



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 18 2014

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas Hintermister
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FROM: Lisa J. Stevenson
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Attorney

SUBJECT: Proposed Interim Audit Report on the Kentucky State Democratic Central
Executive Committee (LRA 963)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Interim Audit Report ("IAR") on the Kentucky State Democratic Central Executive Committee ("the Committee"). The IAR contains one finding: Recordkeeping for Employees.¹ We concur with any issues not specifically discussed in this memorandum. If you have any questions, please contact Danita C. Alberico, the attorney assigned to this audit.

II. RECORDKEEPING FOR EMPLOYEES

The Office of General Counsel's comments focus on the finding that the Committee did not maintain monthly payroll logs for the percentage of time each employee spent on activity in

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).

connection with a federal election in accordance with 11 C.F.R. § 106.7(d)(1). The auditors found that the amount of federal and non-federal funds paid for employees for whom logs were not maintained totaled \$833,262. This amount consisted of \$820,979 for which the payroll was allocated between federal and non-federal funds. The remainder, \$12,283, was paid exclusively with non-federal funds. After the Audit Division notified the Committee of the audit, the Committee amended its reports to disclose that some of the employee salaries (totaling \$503,149) that it had previously reported as allocated expenses were paid exclusively with federal funds. The Committee did not make any amendments regarding the balance (totaling \$317,830) and continued to report the balance as allocated between federal and non-federal funds. The proposed IAR recommends that the Committee provide evidence that it maintained monthly time logs or implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends in connection with a federal election.

The Audit Division bases its IAR recommendation on the Commission regulation that requires a state party committee to “keep a monthly log of the percentage of time each employee spends in connection with a Federal election.” 11 C.F.R. § 106.7(d)(1). To determine if it must allocate the salary, wages, and benefits of its employees, a state party committee must examine the percentage of time that its employees spend on federal election activities (“FEA”) or activity in connection with federal elections. Salaries and benefits of employees who spend more than 25% of their compensated time on FEA or activities in connection with a federal election in a given month must be paid only from a federal account. 2 U.S.C. § 431(20)(A)(iv); 11 C.F.R. § 106.7(d)(1)(ii); *see* 2 U.S.C. § 441i(b)(2). Salaries and benefits of employees who spend 25% or less of their time on FEA or activities in connection with a federal election may be allocated as administrative costs or paid from the federal account. 11 C.F.R. §§106.7(c)(1) and 106.7(d)(1)(i). Salaries and benefits of employees who spend none of their compensated time on FEA or activities in connection with a federal election may be paid entirely with funds that comply with state law. 11 C.F.R. § 106.7(d)(1)(iii).

The Commission analyzed the requirements of this regulation in a request for legal consideration in which several state party committees asked the Commission to consider whether the monthly time log requirement applies to employees who are paid with 100% federal funds. The Commission concluded that the time log requirement applies even if the employees are paid exclusively with federal funds. However, the Commission determined as an exercise of prosecutorial discretion that it would not pursue recordkeeping violations for the failure to keep time logs or provide affidavits to account for employee salaries paid with 100% federal funds and reported as such. Commission Certifications in the Matter of Request for Consideration of a Legal Question, LRA 917 (Vermont Democratic Party) and LRA 921 (Democratic Party of Illinois).

The Commission’s conclusion in the request for legal consideration, as applied to the facts here, raises an important issue: Since the Committee ultimately paid \$503,149 with 100% federal funds, is it appropriate to include a finding in the audit report regarding this amount and require a plan to implement monthly payroll logs simply because the Committee initially reported this activity as allocable between federal and non-federal funds?

We do not think it is appropriate to include the portion that reflects the amount that the Committee paid with 100% federal funds. The Committee's amendments suggest that its original reporting of \$503,149 of the activity as "allocable" was erroneous. Given the exclusive use of the federal funds to pay some of its employees, the Committee's amendment to characterize the activity as paid solely with federal funds appears reasonable. In light of the Commission's decision to not pursue a finding for failure to maintain logs when a committee pays salaries with 100% federal funds, we do not think that a finding, pertaining to \$503,149 of the Committee's payroll, requiring the Committee to provide additional evidence that it maintained logs or to implement a plan to maintain logs for salaries paid exclusively with federal funds is warranted. See Office of General Counsel Comments on Interim Audit Report on the South Dakota Democratic Party (LRA 885), p. 2.