



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

April 15, 2019

TO: Patricia C. Orrock
Chief Compliance Officer

FROM: Neven Stipanovic *NS* for NS
Acting Associate General Counsel
Policy Division

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Danita Alberico *DA*
Attorney

SUBJECT: Interim Audit Report on the Mississippi Republican Party (LRA 1077)

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“IAR”) on the Mississippi Republican Party (“Committee”). The proposed IAR contains four findings: (1) Misstatement of Financial Activity; (2) Recordkeeping for Employees; (3) Reporting of Debts and Obligations; and (4) Reporting of Apparent Independent Expenditures.¹ We concur with the findings, except as addressed below regarding proposed Finding 2, Recordkeeping for Employees. If you have any questions, please contact Danita Alberico, the attorney assigned to this audit.

In proposed Finding 2, the Audit Division states that the Committee did not maintain monthly payroll logs for the percentage of time each employee spent on federal election activity in accordance with 11 C.F.R. § 106.7(d)(1). The auditors found that the amount of federal and nonfederal funds paid for employees for which logs were not maintained totaled \$42,415. Of this amount, the Committee paid a total of \$31,097 to five individuals that the Committee

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).

represents worked on a contractual basis and were not employees of the Committee. In contrast, the auditors consider the five individuals as employees because the Committee could not substantiate that the individuals were contractors as well as the manner in which the Committee reported the payment.

In our view, the Audit Division should not draw a distinction between employees and contract workers for the purpose of applying the recordkeeping requirements of 11 C.F.R. § 106.7(d)(1). First, the Audit Division and the Office of the General Counsel have taken the position that both committee employees as well as contract workers are subject to the requirements of 11 C.F.R. § 106.7(d)(1). Request for Commission Directive 69 Guidance involving the Dallas County Republican Party (LRA # 903) (Sep. 25, 2012).²

Second, the Commission has not set forth a standard to distinguish between contract workers and employees, and the Commission has been divided on whether contract workers are subject to the requirements of 11 C.F.R. § 106.7(d)(1)³ We, therefore, do not think it would be a prudent use of our resources to dispute this issue with the Committee. Accordingly, we recommend that you revise the proposed IAR to accept the Committee's representation that the personnel are contract workers.

² The Commission's guidance had been sought on this issue pursuant to Commission Directive 69, but the recommendation of the Audit Division and the Office of the General Counsel to include contract workers within the scope of the recordkeeping requirement failed to receive the affirmative vote of four or more Commissioners. Pursuant to Directive 69, the Office of Compliance proceeded to include the payroll for contract workers within the recordkeeping finding in those audits in the Interim Audit Reports submitted to the Commission.

³ In the audits of the Vermont Democratic Party, Dallas County Republican Party, Democratic Party of South Carolina, and Republican Party of Iowa, the Commission considered whether the payroll recordkeeping requirement under 11 C.F.R. § 106.7(d)(1) should be applied to individuals who perform work for committees as contract workers. In those audits, the Commission did not approve, by the required four votes, the Audit Division's recommendations to include contract workers within the scope of the section 106.7(d)(1) monthly payroll log requirement, and the recordkeeping findings as pertaining to the contract workers, were removed from the reports.