



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**MEMORANDUM**

**TO:** Patricia C. Orrock  
Chief Compliance Officer

Thomas E. Hintermister  
Assistant Staff Director  
Audit Division

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

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Assistant General Counsel  
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**SUBJECT:** Proposed Preliminary Audit Report on Committee for Charlotte/Charlotte DNC  
Host Committee (LRA 965)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Preliminary Audit Report ("proposed Report") on the Committee for Charlotte/Charlotte DNC Host Committee ("CFC"). The proposed Report contains two findings: Recordkeeping for In-Kind Contributions (Finding 1) and Disclosure of Disbursements (Finding 2).<sup>1</sup> We concur with the findings, and comment on the cover memorandum to the Office of the General Counsel. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

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<sup>1</sup> 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 Report. 11 C.F.R. §§ 2.4(a) and (b)(6).

## **II. CONVENTION PRODUCTION CONTRACT AND ADDITIONAL, SPECIFIC INVOICES**

In the cover memorandum to the Office of the General Counsel, the Audit Division raises the issue of whether CFC made impermissible expenditures related to a convention production contract. The Audit Division decided not to include this issue as a finding in the Preliminary Audit Report ("PAR"). We concur with this approach. We, however, recommend that the Audit Division include in the cover memorandum transmitting the PAR to the Commission a discussion of the convention production contract and additional invoices, along with an explanation of how the Audit Division is applying refunds against the two invoices. We start with background information about this issue and the reasons for the Audit Division's decision not to include this issue as a finding in the PAR.

### **A. BACKGROUND**

The Audit Division previously advised this Office that it was reviewing whether the Committee may have made impermissible expenditures related to the production of the 2012 Democratic National Convention rather than for promoting the host city and its commerce or defraying convention expenses. If so, the expenditures could constitute in-kind contributions to the convention committee that are subject to the convention expenditure limitation. The regulations promulgated under the Presidential Election Campaign Fund Act provide that expenditures made by a host committee shall not be considered expenditures by a national committee and shall not count against the expenditure limitation provided the funds are permissible under 11 C.F.R. § 9008.52. See 11 C.F.R. § 9008.8(b)(1). Pursuant to section 9008.52(b), the categories of permissible host committee expenditures generally relate to disbursements for promoting the convention city and its commerce and defraying convention expenses (i.e., infrastructure related expenditures made to prepare the convention hall to host the convention). For example, the host committee can incur expenses to promote the suitability of the city as a convention site and it can incur expenses for construction at the convention location. 11 C.F.R. § 9008.52(b)(1) and (5). By contrast, the Commission has found that expenditures primarily related to and for the purpose of paying for: 1) decorations and music, 2) closed circuit television expenses, 3) entertainment expenses in an area outside the main convention hall but within the convention center where convention attendees could watch convention proceedings on large television screens, 4) producers, directors and production staff for services provided during the convention, and 5) miscellaneous expenses associated with television production, are impermissible host committee expenses when they are incurred during the convention on behalf of attendees or the general public. See Commission Amended Certification, In the Matter of the Committee on Arrangements for the 1996 Republican National Convention (certified Apr. 30, 1998); see also See Report of the Audit Division on San Diego Host Committee/Sail to Victory '96 ("San Diego Host"). The Commission made this finding because the expenditures relate to conveying and enhancing a party's message in the hope of influencing the public to support the party hosting the convention and its presidential candidate. See Report of the Audit Division on San Diego Host Committee/Sail to Victory '96 ("San Diego Host").

Here, the Audit Division explained that there could be specified services that may not relate to promoting the host city or defraying convention expenses. According to the Audit Division, RK Productions ("RK") had been the vendor contracted "by the Committee for Charlotte [aka CFC] on behalf of the 2012 Democratic National Convention Committee, Inc.," to produce the Democratic National Convention since 1996, and the Democratic host committees have paid an average of 98% of the total RK production costs in the conventions from 1996 to present. See Agreement for the Arrangement and Supervision of Production Related Services.<sup>2</sup>

The Audit Division further explained that CFC made disbursements pursuant to a convention production contract with RK, totaling \$11,700,000, which is not in question, and, in addition to the production contract, RK billed and CFC paid for seven additional invoices totaling \$619,533. Based on a review of similar expenditures from past host committee audits, the Audit Division concluded that five of these invoices for \$372,762 were permissible.

For the \$246,771 remaining for the two other invoices, however, the Audit Division could not find documentation from past host committee audits indicating whether these disbursements were permissible. For one invoice of \$167,121, CFC reimbursed production crew's air fare, per diem and housing costs. This crew's duties included band staging, beauty, graphics, pyrotechnics, executive production, announcer, talent, and technical services. The second invoice of \$79,650 was for pyrotechnics and a confetti effects package. Therefore, there is a question as to whether these expenses were incurred for the purpose of presenting the television image of the convention – similar to those the Commission found impermissible in the San Diego Host audit.<sup>3</sup> *Id.*

Based on the information and documentation the Audit Division currently possesses in this audit, it cannot confirm that the Committee's \$246,771 in disbursements for these two invoices to RK were made in accordance with 11 C.F.R. § 9008.52(b). The Audit Division, nevertheless, decided not to recommend a finding for possible impermissible expenditures by CFC for two reasons. First, as to five of the invoices for \$372,762, the same or similar expenditures had been deemed permissible by the Audit Division based on past host committee audits.<sup>4</sup> Second, the possible impermissible expenditures of \$246,771 identified by the audit is less than an amount of

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<sup>2</sup> We recommend that the auditors include this contracted Agreement in the materials provided to the Commission in the Voting Ballot matters folder.

<sup>3</sup> The 1996 San Diego Host expenditures were for services that included producers, directors, production staff, music/orchestra, rigging stage labor, satellite, special effects, makeup and hairdressing, video operations, sound operations, video segments, editing, and graphics.

<sup>4</sup> In the Tampa Bay Host Committee audit, the Audit Division advised the Office of the General Counsel that the Tampa Bay Host Committee may have made similarly, possibly impermissible expenditures for production of the 2012 Republican National Convention to a vendor. We advised the Audit Division that "[i]f there was information that showed that the prior host committees' expenditures to this vendor were the same as in the San Diego Host audit, then this may suggest that the Tampa Bay Host Committee made similar expenditures to [this vendor]." Preliminary Audit Report on the 2012 Tampa Bay Host Committee, Inc., Memorandum to Patricia C. Orrock (Feb. 3, 2014). Ultimately, the Audit Division determined that, "[b]ased upon further review of available documentation provided by the Committee ... no material noncompliance was discovered." Memorandum to Commission, Preliminary Audit Report on the Tampa Bay Host Committee, Inc., Memorandum to Commission (Mar. 25, 2014).

\$579,929 that RK refunded to CFC from the \$11,700,000 production contract. We concur with the two reasons, but discuss the second reason further below.

**B. DISCUSSION: Refunds of disbursements from the same vendor may offset potentially impermissible contributions**

We concur that disbursements refunded to a host committee from a vendor may be applied to other disbursements pertaining to the same vendor for the purpose of offsetting expenditures that may be impermissible pursuant to 11 C.F.R. § 9008.52.

The Commission has permitted refunds in similar and analogous circumstances. In the Convention committee context, the Commission has recognized "the practice of permitting convention committees to 'offset' in-kind contributions received from host committees that are deemed impermissible in post convention audits" with convention committee expenditures that the host committee could have funded. *See Explanation and Justification for Other Convention-Related Issues*, 68 Fed. Reg. 47386, 47405 (Aug. 8, 2003). The Commission has also approved the application of refunds in Title 26 Presidential campaigns where a presidential committee exceeded the spending limit, and the Audit Division applied amounts due (credit) from other committees and vendors to offset this amount. *See Bush-Cheney '04 Final Audit Report* at 9. Additionally, the Commission has approved the application of refunds of non-federal funds from the federal account related to party committees' allocable administrative expenses. *See 2010 Unauthorized Committee Audit Program, Materiality Thresholds* at 39. We do not see a legal objection to the application of a similar refund made to a host committee from the same vendor to offset a potentially impermissible expenditure. While 11 C.F.R. § 9008.50 et seq. does not address refunds to host committees, nothing in these provisions prohibits such a refund as basis to offset impermissible host committee expenditures. Therefore, we concur with the Audit Division's decision not to include a finding on this issue in the proposed Report.