



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2014 FEB 19 PM 3:55

February 19, 2014

AGENDA ITEM

MEMORANDUM

To: The Commission

For Meeting of 3-18-14

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Thomas E. Hintermister *TH*
Assistant Staff Director
Audit Division

Kendrick Smith *KS*
Audit Manager

By: Nicole Burgess *NB*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on the State Democratic
Executive Committee of Alabama ((SDA) A11-22)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presents its recommendation below and discusses the finding in the attached Draft Final Audit Report (DFAR). The Office of General Counsel has reviewed this memorandum and concurs with the recommendation.

Recordkeeping for Employees

For the period covered by the audit, SDA did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429 for which monthly payroll logs were not maintained. All of these individuals were paid with an allocation of federal and non-federal funds and disclosed on Schedule H4 (\$248,930) or with exclusively non-federal funds during a given month (\$30,499).

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid entirely or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets.

It should be noted that this finding does not contain contract labor totaling \$110,908.

The Audit staff recommends that the Commission find that SDA failed to maintain logs to document the time employees spent on federal election activity for employees totaling \$279,429. This amount includes payroll paid as follows to SDA employees.

- A. Employees reported on Schedule H4 and paid with allocated federal and non-federal funds during the same month (totaling \$248,930); and,
- B. Employees paid exclusively with non-federal funds in a given month and not reported by SDA (totaling \$30,499).

SDA did not request an audit hearing.

If this memorandum is approved, a Proposed Final Audit Report will be prepared within 30 days of the Commission's vote.

In case of an objection, Directive No. 70 states that the Audit Division Recommendation Memorandum will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact Nicole Burgess or Kendrick Smith at 694-1200.

Attachment:

Draft Final Audit Report of the Audit Division on the State Democratic Executive Committee of Alabama

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on the State Democratic Executive Committee of Alabama

(January 1, 2009 - December 31, 2010)

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 the matter discussed in this report.

About the Committee (p. 2)

The State Democratic Executive Committee of Alabama is a state party committee headquartered in Montgomery, Alabama. For more information, see the chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts

○ Contributions from Individuals	\$ 342,232
○ Transfers from Affiliated Committees	413,892
○ Contributions from Other Political Committees	225,377
○ Transfers from Non-federal Accounts	316,171
○ All Other Receipts	173,243

Total Receipts **\$ 1,470,915**

• Disbursements

○ Operating Disbursements	\$ 950,626
○ Federal Election Activity	456,345
○ All Other Disbursements	72,274

Total Disbursements **\$ 1,479,245**

Finding and Recommendation (p. 3)

- Recordkeeping for Employees

¹ 2 U.S.C. §438(b).

Draft Final Audit Report of the Audit Division on the State Democratic Executive Committee of Alabama

(January 1, 2009 - December 31, 2010)



Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Commission Guidance	1
Part II. Overview of Committee	
Committee Organization	2
Overview of Financial Activity	2
Part III. Summary	
Finding and Recommendation	3
Part IV. Finding and Recommendation	
Recordkeeping for Employees	4

Part I

Background

Authority for Audit

This report is based on an audit of the State Democratic Executive Committee of Alabama (SDA), 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 whether 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

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the disclosure of individual contributors' occupation and name of employer;
2. the disclosure of disbursements, debts and obligations;
3. the disclosure of expenses allocated between federal and non-federal accounts;
4. the consistency between reported figures and bank records;
5. the disclosure of independent expenditures;
6. the completeness of records; and
7. other committee operations necessary to the review.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," SDA requested early consideration of a legal question raised during the audit. SDA questioned whether the monthly time logs required under 11 C.F.R. §106.7(d)(1) applied to employees paid with 100 percent federal funds. (See Finding, page 4.)

The Commission concluded, by a vote of 5-1, that 11 C.F.R. §106.7(d)(1) does require committees to keep a monthly log for employees paid exclusively with federal funds. Exercising its prosecutorial discretion, however, the Commission decided it will not pursue recordkeeping violations for the failure to keep time logs or to provide affidavits to account for employee salaries paid with 100 percent federal funds and reported as such. The Audit staff informed SDA Counsel of the Commission's decision on SDA's request. The finding presented in this audit report, Recordkeeping for Employees, does not include SDA employees paid with 100 percent federal funds and reported as such.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	July 10, 1976
• Audit Coverage	January 1, 2009 - December 31, 2010
Headquarters	
Montgomery, Alabama	
Bank Information	
• Bank Depositories	Two
• Bank Accounts	Three Federal, Two Non-federal, One Levin
Treasurer	
• Treasurer When Audit Was Conducted	Mr. Edgar C. Gentle, III (1/31/11 – 7/18/12) Mr. James B. Davidson (7/19/12 – 12/5/12) Mr. James D. Turner (12/6/12 – 6/19/13) Mr. Edgar C. Gentle, III (6/20/13 – Present)
• Treasurer During Period Covered by Audit	Mr. Brannon Walden (5/22/08 – 1/30/11)
Management Information	
• Attended Commission Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash-on-hand @ January 1, 2009	\$ 13,139
Receipts	
○ Contributions from Individuals	342,232
○ Transfers from Affiliated Committees	413,892
○ Contributions from Other Political Committees	225,377
○ Transfers from Non-federal Accounts	316,171
○ All Other Receipts	173,243
Total Receipts	\$ 1,470,915
Disbursements	
○ Operating Disbursements	\$ 950,626
○ Federal Election Activity	456,345
○ All Other Disbursements	72,274
Total Disbursements	\$ 1,479,245
Cash-on-hand @ December 31, 2010	\$ 4,809

Part III

Summary

Finding and Recommendation

Recordkeeping for Employees

During audit fieldwork, the Audit staff determined that SDA did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429², for whom SDA did not maintain monthly payroll logs. This consisted of \$248,930, for which payroll was allocated between federal and non-federal funds, and \$30,499, for which payroll was exclusively non-federal. Prior and subsequent to the exit conference, SDA representatives provided the Audit staff with affidavits for most of the employees attesting to the percentage of time spent on federal election activity.

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid all or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. The Audit staff considers this matter resolved. (For more detail, see p. 4.)

² This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1).

Part IV

Finding and Recommendation

Recordkeeping for Employees

Summary

During audit fieldwork, the Audit staff determined that SDA did not maintain any monthly payroll logs, as required, to document the percentage of time each employee spent on federal election activity. For 2009 and 2010, the Audit staff identified payments to SDA employees totaling \$279,429³, for whom SDA did not maintain monthly payroll logs. This consisted of \$248,930, for which payroll was allocated between federal and non-federal funds, and \$30,499, for which payroll was exclusively non-federal. Prior and subsequent to the exit conference, SDA representatives provided the Audit staff with affidavits for most of the employees attesting to the percentage of time spent on federal election activity.

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid all or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. The Audit staff considers this matter resolved.

Legal Standard

Maintenance of Monthly Logs. Party committees must keep a monthly log of the percentage of time each employee spends in connection with a federal election.

Allocations of salaries, wages, and fringe benefits are to be undertaken as follows:

- employees who spend 25 percent or less of their compensated time in a given month on federal election activities must be paid either from the federal account or be allocated as administrative costs;
- employees who spend more than 25 percent of their compensated time in a given month on federal election activities must be paid only from a federal account; and
- employees who spend none of their compensated time in a given month on federal election activities may be paid entirely with funds that comply with State law.

11 C.F.R. §106.7(d)(1).

Facts and Analysis

A. Facts

During fieldwork, the Audit staff reviewed disbursements for payroll. SDA did not maintain any monthly payroll logs or equivalent records to document the percentage of time its employees spent in connection with federal election activity. These logs are required to document the proper allocation of federal and non-federal funds used to pay

³ This total does not include payroll for employees paid with 100 percent federal funds and reported as such (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1).

employees. For 2009 and 2010, logs were not maintained for \$279,429 in payroll.⁴ All of these individuals were disclosed as having been paid with an allocation of federal and non-federal funds (\$248,930) or exclusively non-federal funds (\$30,499).⁵

The Audit staff requested that SDA provide documentation to verify the time employees spent on federal election activity. In response, SDA provided signed affidavits for five of the 11 employees noted above. The affidavits stated the employee name, job title and responsibilities, the time period covered by the affidavit and the funding used. They also included a brief statement concerning the time spent on federal election activity.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter again with SDA representatives at the exit conference. SDA did not provide the requested monthly time logs during the response period; SDA did, however, submit additional affidavits from three employees and another after the response period. Each of these affidavits stated the employee name, job title and responsibilities, the time period covered by the affidavit and the funding used, and included a brief statement regarding the time spent on federal election activity. The affidavits provided by SDA, prior to and subsequent to the exit conference, did not preclude this matter from the audit report because SDA did not create and maintain these documents prior to the audit notification letter. Instead, the affidavits were prepared during fieldwork after requests from the Audit staff for verification documentation.

The Interim Audit Report recommended that SDA provide evidence that it maintained monthly time logs to document how much time each employee spent on federal election activity or a plan to maintain monthly payroll logs to track the percentage of time each employee spends on federal election activity.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, SDA stated it will implement procedures to make sure all employees, paid entirely or in part with federal and/or non-federal funds, are documented by the use of monthly time sheets. Such action is consistent with Commission guidance with respect to payroll logs. As such, the Audit staff considers this matter resolved.

⁴ Payroll is stated net of taxes and benefits.

⁵ Payments to SDA employees paid with 100 percent federal funds and reported as such are not included in this finding (see Part I, Background, Commission Guidance, Request for Early Commission Consideration of a Legal Question, Page 1).