



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 07 2016

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

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FROM: Adav Noti *AN*
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SUBJECT: Proposed Interim Audit Report on the Hawaii Democratic Party (LRA 1024)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("proposed IAR") on the Hawaii Democratic Party ("HDP or Committee"). The proposed IAR contains seven findings: Misstatement of Financial Activity (Finding 1), Receipt of Contributions that Exceed Limits (Finding 2), Receipt of Impermissible Funds (Finding 3), Reporting of Debts and Obligations (Finding 4), Recordkeeping for Employees (Finding 5), Failure to File Reports and Properly Disclose Independent Expenditures (Finding 6), and Allocation of Expenditures (Finding 7).¹ We generally concur with the findings and comment on Finding 3 and Finding 6. If you have any questions, please contact Margaret J. Forman, 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. FINDING 3: TO BE RECEIPTS FROM IMPERMISSIBLE FUNDS, THE TRANSACTIONS MUST BE IN MADE CONNECTION WITH A FEDERAL ELECTION

The proposed IAR concludes that 75 receipts, totaling \$169,586, were deposited into HDP's federal account and appeared to be from impermissible sources, including from labor unions, corporations, limited liability companies and organizations not registered with the Federal Election Commission. Some of these receipts from those entities were contributions (\$96,420) from impermissible sources. But some of the receipts were for state party committee convention fees (*i.e.*, registration and convention booth fees, totaling \$15,085), and for Democratic National Convention credentials (\$58,000).

We concur with the conclusion of the Audit Division regarding the \$96,420 in contributions from impermissible sources. In particular, we understand from the Audit Division that some of the convention fees were for delegate expenses, and therefore concur that they may not be paid from impermissible sources. We also conclude that the receipts for convention fees and DNC credentials, to the extent that these receipts were in connection with a convention that nominates candidates for federal office, may not be from impermissible sources.

52 U.S.C. § 30118; 11 C.F.R. §§ 100.2(e) (defining nominating convention as "election"), 110.14(c); *see* 11 C.F.R. parts 110, 114 and 115; *see also* Advisory Opinion 1980-64 (NEA) (Labor organization prohibited from paying member's delegate expenses); Advisory Opinion 1979-07 (New Jersey Democratic State Committee) (since the end to be served by the delegate selection process is the nomination of a party's candidate for President, the State Committee's expenses incident to such activity are clearly part of the 1980 Federal election process and may not be paid from contributions to the State Committee by corporations, labor organizations or national banks unless made from a separate segregated fund. *See* 2 U.S.C. § 441b [now 52 U.S.C. § 30118]).

Some of the receipts, however, are not clear as to whether they were in connection with a federal nominating convention. For example, one of the receipts was from a non-federal committee for a convention booth—we do not know the nature of the convention at which this booth was rented.

If the information is available, we recommend that the Audit Division revise the proposed IAR to analyze the transactions to determine whether the receipts were in connection with a nominating convention that nominated candidates for federal office. 52 U.S.C. § 30118; 11 C.F.R. § 110.14(c). If the information is not available, we recommend that the Audit Division revise the proposed IAR to request this information from HDP.

III. FINDING 6: DISCUSSION OF ADVERTISEMENTS INVOLVING INDEPENDENT EXPENDITURES

A. EXPLANATION NEEDED AS TO WHY HDP MUST DEMONSTRATE THAT RADIO ADS WERE COORDINATED, AS REPORTED

The proposed IAR concludes that HDP made 18 apparent independent expenditures totaling \$30,148. Of these, \$17,802.82 was for 16 radio advertisements. HDP disclosed the radio advertisements as coordinated expenditures on Schedule F of its report. The Audit Division maintains that the Committee should have disclosed these expenditures as independent expenditures because the Committee failed to produce documentation demonstrating that the conduct prong for coordination was met. *See 11 C.F.R. § 109.21(d); proposed Report at 17, note 7, and 18.*

[REDACTED] We, therefore, recommend that the Audit Division explain why it required HDP to demonstrate that the spending was coordinated, and to note how the Audit Division would expect the HDP to make such a demonstration if the conduct prong was not memorialized. *See 11 C.F.R. § 109.21(e)* (noting that conduct prong does not require “[a]greement or formal collaboration” but only “a mutual understanding or meeting of the minds on all or any part of the material aspects of the communication or its dissemination”).

B. TV AD IS INDEPENDENT EXPENDITURE, BUT 24-HOUR REPORTING MUST BE BASED ON DATE THE AD WAS DISSEMINATED

The proposed IAR also concludes that HDP made an apparent independent expenditure, totaling \$11,922, for the production and design of a television advertisement. We agree that this disbursement is an independent expenditure because it contains express advocacy under 11 C.F.R. § 100.22(a), but we recommend that the Audit Division include more of an explanation as to why this television advertisement constitutes express advocacy. “Express advocacy means any communication that –(a) [u]scs phrases such as ... “vote against Old Hickory,” “defeat” accompanied by a picture of one or more candidate(s), “reject the incumbent” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s)....” 11 C.F.R. § 100.22(a). Here, the television advertisement depicts the Hawaii Senatorial candidate, Linda Lingle, making a speech at the 2008 Republican National Convention, endorsing the nomination of McCain/Palin for President/Vice President. While this depiction continues, the narrator states that the candidate “Linda Lingle was wrong then [i.e., during the 2008 election when she endorsed McCain/Palin] about a lot of things, and she’s wrong for Hawaii now.” The phrase “she’s wrong for Hawaii” is express advocacy because it has the same meaning as “defeat,” accompanied by a picture of one or more candidate(s), ‘reject the incumbent,’ or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable

meaning than to urge the election or defeat of one more clearly identified candidate(s)." 11 C.F.R. § 100.22(a).

The proposed IAR also concludes that the HDP failed to file 24-hour reports for independent expenditures, including this television advertisement. While we agree that the HDP is required to file 24-hour reports for independent expenditures consistent with the Commission's regulations, we note that the trigger for this 24-hour reporting requirement is "the day following the date on which a communication that constitutes an independent expenditure *is publicly distributed or otherwise publicly disseminated.*" 11 C.F.R. § 104.5(g)(2) (emphasis added). Here, the Audit Division states that the independent expenditure associated with the television advertisement was for the production and design of the advertisement.

The Audit Division, however, did not explain how it determined the distribution or dissemination date for this independent expenditure. Since the information that we reviewed relates to the production and design cost related to the advertisement, we are not sure if the Audit Division has the information that would show the distribution or dissemination date. We, therefore, recommend that the Audit Division revise the report to explain how it determined the date of distribution or dissemination.