



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION
COMMISSION
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September 15, 2006

MEMORANDUM

AGENDA ITEM
For Meeting of: 10-4-06

To: The Commissioners

Through: Patrina M. Clark *PMC*
Staff Director

From: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

Martin L. Favin *MLF*
Audit Manager

Zuzana O. Parrish *ZOP*
Lead Auditor

Subject: Report of the Audit Division on Daniel Mongiardo for U.S. Senate (A05-20)

Attached for your approval is the subject report.

Recommendation

The Audit staff recommends that the report be approved.

This report is being circulated on a tally vote basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Zuzana O. Parrish or Martin L. Favin at 694-1200.

Attachment:

Report of the Audit Division on Daniel Mongiardo for U.S. Senate



Report of the Audit Division on Daniel Mongiardo for U.S. Senate

November 7, 2003 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

The Daniel Mongiardo for U.S. Senate is the principal campaign committee for Daniel Mongiardo, Democratic candidate for the U.S. Senate from the state of Kentucky and is headquartered in Frankfort, Kentucky. For more information, see the chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**
 - Contributions from Individuals \$ 1,813,162
 - Loans Received 776,050
 - Contributions from Political Committees 456,841
 - Other Receipts 7,528
 - **Total Receipts** \$ 3,053,581
- **Disbursements**
 - Operating Expenditures \$ 2,764,897
 - Loan Repayments 249,367
 - Other Disbursements 8,011
 - **Total Disbursements** \$ 3,022,275

Findings and Recommendations (p. 3)

- Misstatement of Cash-on-Hand (Finding 1)
- Failure to File 48-Hour Notices (Finding 2)
- Failure to File Form 3Z-1 (Finding 3)
- Disclosure of Outstanding Debt (Finding 4)

¹ 2 U.S.C. §438(b).

Report of the Audit Division on Daniel Mongiardo for U.S. Senate

November 7, 2003 – December 31, 2004



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Part I

Background

Authority for Audit

This report is based on an audit of Daniel Mongiardo for U.S. Senate (DMUS), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

Scope of Audit

This audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	Daniel Mongiardo for U.S. Senate
• Date of Registration	November 24, 2003
• Audit Coverage	November 7, 2003 – December 31, 2004
Headquarters	Frankfort, Kentucky
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Two Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Robert W. Kellerman
• Treasurer During Period Covered by Audit	Robert W. Kellerman
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid staff and volunteers

Overview of Financial Activity (Audited Amounts)

Cash on hand @ November 7, 2003	\$ 0
○ Contributions from Individuals	1,813,162
○ Loans Received	776,050
○ Contributions from Political Committees	456,841
○ Other Receipts	7,528
Total Receipts	\$ 3,053,581
○ Operating Expenditures	2,764,897
○ Loan Repayments	249,367
○ Other Disbursements	8,011
Total Disbursements	\$ 3,022,275
Cash on hand @ December 31, 2004	\$ 31,306

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Cash-on-Hand

A comparison of DMUS's reported figures to its bank records revealed that the ending cash-on-hand balance had been misstated for calendar year 2004. The Audit staff recommended that DMUS amend its most recent disclosure report. In its response to the interim audit report, DMUS complied with the recommendation and corrected the misstatement.

(For more detail, see p. 4)

Finding 2. Failure to File 48-Hour Notices

DMUS failed to file 48-hour notices for 56 contributions totaling \$81,500. The Audit staff recommended that DMUS provide evidence that 48-hour notices were timely filed or submit any written comments it considers relevant. In its response to the interim audit report, DMUS explained why it failed to file the above 48 hour notices.

(For more detail, see p. 5)

Finding 3. Failure to File Form 3Z-1

DMUS failed to file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report. The Audit staff recommended that DMUS provide any relevant information as to why the Form 3Z-1 for the 2003 Year End report was not filed. In response to the recommendation in the interim audit report, DMUS submitted a statement explaining why the Form 3Z-1 was not filed.

(For more detail, see p. 7)

Finding 4. Disclosure of Outstanding Debt

DMUS failed to itemize outstanding debt totaling \$53,539, on its 2004 July Quarterly report, to its largest media vendor. The Audit staff recommended that DMUS amend Schedule D (Debts and Obligations) and the corresponding Summary Pages for its 2004 July Quarterly report to disclose this debt. In its response to the interim audit report, DMUS amended the above report correcting this omission.

(For more detail, see p. 8)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Cash-on-Hand

Summary

A comparison of DMUS's reported figures to its bank records revealed that the ending cash-on-hand balance had been misstated for calendar year 2004. The Audit staff recommended that DMUS amend its most recent disclosure report. In its response to the interim audit report, DMUS complied with the recommendation and corrected the misstatement.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
 - The total amount of receipts for the reporting period and for the calendar year; and
 - The total amount of disbursements for the reporting period and for the calendar year.
- 2 U.S.C. §434(b)(1), (2) and (4).

Facts and Analysis

A comparison of DMUS's reported figures to its bank records revealed that the ending cash-on-hand balance for calendar year 2004 had been understated by \$53,341. As detailed by the chart below, the ending cash balance discrepancy was primarily due to understated receipts and overstated disbursements.

2004 Activity			
	Reported	Bank Records	Discrepancy
Opening Cash Balance	\$ 268,825	\$ 268,875	\$ 50 Understated
Receipts	\$ 2,704,853	\$ 2,746,673	\$ 41,820 Understated
Disbursements	\$ 2,995,713	\$ 2,984,242	(\$ 11,471) Overstated
Ending Cash Balance	(\$22,035)	\$ 31,306	\$ 53,341 Understated

The understatement of receipts was primarily due to unreported contributions from individuals and unreported in-kind contributions totaling \$41,379. The net overstatement of disbursements was caused primarily by DMUS reporting disbursements totaling (\$34,128) which were not supported by checks or debit memos and not reporting disbursements totaling \$22,905. The understatement of ending cash was primarily the result of these misstatements.

At the exit conference, the Audit staff provided DMUS representatives with schedules explaining the misstatement. The representatives offered no comments.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DMUS correct the cash misstatement by amending its most recently filed disclosure report with an explanation that it resulted from audit adjustments from a prior period. In response, the DMUS Treasurer corrected the misstatement by amending the most recent disclosure report. He stated that the errors were inadvertent and, in his opinion, the total amounts were minimal in proportion to the total financial activity of the campaign.

Finding 2. Failure to File 48-Hour Notices

Summary

DMUS failed to file 48-hour notices for 56 contributions totaling \$81,500. The Audit staff recommended that DMUS provide evidence that 48-hour notices were timely filed or submit any written comments it considers relevant. In its response to the interim audit report, DMUS explained why it failed to file the above 48 hour notices.

Legal Standard

Last-Minute Contributions (48-Hour Notice). Campaign committees must file special notices regarding contributions of \$1,000 or more received less than 20 days but more than 48 hours before any election in which the candidate is running. This rule applies to all types of contributions to any authorized committee of the candidate. 11 CFR §104.5(f).

Facts and Analysis

The Audit staff reviewed 336 contributions (\$620,850) of \$1,000 or more that were received during the 48-hour notice filing period for the primary and general elections. Of these contributions, DMUS failed to file 48-hour notices for 56 of them totaling \$81,500 as summarized below.

Election Type	Number of Notices	Total
Primary	1	\$1,000
General	55	\$80,500
48-Hour Notices Not Filed	56	\$81,500

At the exit conference, DMUS was provided a schedule of the 48-hour notices not filed. The DMUS representatives stated they were aware of this issue but offered no further comments.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DMUS provide evidence that 48-hour notices were timely filed or submit any written comments it considers relevant. In response, the

DMUS Treasurer referred to his letter submitted in response to a January 11, 2005 Request for Additional Information (RFAI) from the Commission's Reports Analysis Division² in which he explained why DMUS had not filed all the required 48-hour notices. In this letter, the Treasurer explained that DMUS' failure to comply with the 48-hour filing requirements was caused by the timing of the receipt of two categories of contributions. He stated the following:

The first category is composed of contributions that were actually made to other organizations, such as MoveOn.org, but designated for the Mongiardo campaign. The organization provides for campaign access to its database to electronically transfer the contributor information into the campaign database. The reported contribution dates are the dates of the contributions by the individuals to the organization that are contained in the database transfer information to the campaign. As you may know, these contributions are received in a lump sum check from the organization several days after the contributions are actually made to the organization. The organization is the campaign's sole source of contributor information...[T]he campaign staff advises that it did not even learn of these contributions until after the cut off date for 48 hour reporting. The funds were not actually received and deposited by the campaign until after the cutoff.

The second category of contributions is for contributions made directly to the campaign...[T]he information was either not accessible in a timely manner from the credit card processor by the campaign staff, or were not reported by the campaign staff to the Treasurer in a timely manner. In all cases of the credit card contributions, the funds are not actually received by the campaign from the credit card processor until several days after the date of actual contribution, and it is impossible to determine exactly what contributions are contained in which lump sum payment from the credit card company (a source of continuing frustration for us).

The Audit staff reviewed DMUS's receipts database and determined that of the 56 contributions, totaling \$81,500, for which 48-hour notices were not filed as required:

- Fourteen of these contributions (25%) totaling \$19,000 were received through the conduit entities³;
- Ten contributions (18%) totaling \$14,000 were made directly to DMUS through the credit card processor;

² The letter from RAD pertained to the 2004 Post General Report which lacked 48 notices totaling \$68,500.

³ All proceeds received through the conduit entities were deposited into DMUS's account by the end of the 48-hour reporting period.

- Thirty-two contributions (57%) totaling \$48,500 were made directly to DMUS by check.

The Audit staff acknowledges that DMUS relied on the accuracy and timeliness of the information provided by the conduit organizations and credit card processor. However, the Audit staff believes that, for the purposes of 48-hour reporting compliance, near the end of the 48-hour reporting period, DMUS should have contacted the third parties to inquire about contributions which required 48-hour notices and reported those to the Commission on time. The fact that there was a delay between when the contributions were received and when the funds became available is not relevant. Regardless of how the contributions were accomplished there is likely to be a time delay of some sort.

Finding 3. Failure to File Form 3Z-1

Summary

DMUS failed to file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report. The Audit staff recommended that DMUS provide any relevant information as to why the Form 3Z-1 for the 2003 Year End report was not filed. In response to the recommendation in the interim audit report, DMUS submitted a statement explaining why the Form 3Z-1 was not filed.

Legal Standard

Special Reporting Requirements. Principal campaign committees of candidates for the U.S. House and the U.S. Senate must file FEC Form 3Z-1 as part of their July Quarterly and Year-End reports in the year preceding the year in which the general election for the office sought is held. The information in this form allows opposing candidates to compute their “gross receipts advantage” used to determine whether a candidate is entitled to an increased contribution limit. The following information must be disclosed:

1. Gross receipts to date for the primary and general elections,
2. Aggregate amount of contributions from personal funds of the candidate for the primary and general elections, and,
3. A calculation of gross receipts less the candidate’s personal contributions for each election. 11 CFR §104.19.⁴

Facts and Analysis

DMUS failed to file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year-End report.

The Audit staff determined gross receipts for the primary election of \$293,944 and for the general election of \$12,964 should have been disclosed on Form 3Z-1 of the 2003 Year-End report. The candidate made personal contributions totaling \$1,522 and loaned DMUS \$206,000 during this report period, all designated to the primary election.

⁴ This regulation became effective January 27, 2003; as such, this election cycle is the first that required the filing of this form.

The Audit staff presented this matter to the DMUS representatives at the exit conference; DMUS representatives had no comment.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that DMUS provide any relevant information as to why the Form 3Z-1 for the 2003 Year End report was not filed. In response to the recommendation in the interim audit report, the DMUS Treasurer explained that the Committee failed to file Form 3Z-1 as it incorrectly believed that the candidate was filing this form. The Treasurer, however, concluded that all the necessary information that would have been included in Form 3Z-1 was indeed timely reported in the required quarterly report. Although the information needed for the Form 3Z-1 may be included in the regular quarterly report, DMUS was required to file the correct form.

Finding 4. Disclosure of Outstanding Debt

Summary

DMUS failed to itemize outstanding debt totaling \$53,539, on its 2004 July Quarterly report, to its largest media vendor. The Audit staff recommended that DMUS amend Schedule D (Debts and Obligations) and the corresponding Summary Pages for its 2004 July Quarterly report to disclose this debt. In its response to the interim audit report, DMUS amended the above report correcting this omission.

Legal Standard

Continuous Reporting Required. A political committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 2 U.S.C §434(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

Separate Schedules. A political committee must file separate schedules for debts owed by the committee and debts owed to the committee, together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

Itemizing Debts and Obligations.

- A debt of \$500 or less must be reported once it has been outstanding 60 days from the date incurred (the date of the transaction); the committee reports it on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred. 11 CFR §104.11(b).

Facts and Analysis

The Audit staff reconciled the account⁵ of the largest DMUS media vendor and determined that DMUS had an unreported outstanding debt balance at the end of June 30, 2004.

According to the reconciled vendor account, DMUS received three invoices totaling \$63,539 from April 1, 2004 through June 30, 2004. Since DMUS made only one payment of \$10,000 during that period, \$53,539 of the invoiced amount remained unpaid at June 30, 2004. While DMUS paid off this debt in September 2004, the amounts owed should have been disclosed on Schedule D of the 2004 July Quarterly⁶ report. DMUS failed to do so.

At the exit conference, the Audit staff provided the DMUS representatives a reconciled vendor account detailing the unreported debt for the 2004 July Quarterly reporting period. In their response, the DMUS representatives obtained from the vendor and submitted to the Audit staff a complete vendor account history. The Audit staff reviewed the document which further confirmed that DMUS owed the vendor \$53,539 as of June 30, 2004. The document did *not* address DMUS's failure to itemize its debt on Schedule D.

Interim Audit Report Recommendations and Committee Response

The Audit staff recommended that DMUS amend Schedule D and the corresponding Summary Pages of its 2004 July Quarterly report to disclose the outstanding debt. In response, the DMUS Treasurer explained that the DMUS's failure to itemize the outstanding debt was inadvertent, and was due to incomplete information furnished to the Treasurer's office by the campaign finance staff. Nevertheless, the Treasurer agreed with the Audit staff's recommendation and amended the 2004 July Quarterly report.

⁵ The reconciliation consisted of calculating invoiced and paid amounts for individual reporting periods in the 2003 – 2004 campaign cycle. The Audit staff then determined whether any outstanding debts were correctly disclosed on Schedules D.

⁶ The July Quarterly 2004 report covers the second quarter of calendar year 2004 - from April 1, 2004 through June 30, 2004.