



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 3, 2013

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson
Deputy General Counsel - Law *LJS*

Lorenzo Holloway
Assistant General Counsel
Compliance Advice
SH

Danita C. Alberico *dea*
Attorney

SUBJECT: Proposed Interim Audit Report on the Democratic Party of Illinois (LRA 887)

I. INTRODUCTION

The Office of the General Counsel reviewed the proposed Interim Audit Report ("IAR") on the Democratic Party of Illinois ("the Committee"). Our comments address Finding 3: Fundraising Receipts.¹ We concur with the conclusion reached in the finding as to four of the fundraising events but recommend that the auditors expand the report's analysis regarding all ten of the fundraising events at issue in the audit finding using an additional standard to evaluate the permissibility of the funds deposited in the Committee's federal account. We concur with any findings not specifically discussed in this memorandum. If you have any questions, please contact Danita C. Alberico, 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) and (b)(6).

II. FUNDRAISING RECEIPTS (Finding 3)

A. Background

The proposed IAR finds that the Committee participated in 10 fundraising events that raised funds which were deposited in both its federal and non-federal accounts. The fundraising events were not disclosed on Schedules H-2 (Allocation Ratios). The auditors determined that the federal account received \$75,800 (or approximately 8%) and that the non-federal account received \$1,103,925 (or approximately 92%) of the total amount of funds that the Committee received from the fundraising events.²

The proposed IAR indicates that the Committee did not have copies of any written fundraising agreements, as required under 11 C.F.R. § 102.17(c)(1), but that some of the events appear to have involved and/or were sponsored by members of the Illinois House of Representatives as well as local businesses. The auditors found that the Committee's federal account did not share in the costs of the efforts associated with any of the fundraising events for which it received proceeds.³ See 11 C.F.R. § 106.7(d)(4). The auditors also found that the fundraising event solicitations did not include information typically required in joint fundraising notices, see 11 C.F.R. § 102.17(c)(2)(i)(A)-(D), or information regarding the receipt of federal contributions. The proposed IAR recommends that the Committee document the costs associated with each of the fundraising events as well as who paid the costs or, in the alternative, transfer the \$75,800 to the Committee's nonfederal account.

In its exit conference response to the proposed finding, the Committee claimed that all of the fundraising events through which it received contributions were nonfederal in purpose. The Committee also said that four of the fundraising events were not even Committee events and the Committee did not participate. The Committee further contended that it did not solicit any of the federal contributions it received. The Committee characterized the total amount deposited in its federal account from the ten fundraising events as "de minimis" in comparison to the total amount of nonfederal funds that it received from the ten events. It said that some of the funds that it received were, in fact, contribution checks that the Committee "received through other means [and which] were sometimes batched with checks received through events held around the same time." According to the Audit Division, Committee representatives also claimed that contributors attending some of the fundraising events gave contributions benefiting the Committee's federal account on their own initiative.

We consider this finding by grouping the ten fundraising events into two categories. In the first category, we examine four fundraising events that were held to benefit the nonfederal campaign committee of the Committee's chairman, Michael Madigan, and consider whether the funds the Committee received from the four events were the result of joint fundraisers in which the Committee participated. In the second category, we examine the remaining six fundraising events

² The auditors were not able to determine the total amount of funds raised from the ten fundraising events.

³ The auditors also noted that the Committee's nonfederal account did not pay any fundraising costs associated with the funds it received.

and clarify the standard the auditors should apply to determine whether the funds the Committee deposited in its federal account from the fundraising events were permissible.

B. Four of the Fundraising Events Were Not Committee Events and Funds from those Events Were Impermissibly Deposited in the Committee's Federal Account

Political committees that wish to engage in joint fundraising with other political committees must comply with certain requirements, including solicitation and disclosure obligations, as detailed in the draft Interim Audit Report. *See, e.g.,* 11 C.F.R. § 102.17(a)(1)(i) (participants in a joint fundraising effort must either establish a separate committee or select a participating committee to act as the fundraising representative); 11 C.F.R. § 102.17(c)(1) (requiring written agreement amongst participants); 11 C.F.R. § 102.17(c)(2)(i)(A)-(D) (setting forth requirements for joint fundraising notice).

As to four of the events discussed in the proposed IAR, the Committee asserts that it was not a joint fundraising participant, even though it received and deposited in its federal account a total of \$6,150 in funds from these events. We conclude that the Committee's claim that it did not participate in these events or solicit any federal funds through these events may have merit. If the Committee's assertion is true, it raises the question of whether a state party committee may receive and deposit in its federal account funds from fundraising events in which it did not participate.

The Committee acknowledged that it received contributions that were deposited in its federal account as a result of four fundraising events held on behalf of the Friends of Michael J. Madigan committee.⁴ The Committee contends that the events were non-Committee events and that it did not solicit the contributions. The four fundraisers were:

- 2009 Lake Event held on a date unknown;
- 2010 Lake Event held on April 26, 2010;
- Luciana Event held on September 21, 2010; and
- Union League Event held on September 23, 2010.

The auditors' review of the solicitations for these four events supports the Committee's assertion that the fundraisers were non-Committee events and were not intended to raise funds for the federal account. We reviewed the available solicitations for three of the events – the 2009 Lake Event, the Luciana Event, and the Union League Event – and agree with the auditors' assessment.⁵

⁴ Friends of Michael J. Madigan is a non-federal committee. Michael J. Madigan is the Speaker of the Illinois House of Representatives and serves as the Chairman of the Democratic Party of Illinois.

⁵ The auditors do not possess a copy of the solicitation for the 2010 Lake Event so this Office is unable to examine the content of the solicitation. The auditors indicated, however, that the Lake Events were annual events and that they reviewed a copy of the 2010 Lake Event solicitation while conducting the audit field work. The auditors said that there were no substantive differences between the content of the 2009 and 2010 Lake Event solicitations, and this Office has no reason to question that conclusion.

Comments to the Interim Audit Report
Democratic Party of Illinois (LRA 887)
Page 4

Based on the content of the solicitations and information provided by the auditors, it appears that the 2009 Lake Event, 2010 Lake Event, the Luciana Event, and the Union League fundraising events may have been solely for the benefit of the nonfederal campaign account of Michael Madigan. We do not have any facts to suggest that the Committee solicited funds from or participated in these events. The Committee's assertion – that some contributors attending the fundraising events benefitting Madigan's state-level campaign may have used the occasion to also contribute conveniently to the Committee of which Madigan was the chair – seems plausible. Although federal funds do not appear to have been solicited, the Committee accepted and deposited, in its federal account, a total of \$6,150 as a result of these events.

2009 and 2010 Lake Events. The event solicitation for the 2009 Lake Event indicates that contributions were solicited to support the Friends of Michael J. Madigan Committee and asked that contribution checks be made payable to "Friends of Michael J. Madigan." The Committee received a total of \$1,650 in funds which it deposited in its federal account as result of this event. The funds the Committee received were comprised of \$150 in cash, and three checks each payable to the "Democratic Party of Illinois" in the amounts of \$250, \$250 and \$1,000, respectively. The 2009 Lake Event solicitation includes a statement on Illinois' requirements for reporting contributor occupation and name of employer and notes that contributions are not deductible for federal income tax purposes. The solicitation indicates that it was prepared by and for the Friends of Michael J. Madigan Committee and advises that a copy of that committee's report is available at the State Board of Elections.

Luciana Event. The event solicitation for the Luciana Event was in the form of an invitation from Illinois House of Representatives Assistant Majority Leader Frank J. Mautino "honoring Speaker Michael J. Madigan." The solicitation asked that contribution checks be made payable to "Friends of Michael J. Madigan" and mailed to the host of the event, the Committee for Frank J. Mautino. The Democratic Party of Illinois received \$2,500 in funds as a result of the event which it deposited in its federal account. The funds were contributed by a single donor who made his check payable to "DPI" [the Committee]. The solicitation does not contain any disclaimers and notes that a copy of the Madigan committee report is on file with the State Board of Elections.

Union League Event. The event solicitation for the Union League Event said that it was "a fundraiser in honor of Michael J. Madigan" and asked that contribution checks be made payable and mailed to "Friends of Michael J. Madigan." Illinois Strategies, L.L.C. hosted the event, and the Committee received \$1,000 in funds as a result of the event. The funds were contributed by a single donor who made his check payable to the "Illinois Democratic Party." The solicitation notice indicates that the Madigan committee report was on file with the State Board of Elections.

Given that these events were fundraising events in which the Committee did not appear to participate, a question arises regarding whether the Committee can permissibly accept and deposit in its federal account funds from these events. Section 102.5, which governs organizations financing political activity in connection with federal and non-federal elections other than through transfers and joint fundraisers, gives guidance on when funds may be deposited in a committee's federal account. See 11 C.F.R. §102.5. Under these provisions, committees must meet one of the

three listed conditions for depositing contributions into their federal account: the funds (1) were designated for the federal account; (2) resulted from a solicitation which expressly stated that the contribution would be used in connection with a federal election; or (3) were from contributors who were informed that all contributions were subject to the prohibitions and limitations of the Act. 11 C.F.R. § 102.5(a)(2)(i)-(iii). The Explanation and Justification for this provision indicates that "the purpose of this regulation is to assure that funds placed in [the federal] account are from contributors who know the intended use of their contributions." Explanation and Justification for Organizations Financing Political Activity in Connection With Federal and Non-Federal Elections, Other Than Through Transfers and Joint Fundraisers: Account and Accounting, 67 Fed. Reg. 49,073 (July 29, 2002).

Based on the information the auditors possess, we conclude that none of the funds the Committee received as a result of these events appear to meet the regulatory requirements for deposit in the Committee's federal account. We, therefore, conclude that the funds totaling \$6,150 that the Committee received and deposited in its federal account from the events benefiting the Friends of Michael J. Madigan Committee are impermissible and should be transferred to the Committee's nonfederal account. *Id.*

C. The Proposed IAR Should Be Revised to Analyze the Remaining Six Fundraising Events Under a Different Standard

The proposed IAR finds that the Committee received and deposited in its federal account funds from fundraising activity but that the federal account did not pay any costs associated with the fundraising activity. As discussed, above, four of the events in the proposed IAR were not Committee events. Therefore, our comments here address the six remaining fundraising events which the auditors advised this Office may be either joint fundraising events with other political committees or Committee fundraising events benefiting solely its federal and nonfederal accounts. The auditors lack sufficient information at this time to determine which category these events fall into. The auditors identify these events as follows:

- WesPAC/IBEW Event held on February 24, 2010;
- Reza's Dinner held on August 12, 2010;
- Janssen Event held on September 28, 2010;
- Hospitality Event held on October 6, 2010;
- DC Event held on October 14, 2010; and
- DC 2009 Event held on a date unknown.

The auditors said that with the exception of the WesPAC/IBEW Event, the Committee failed to document the costs of the fundraising events and the amounts that the Committee paid.⁶

⁶ The auditors advised this Office that the Committee provided fundraising cost information for the WesPAC/IBEW Event totaling \$842.17. The auditors said that they were not able to determine whether the Committee paid a share of the costs for the WesPAC/IBEW Event because the Committee did not provide any other details clarifying whether the \$842.17 represented the total costs for the event or whether the amount represented an allocated portion of the costs.

Comments to the Interim Audit Report
Democratic Party of Illinois (LRA 887)
Page 6

The proposed IAR notes that the Committee did not provide copies of written joint fundraising agreements identifying the fundraising representatives, setting forth the allocation formulas, and setting forth the distribution percentages for the joint fundraising proceeds and expenses in accordance with 11 C.F.R. § 102.17(c)(1). The proposed IAR suggests that the funds the Committee deposited in its federal account may be permissible funds if the Committee demonstrates that it paid its share of the fundraising costs associated with each of the fundraising events. The proposed IAR recommends that the Committee document all of the costs of the fundraising events as well as who paid the costs. It further recommends that, absent such a demonstration, the funds deposited in the Committee's federal account be considered impermissible and that the Committee transfer the impermissible funds to its non-federal account.

We do not believe the auditors possess sufficient information at this time to conclude that any of the six remaining fundraising events were joint fundraisers with other political committees. Despite the event solicitations directing contributors to make their checks payable to the "Democratic Party of Illinois," we do not have any information suggesting that the Committee was establishing fundraising events with other committees with the objective of shared costs and the benefit of shared proceeds.⁷ In addition, even though some of the solicitations request that contributors mail their checks to the event sponsor and/or include "paid for by" disclaimers, these statements do not establish that the events were joint fundraisers with other political committees.

We recommend that the auditors revise the proposed IAR to specifically ask the Committee to identify which, if any, of the six events were joint fundraising events with other political committees or which, if any, were Committee events benefiting solely its federal and nonfederal accounts. Given that the present facts show that the Committee deposited funds from these six events in its federal account, we also recommend the analysis in the proposed IAR be expanded to address two issues: First, the proposed IAR should consider whether the Committee complied with the requirements of 11 C.F.R. § 102.5(a)(2), as discussed in section II.B. above. Second, to the extent that there exists information showing that the Committee participated in a fundraising event for both its federal and non-federal accounts, whether the Committee properly allocated costs between the two accounts as required under 11 C.F.R. § 106.7(d)(4).

⁷ The Committee, in its exit conference response, said that the fundraising events were nonfederal in purpose.