



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 7, 2019

MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

FROM: Neven F. Stipanovic *NFS*
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Assistant General Counsel
Compliance Advice

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Attorney

SUBJECT: Interim Audit Report on the South Dakota Democratic Party (LRA 1094)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Interim Audit Report (“Proposed IAR”) on the South Dakota Democratic Party (“Committee” or “SDDP”). The Proposed IAR contains three findings: (1) Misstatement of Financial Activity – Increased Activity; (2) Contributions from Unregistered Political Organizations; and (3) Reporting of Debts and Obligations.¹ We concur with the findings, and we comment on the recommendation for Finding 2. If you have any questions, please contact Margaret 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 2 – CLARIFICATION OF HOW COMMITTEES MAY SHOW THAT CONTRIBUTIONS FROM UNREGISTERED POLITICAL ORGANIZATIONS ARE MADE WITH PERMISSIBLE FUNDS

The Audit Division determined that SDDP received \$67,182 in contributions from unregistered political organizations, and that these contributions may not have been made using funds permissible under the Federal Election Campaign Act (“Act”). The Audit Division includes a recommendation that SDDP provide evidence that the receipts were made from permissible funds. Proposed IAR at 6.

We recommend that the Audit Division revise the recommendation to address the fact that some of the unregistered organizations that made the contributions were state committees that, under South Dakota law, may accept contributions from corporations and unions.² [REDACTED] contributions from unregistered organizations are [REDACTED] unless the audited committee can provide documentation from the unregistered organization attesting to the permissibility of the contributions. [REDACTED].³ 11 C.F.R. § 103.3(b)(1). *See id.* However, if the unregistered political organization accepts funds that are not permissible under the Act, [REDACTED] the audited committee should include information on how it was determined that sufficient permissible funds were on hand when the contribution was made. [REDACTED].

During the audit cycle at issue here, South Dakota law allowed candidate and party committees to accept contributions from these state committees (“state PACs”), *see supra* note 2, which may accept contributions from corporations and unions. S.D. Codified Laws (West) §§ 12-27-7, 12-27-9, 12-27-10 (2016); *see* 2017 SD Session Laws Ch. 222 (Initiated Measure 22) §§12-27-7, 12-27-9, 12-27-10 (Westlaw).⁴

² Under South Dakota state law, these state committees are referred to as political action committees, and are not federal committees. S.D. Codified Laws (West) § 12-27-1(17). No committees with the same names are registered with the Commission.

³ This documentation includes, but is not limited to, a written statement from the unregistered organization explaining why the contributed funds are legal, or a written statement by the audited committee’s treasurer memorializing an oral communication which explains why the contributed funds are legal. 11 C.F.R. § 103.3(b)(1). *See e.g.*, [REDACTED]. In past audits, including the 2010 audit cycle pertaining to this Committee, the Commission has permitted this to be accomplished by the committee producing a letter signed by the contributor, simply stating that the contributor certifies that the specific campaign contribution originated from federally permissible sources.

⁴ In 2017, South Dakota law changed to allow contributions to candidates and party committees from corporations and unions, S.D. Codified Laws (West) §§ 12-27-7, 12-27-9, 12-27-10 (2017); *see* 2017 SD Session Laws Ch. 222 (Initiated Measure 22) §§12-27-7, 12-27-9, 12-27-10 (Westlaw); National Conference of State Legislatures, State Limits on Contributions to Candidates, 2015-2016 and 2017-2018 (<http://www.ncsl.org/Portals/1/documents/legismgt/elect/ContributionLimitstoCandidates2015-2016.pdf> , http://www.ncsl.org/Portals/1/Documents/Elections/Contribution_Limits_to_Candidates_2017-2018_16465.pdf).

Three of the unregistered political organizations from whom SDDP received contributions appear to have been state PACs. Because these state PACs could have accepted corporate and union contributions under South Dakota law during the audit period, SDDP may have received impermissible contributions. 52 U.S.C. § 30118. We, therefore, recommend that the Audit Division revise the Proposed IAR to clarify that SDDP should include information on how it was determined that sufficient permissible funds were on hand when the contributions were made. [REDACTED].