



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 16, 2012

MEMORANDUM

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SUBJECT: Proposed Interim Audit Report on Dallas County Republican Party (LRA 903)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report (“IAR”) on the Dallas County Republican Party (“DCRP” or “Committee”).¹ We concur with Finding 1 in the proposed IAR (Misstatement of Financial Activity). In its cover memorandum, the Audit Division requested a legal analysis of Finding 2 (Recordkeeping for Payroll and Contract Labor).

Finding 2 presents two distinct issues. The first is whether the time log requirement of 11 C.F.R. § 106.7(d) applies when a committee has paid an employee’s salary and benefits costs from 100% federal funds. We analyze this issue below, consistent with our analysis in several other

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).

2010 cycle Title 2 audits. The second is whether work performed by "contract labor" is subject to the log requirement. Because the second question raises the important and novel issue of whether such work can ever be considered "federal election activity" within the meaning of 2 U.S.C. § 431(20), we are, as you know, preparing a memo to the Commission on that question for submission by both our offices pursuant to Commission Directive 69. If you have any questions, please contact Jennifer Waldman, the paralegal assigned to this audit.

II. BACKGROUND

DCRP's total payroll and contract labor costs paid by its federal and non-federal accounts during 2009 and 2010 were \$190,269. The Committee, however, did not keep a monthly log of the percentage of time that each employee spent in connection with a federal election. The specific question addressed in this memorandum has to do with salary and benefits payments to two employees. While DCRP reported payments to or on behalf of the employees in different manners in different reporting periods, each had at least one reporting period in which their compensation was reported either on line 21(b) as an ordinary Federal operating expense paid with 100% Federal funds, or on line 30(b) as federal election activity ("FEA") paid with 100% federal funds

"Committees must keep a monthly log of the percentage of time each employee spends in connection with a Federal election." 11 C.F.R. § 106.7(d). Section 11 C.F.R. § 106.7(d)(1) addresses the allocation of employee salaries, wages, and fringe benefits based on the percentage of time that each employee spends on activities in connection with a federal election. Employees who spend 25% or less of their compensated time in a given month on federal election activities must be paid either from the federal account or have their pay allocated as administrative costs. Employees who spend more than 25% of their compensated time in a given month on federal election activities must be paid only from the federal account. 11 C.F.R. § 106.7(d)(1).

III. ANALYSIS

Part of DCRP's payroll was paid with 100% federal funds and reported as Federal Election Activity. Previously, the Proposed Interim Audit Report on Mississippi Democratic Party Political Action Committee sought guidance on whether state party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. See Proposed Interim Audit Report on Mississippi Democratic Party Political Action Committee Legal Comments, Aug. 1, 2012. We reiterate the advice on this issue that we provided in the context of the Mississippi Democratic Party audit.

We conclude that, read literally, the regulations support the conclusion that State party committees must maintain a monthly log under 11 C.F.R. § 106.7(d)(1) for employees who are paid from and reported as solely 100% federal funds. The regulations require a state party committee to keep a log of the percentages of time that each employee spends in connection with an election. 11 C.F.R. § 106.7(d)(1); Although 100% of the time on federal activity represents the whole or complete time on federal activity, this is still a percentage.

Whether the Audit Division should pursue findings of this nature, however, raises practical questions. Section 106.7(d) works in support of the statute's requirement that state and local party committees treat as "federal election activity," payable with 100% federal funds, the salaries and benefits of any employee who spends more than 25% of his or her compensated time during the month on activities in connection with a federal election. 2 USC §§ 431(20)(A)(iv), 441i(b)(1). In this case, some of the employees were paid with 100% federal funds. The only significance the log could play under those circumstances would be to identify those employees who spent less than 25% of their compensated time during a month on activities in connection with a federal election, but whose salaries and benefits the Committee voluntarily chose to pay with 100% federal funds. Because the salaries and benefits of such employees are not "federal election activity," they would not be reported as such on line 30(b) of the Detailed Summary Page, but would instead be reported as Federal operated expenses on line 21(b). 11 C.F.R. § 106.7(d)(1); see 11 C.F.R. §§ 104.14(h)(1) and 104.17(a)(4), or as payments for allocable operating expenses on line 21(a) and on Schedule H4.² If the Audit Division believes that logs (or the equivalent substitute) are needed to verify this reported information, then you should consider whether a recordkeeping finding or a limitation on the scope of the audit is appropriate.

We provide these comments, however, recognizing the Commission's 3-3 split on a similar issue in the Georgia Federal Elections Committee ("GFEC") audit involving employees whom the committee asserted spent *no* time on activity in connection with federal elections. In that audit, the Commission split on the issues of whether the Commission could require a committee to keep a log for such employees, notwithstanding that zero (as well as 100) is a percentage. For the GFEC employees, presumably, there would be considerably more reason to require the log, to ensure that their salaries are properly paid with 100% non-federal funds. Nevertheless, in a motion that failed 3-3, three Commissioners asserted that "the Commission does not have jurisdiction to impose recordkeeping and documentation requirements on employee activity that a State party committee claims is solely non-federal." See Commission Agenda Document No. 11-10-B (Motion on Audit Division Recommendation Memorandum on GFEC, *considered in Open Session*, Mar. 3, 2011). Here, unlike with GFEC, the payments at issue were made with 100% federal funds, so the Commissioners' concern over "solely non-federal" activity may be reduced. Nevertheless, given that there is some uncertainty on a related issue, we recommend that you raise this issue in the memorandum that forwards the report to the Commission.

² According to the Reports Analysis Division ("RAD"), if a committee asked RAD how to disclose payroll that could be allocated with shared federal/non-federal funds, but was paid with 100% federal funds, RAD would advise them to disclose it on Schedule B as a 100% federal operating expense. However, if the committee opted to disclose the expense as allocated on Schedule H4, RAD would consider that acceptable. RAD explained that there is no requirement to reimburse the federal account the non-federal share and some committees that initially disclose expenses as allocated later decide they do want to reimburse the federal account the non-federal share.