



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

TO: Patricia C. Orrock
Chief Compliance Officer

Thomas Hintermister
Assistant Staff Director
Audit Division

FROM: Lisa J. Stevenson *LJS*
Deputy General Counsel – Law

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Danita C. Alberico *DA*
Attorney

SUBJECT: Proposed Interim Audit Report on the Oklahoma Democratic Party (LRA 978)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Interim Audit Report (“IAR”) on the Oklahoma Democratic Party (“the Committee”). The IAR contains four findings: 1) Misstatement of Financial Activity; 2) Misstatement of Financial Activity – Levin Fund; 3) Reporting of Debts and Obligations; and 4) Recordkeeping for Employees.¹ We address recordkeeping for employees (Finding 4). We concur with any issues not specifically discussed in this memorandum. If you have any questions, please contact Danita C. Alberico, the attorney assigned to this audit.

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).

II. RECORDKEEPING FOR EMPLOYEES

The Office of General Counsel's comments focus on the finding that the Committee did not maintain monthly payroll logs for the percentage of time each employee spent on activity in connection with a federal election in accordance with 11 C.F.R. § 106.7(d)(1). The auditors found that the amount of payroll allocated between federal and non-federal employees for whom logs were not maintained totaled \$200,440. Subsequent to the exit conference, the Committee informed the Audit Division that its payroll expenditures were erroneously reported as shared federal/non-federal activity. The Committee stated that its payroll totaling \$200,440 was for 100% federal activity, was paid with 100% federal funds, and should have been reported as such. The Committee advised the Audit staff that it intended to amend its reports to correctly disclose these expenditures as solely federal activity. The proposed IAR recommends that the Committee provide evidence that it maintained monthly time logs or implement a plan to maintain monthly payroll logs to track the percentage of time each employee spends in connection with a federal election.

The Audit Division's IAR recommendation is based on the Commission regulation that requires a state party committee to "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)(1). To determine if it must allocate the salary, wages, and benefits of its employees, a state party committee must examine the percentage of time that its employees spend on federal election activities ("FEA") or activity in connection with federal elections. Salaries and benefits of employees who spend more than 25% of their compensated time on FEA or activities in connection with a federal election in a given month must be paid only from a federal account. 52 U.S.C. § 30101(20)(A)(iv); 11 C.F.R. § 106.7(d)(1)(ii). Salaries and benefits of employees who spend 25% or less of their time on FEA or activities in connection with a federal election may be allocated as administrative costs or paid from the federal account. 11 C.F.R. §§ 106.7(c)(1) and 106.7(d)(1)(i). Salaries and benefits of employees who spend none of their compensated time on FEA or activities in connection with a federal election may be paid entirely with funds that comply with state law. 11 C.F.R. § 106.7(d)(1)(iii).

The Commission analyzed the requirements of this regulation in response to a request for legal consideration in which several state party committees asked the Commission to consider whether the monthly time log requirement applies to employees who are paid with 100% federal funds. The Commission concluded that the time log requirement applies even if the employees are paid exclusively with federal funds. However, the Commission determined, as an exercise of prosecutorial discretion, that it would not pursue recordkeeping violations for the failure to keep time logs for employee salaries paid with 100% federal funds and reported as such. Commission Certifications in the Matter of Request for Consideration of a Legal Question, LRA 917 (Vermont Democratic Party) (Nov. 30, 2012), and LRA 921 (Democratic Party of Illinois) (Nov. 30, 2012).

In light of the Commission's conclusion in the request for legal consideration, we do not think it is appropriate -- where the Committee contends that it paid \$200,440 with 100% federal funds -- to include a finding in the audit report for this amount and to require a plan to implement

monthly payroll logs simply because the Committee initially reported this activity as allocable between federal and non-federal funds. The Committee's contention, if supported by the filing of amended disclosure reports, suggests that its original reporting of the \$200,440 in activity as "allocable" was erroneous. Given the Committee's apparent exclusive use of the federal funds to pay its employees, the Committee's intended amendments to characterize the activity as paid solely with federal funds appear reasonable. In light of the Commission's decision to not pursue a finding for failure to maintain logs when a committee pays salaries with 100% federal funds, we do not think that a finding requiring the Committee to provide additional evidence that it maintained logs or to implement a plan to maintain logs for salaries paid exclusively with federal funds is warranted so long as the Committee files the amended disclosure reports prior to the Commission's issuance of the Final Audit Report on the Committee. *See* Office of General Counsel Comments on Interim Audit Report on the South Dakota Democratic Party (LRA 885), p. 2.