



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 5, 2010

MEMORANDUM

TO: Patricia Carmona
Chief Compliance Officer

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Assistant Staff Director

FROM: Christopher Hughey *pch*
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SUBJECT: Proposed Audit Division Recommendation Memorandum on the Kansas
Republican Party (LRA 801)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Division Recommendation Memorandum ("ADRM") and accompanying proposed Draft Final Audit Report ("DFAR") on the Kansas Republican Party ("the Committee"). We recommend that the Audit Division modify Finding 3 of the DFAR. We concur with any other documents and findings not specifically discussed in this memorandum. If you have any questions, please contact Allison T. Steinle, the attorney assigned to this audit.

II. RECOMMENDED MODIFICATION TO FINDING 3

Finding 3 of the DFAR concludes that a \$6,000 expenditure for a mailer that mentioned a federal candidate should have been paid with 100 percent federal funds because it was made for Federal Election Activity ("FEA"). At the time this Office drafted our legal comments on the

Interim Audit Report ("IAR") and the first proposed DFAR, our understanding was that the mailer was a public communication that promoted, supported, opposed, or attacked ("PASO-ed") a clearly identified candidate for federal office. *See* 2 U.S.C. § 431(20); 11 C.F.R. § 100.24. We have since been informed that the Committee has been unable to produce a printed copy of the mailer and that the auditors cannot confirm that the mailer PASO-ed a clearly identified candidate for federal office. Accordingly, we are recommending that the Audit Division remove the mailer from the category of "Payment and Disclosure of Non-Allocable Federal Election Activity" and place it under the category of "Payment and Disclosure of Printed Materials" on page 10 of the DFAR. The "Payment and Disclosure of Printed Materials" category specifically addresses expenditures for mailers for which the Committee was unable to produce a printed copy, and treats them as federal activity because the Committee has been unable to demonstrate their non-federal nature.

Moving the \$6,000 expenditure to this category technically requires the Committee to report the expenditure as federal activity on Line 21 of Form 3X rather than FEA on Line 30 of Form 3X, as it had been previously instructed to do. Because the Committee has already amended its reports to disclose the \$6,000 expenditure as FEA and the amount at issue is small, however, we recommend that the Audit Division not require the Committee to further amend its reports to disclose the expenditure as federal activity.

Finally, there is an additional point that the Audit Division should bring to the Commission's attention in the ADRM: the Committee is already aware of this modification and has been given an opportunity to respond. On September 10, 2010, this Office contacted the Audit Division and informally suggested the proposed modification. The Audit Division stated that it agreed with the modification, and on September 27, 2010, it sent an e-mail to the Committee's treasurer to inform him of the proposed modification and provide the Committee with an additional opportunity to respond in writing and request an audit hearing. *See* Attachment 1. The Committee has declined a hearing and stated that it agrees with the proposed modification to the DFAR. *See id.*

Attachment:

- (1) E-mails between Steve Fitzgerald, Treasurer, Kansas Republican Party and Jim Miller, Auditor





