 reports and continuing until the Committee paid the debt in full in October 2009. The Committee provided a copy of a check to FIREPAC, dated October 21, 2009, for \$32,233.

that the IAFF, a union, paid for the bus rental cost. Therefore, the Committee received a prohibited in-kind contribution from the IAFF.

While we concur with your conclusion, we suggest that the discussion at page 12 of the DFAR be revised to delete the references to 11 C.F.R. § 103.3 in the second and third paragraphs. We do not think a 30 day standard based on section 103.3 is appropriate here. Section 103.3 contains the rules for deposit and refund of contributions like checks rather than an in-kind contribution that results from a bus rental.

II. CLARIFY IMPACT OF INVESTMENT ACCOUNT LOSSES ON EXCESSIVE CONTRIBUTIONS AND MISSTATEMENT (Findings 2 and 3)

We concur with the Audit staff's analysis of excessive contributions (Finding 2) and misstatement of financial activity (Finding 3) but suggest several revisions to clarify these findings in the DFAR.³ The Audit staff should clarify the impact of the Committee's investment account on these findings. The Committee had an investment account ("General Account") with a brokerage for general election contributions received during the primary election period under the conditions set forth in AO 2007-03 (Obama), which lost a substantial amount of value during the audit period because of the decline in the stock market.⁴ See AO 2008-04 (Dodd). In response to the PAR, the Committee made numerous arguments about why the General Account's losses should not result in excessive contributions. However, these arguments are irrelevant to the draft you have asked us to review. Instead, they seem to refer to a potential issue raised by the auditors at a previous stage in the audit about whether the Committee properly valued assets transferred from the General Account to Senator Dodd's Senate committee. At an earlier stage in the audit, the Audit Division believed that the value of those transferred assets, which were intended to cover redesignations of presidential general election contributions to the Senate committee, could potentially have raised excessive contribution issues. The DFAR, however, does not contain any finding of excessive contributions arising from a loss in value of the General Account assets transferred to the Senate committee. Most of the contributions from the General Account are considered either timely or untimely resolved based on the Committee's response to the PAR. For the Committee's benefit, the DFAR should make clear that the two references to the investment account in the misstatement finding are not related to the value of the assets transferred from the General Account to the Senate committee and that the excessive contributions finding is not now based on the value of the General Account assets transferred to the Senate committee.

The DFAR should provide additional explanation to clarify the misstatement finding (Finding 3). The misstatement finding refers to the Committee's failure to report \$150,370 in net realized investment losses. This has nothing to do with the transfer of any assets from the General

³ In addition to these changes, we suggest that the discussion of apparent excessive contributions from other political committees at pages 12-13 be revised to clarify how the specific contributions identified in the bullet points on page 12 were resolved by the Committee's response to the PAR.

⁴ After Senator Dodd withdrew from the primary race on January 3, 2008, he was no longer a potential general election candidate, and the Committee was required to refund or redesignate the general election contributions. See 11 C.F.R. § 102.9(e)(3); AO 2008-04; AO 2007-03; AO 2003-18 (Smith).

Account to the Senate committee, because that transfer took place in October 2008, after the close of the audit coverage period on September 30, 2008. Nor, contrary to the Committee's contention, does it reflect any unrealized losses, which are not required to be reported. Rather, this part of the misstatement finding simply reflects the accumulated net *realized* losses resulting from activity in the investment accounts from January 1, 2008 through September 30, 2008, which were identified as net realized losses on the broker statements. Realized capital losses must be reported as "other disbursements" in the reporting period in which they are realized. See Memorandum to Wanda J. Thomas, Audit Report on Friends of Weiner (Mar. 4, 2009) (This Office concluded that the committee was not required to report unrealized gains and losses as cash on hand under 11 C.F.R. § 104.3(a)(1), but the report should be clarified to reflect that the Audit Division's view was that the committee failed to report realized gains and losses.) The Committee failed to report these net realized losses, which, in part, resulted in the misstatement.

The misstatement finding also states that the Committee overreported \$351,210 in transfers to the Senate committee. Although this amount relates to the transfer of assets from the General Account to the Senate committee, the overreporting finding is based on the timing of that transfer, not on the appropriate value of the assets. The Committee reported that the transfer occurred in September 2008, but in fact it did not occur until October 2008. The transfer should not have been reported on the report covering September 2008. More to the point, the misreporting of the transfer results in an overstatement of disbursements for the audit coverage period because the transfer did not in fact take place during the audit coverage period as originally reported. We understand that the Committee has amended its reports to correct this misstatement.

The excessive contributions finding (Finding 2) should clarify that the excessive contribution finding is not based on the value of the assets moved from the General Account to the Senate committee for redesignated contributions, and that these contributions are considered resolved. In several places (text and footnote 10 on page 13, footnote 11 on page 15) the DFAR states that the Committee had redesignation letters for moving general contributions to the Senate Committee, but it had insufficient funds to make the transfers. Footnote 11 states that there is \$173,210 in contributions for which the Committee provided redesignation letters but has not provided evidence that it actually moved the funds to the candidate's Senate Committee. Because the excessive contributions finding is not based, as we understand it, on any lack of funds or failure to move the funds for redesignated contributions, we question the need for these references.

In addition, we suggest several other changes throughout the DFAR to clarify that the valuation of assets moved from the General Account to the Senate committee has no impact on the findings in the DFAR. We suggest you delete the last sentence of footnote (a) of the Statement of Net Outstanding Campaign Obligations on page 7, which states "This loss and subsequent losses are the basis for the excessive contributions of \$244,050 identified during audit fieldwork discussed in finding 2." We also suggest you delete the last sentence in the last paragraph of Finding 1 on page 8, which states "The valuation of the investment account has no impact here, but is discussed further in Findings 2 and 3." These sentences could create confusion because the \$244,050 in excessive contributions related to the General Account identified in the PAR was

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based on lack of documentation of redesignations or other resolution of those contributions, not on the loss of value of the General Account.