



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

June 23, 2017

**MEMORANDUM**

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

Thomas E. Hintermister  
Assistant Staff Director  
Audit Division

**FROM:** Lisa J. Stevenson *LJS*  
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Lorenzo Holloway *MJF* for LH  
Assistant General Counsel  
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Attorney

**SUBJECT:** Proposed Draft Final Audit Report on the Hawaii Democratic Party (LRA 1024)

**I. INTRODUCTION**

The Office of the General Counsel has reviewed the proposed Draft Final Audit Report ("proposed DFAR") on the Hawaii Democratic Party ("HDP or Committee"). The proposed DFAR 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). We generally concur with the findings except as discussed in our comments on Findings 1 and 3. If you have any questions, please contact Margaret J. Forman, the attorney assigned to this audit.

## **II. FINDINGS 1 AND 3: TO BE RECEIPTS FROM IMPERMISSIBLE FUNDS, THE TRANSACTIONS MUST BE IN MADE CONNECTION WITH A FEDERAL ELECTION**

In the proposed DFAR, the Audit Division concludes that HDP's state convention account ("state convention account") is a Federal account because the expenses, receipts and balances in this account were reported as Federal activity and this activity was not disclosed in HDP's state reports.<sup>1</sup> Proposed DFAR at 9-10 and 15-17. This conclusion is significant in two ways. First the Audit Division uses this conclusion as a basis to examine the state convention account and find that HDP misstated some of its financial activity in this account (Finding 1). Second, the Audit Division uses it to find that the Committee received impermissible contributions (Finding 3).

We caution against concluding that the state convention account was a Federal account solely on the basis of how HDP characterized the account on its disclosure reports. While the manner in which HDP reported these receipts may be informative, it is not dispositive on the issue of whether the state convention account was a Federal account. HDP, for example, may have been mistaken in how it reported its financial activity.<sup>2</sup> We believe that the focus should be on whether the receipt of these funds was in connection with a Federal election.<sup>3</sup> 52 U.S.C. § 30118; 11 C.F.R. § 102.5; *see* 11 C.F.R. parts 110, 114 and 115. We do not have enough facts to resolve this question at this time based on the current record.<sup>4</sup>

At the interim audit report stage, we understood that some of the convention fees were apparently received for delegate expenses, and we noted that these expenses may not be paid from

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<sup>1</sup> The HDP, in its response to the Interim Audit Report ("IAR"), asserts that the state convention account "was established for the sole purpose of administrating the HDP's biennial convention" and therefore should not have been included in findings 1 and 3 of the proposed DFAR. Correspondence from Neil Reiff to Thomas Hintermister, at 1-3 (Dec. 12, 2016). The HDP disclosed the state convention account on its Federal reports as a Federal account, and, as we understand it from the Audit Division, funds in this account were separate from the other Federal HDP accounts.

We also note that the HDP, in response to the IAR, cites 11 C.F.R. § 100.24(c)(3) in support of its position that the Commission permits state party committees to pay for state conventions exclusively with non-Federal funds. Here, we are looking primarily at receipts from sources that would be regarded as prohibited if received in connection with a Federal election. The section that HDP cites addresses Federal election activity, which applies to certain disbursements, not receipts. We are not concluding that the payment of convention fees for the state convention is Federal election activity. 52 U.S.C. § 30101(20); 11 C.F.R. § 100.24(b), (c)(3).

<sup>2</sup> In its response to the IAR, "[t]he HDP acknowledges that some portion of the activity of this account was inadvertently and incorrectly included in its federal reports." Correspondence from Neil Reiff to Thomas Hintermister, at 1 (Dec. 12, 2016).

<sup>3</sup> The selection of delegates from Hawaii to the DNC convention, occurs at the state convention. 2012 By-Laws of the Democratic Party of Hawaii at Article VI, Section 3B; 2012 Constitution of the Democratic Party of Hawaii.

<sup>4</sup> Even if we conclude that the receipts were in connection with a Federal election, there remains a legal question as to whether this would be sufficient to conclude that the state convention account is a Federal account. This could be viewed as an instance when a committee deposits Federal contributions into a non-Federal account. *See* 11 C.F.R. § 102.5.

impermissible sources to the extent that these receipts would be in connection with a Federal election. 52 U.S.C. § 30118; 11 C.F.R. § 102.5; *see* 11 C.F.R. parts 110, 114 and 115; *see e.g.*, 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]."). We advised the Audit Division, if the information was available, to analyze the transactions to determine whether they were in connection with a Federal election.

At the current audit stage, the Audit Division still does not have enough information to make such a determination. We do not know the degree to which, or even whether, these receipts, which are in the form of fees to the convention account from corporate, labor union and unregistered, non-Federal committee sources, were for the purpose of influencing a Federal election. 11 C.F.R. § 102.5(a)(1)(i). Without more information, we cannot reach a conclusion as to whether the state convention account was required to be disclosed as a Federal account. We, therefore, recommend that the Audit Division revise the Draft Final Audit Report to seek more information about these receipts, as they might pertain to a Federal election.