



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

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SUBJECT: Interim Audit Report on the Maine Republican Party (LRA 817)

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("proposed report") on the Maine Republican Party ("the Committee"). Our comments focus on Finding 3 – Disclosure of Disbursements. Generally, we recommend that the Audit staff provide more explanation of why it categorized expenses as allocable administrative expenses, federal expenses or federal election activity ("FEA"). We make several comments and specific recommendations on this finding. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.¹

The proposed report concludes that the Committee incorrectly disclosed different categories of disbursements totaling \$818,330, including: 1) \$94,019 in disbursements, apparently for administrative expenses and FEA, that were paid from non-federal accounts but which the auditors conclude should have been paid from the federal account; 2) an apparent coordinated party expenditure of \$12,500 for a television

¹ This Office recommends 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 report. 11 C.F.R. §§ 2.4(a), 2.4(b)(6).

advertisement reported as an operating expense;² and 3) \$711,811 in disbursements from the federal account that the Committee reported on the summary page and Schedule B as line 21(b) federal operating expenses but which the auditors conclude should have been reported on line 30(b) as FEA paid entirely with federal funds, including disbursements for payroll, travel reimbursements and printed materials. The auditors recommend that the Committee amend its reports to correct these disclosure problems.

Generally, we recommend that you expand Finding 3 to include more information about all of the categories of expenses and more explanation about why the Audit staff categorized expenses as allocable administrative expenses, federal expenses, or FEA. The analysis of the various expenses differs based on the type of expense. The auditors provided spreadsheets of the non-federal account and federal account expenses for our review. We reviewed the spreadsheets and found that some types of expenses included in the spreadsheets are not specifically discussed in the proposed report, such as expenses for state conventions and events. We suggest that the Audit staff include in the finding the information about all of the expenses from those spreadsheets and explain the reasons for your categorizations of the expenses. The finding should state the amount of each type of expense in each category (payroll, printed materials, etc.) and note where documentation was not available for the auditors to review. Charts of the expenses broken down by category would be helpful to the Commission.

Administrative Costs

The auditors conclude that the Committee paid apparent allocable administrative costs from its non-federal accounts totaling \$48,520. These costs include postage, consulting, travel reimbursements, printing, accounting fees and other expenses. Because the available information does not indicate that these expenses were solely non-federal, the auditors conclude that they were allocable administrative expenses that should have been reported on Schedule H-4 using a 36/64% allocation ratio.

We agree that based on the available information, these costs appear to be allocable administrative costs. Administrative costs include rent, utilities, office equipment and supplies, postage for other than mass mailings, and routine building maintenance, unless those costs are directly attributable to a clearly identified candidate. 11 C.F.R. § 106.7(c)(2). Some of the costs at issue here, such as postage, consulting and travel reimbursements, might or might not be allocable administrative expenses depending on whether they were related to activity on behalf of a clearly identified candidate. The Committee should be given the opportunity to demonstrate that these were non-federal expenses. In the absence of such a demonstration, we concur with the auditors that these appear to be the type of ordinary overhead expenses that can be

² We concur that the Committee's payment of \$12,500 for a television advertisement appears to be a coordinated party expenditure on behalf of Charlie Summers for Congress. The advertisement appears to be a public communication that refers to a clearly identified House candidate and that was publicly disseminated in the candidate's jurisdiction within 90 days of the election. See 11 C.F.R. § 109.37. The candidate appears in the advertisement and the advertisement states that it was approved by the candidate.

considered administrative expenses and that the Committee should have allocated them on a 36% federal basis and reported accordingly.

Possible FEA

The auditors also conclude that certain expenses paid from the non-federal account, as well as expenses paid from the federal account and reported as federal operating expenses, were apparent Federal Election Activity ("FEA"). The expenses paid from the non-federal account totaled \$45,499 and included payroll and associated costs, costs of voter identification, and costs of and printed materials. Copies of the printed materials were not available for the auditors to review. The auditors conclude that unless the committee provides documentation that these expenses were solely non-federal, it should disclose these transactions as FEA.

With respect to the federal account, the auditors conclude that payments totaling \$711,811 reported as federal operating expenditures appear to be non-allocable FEA that should have been reported on the summary page and Schedule B for line 30(b) instead of Schedule B for line 21(b). These disbursements were for payroll and associated costs, reimbursements of travel expenses, printed materials, telemarketing and other expenses. The Committee coded \$390,000 of these disbursements as FEA on its database. Copies of the printed materials and the telemarketing script were unavailable for review. For the payroll expenses, there were no records indicating that less than 25% of the employees' compensated time was for federal activity. The auditors recommend that the Committee demonstrate that the payments from the federal account were for federal operating expenses or amend its reports.

FEA means four types of federal expenses that meet certain requirements: 1) voter registration activity within 120 days of the federal election ("Type I FEA"); 2) voter identification, generic campaign activity or get-out-the-vote ("GOTV") activity in connection with an election where a federal candidate is on the ballot ("Type II FEA"); 3) a public communication that refers to a clearly identified federal candidate and promotes or supports or attacks or opposes ("PASO") a federal candidate ("Type III FEA"); or 4) services of a state or local party committee employee who spends more than 25% of compensated time during a month on activities in connection with a federal election ("Type IV FEA"). See 2 U.S.C. § 431(20); 11 C.F.R. § 100.24.

We do not agree that there is sufficient information to conclude that all of these expenses were FEA. More information than we have here is needed to support an audit finding that an expense meets the requirements to be considered one of the four types of FEA. If the printed materials were public communications that referred to a clearly identified candidate for federal office, and promoted, supported, attacked, or opposed a candidate for that office, they would be Type III FEA. See 2 U.S.C. § 431(20); 11 C.F.R. § 100.24. But since the printed materials are not available for review, it is not possible to examine their form or content to determine whether they were public communications, or if so, whether they PASO-ed a clearly identified federal candidate. Without reviewing

the printed materials, it would also be difficult to determine whether they constituted Type II FEA for voter identification, generic campaign activity or GOTV, or whether any exemptions apply to them. See Legal Analysis Memorandum to the Audit Division, "Proposed Audit Division Recommendation Memorandum on the Kansas Republican Party (LRA 801)" (Oct. 5, 2010). Similarly, although the auditors note that the telemarketing expense was paid to the same vendor that had previously been paid for GOTV activity, there is no available script or other documentation indicating that the specific telemarketing that is the subject of the proposed finding was FEA; it is possible that the same vendor engaged in telemarketing that was for GOTV and telemarketing that was not FEA at all.

To address this situation, we recommend that the expenses for printed materials that are unavailable for review should not be categorized as FEA. Instead, the printed materials paid from the non-federal account should be treated as a separate new category of apparent federal expenses for which the Committee has not provided sufficient documentation to clarify the nature of the expense or to demonstrate that the expense was solely non-federal. This approach is consistent with this Office's advice concerning similar undocumented expenses in the Kansas Republican Party audit.

We also recommend a somewhat different approach than the proposed report with respect to the printed materials and telemarketing expenses paid from the federal account. With respect to the printed materials, we note that some of the costs that are the subject of this finding were coded in the Committee's internal records as FEA but were reported as operating expenses, and some were not coded as FEA at all. The finding might note, for instance, that the \$170,315 in printed materials costs that the Committee coded as FEA represents potential FEA because the Committee recorded it as such in its internal records, but that the Committee should clarify the discrepancy between its reports and its internal records. As for the \$70,032 in printing expenses not coded FEA at all, it is unclear to us why the auditors would assume that these expenses were for FEA when FEA is only one of several types of expenses, even within the broad category of federal expenses, which the materials could have been. With respect to the telemarketing expense (\$23,029), as noted, payments to the same vendor for GOTV are not sufficient indication that this telemarketing expense was also for GOTV.

With respect to payroll, we suggest that the proposed report explain why the auditors concluded that payroll and associated expenses paid from the non-federal account were related to employees who spent more than 25% of their compensated time each month in activities in connection with a federal election (Type IV FEA). You explained to us that where the Committee has provided affidavits that staff spent less than 25% of their time on federal activity, the auditors excluded those payroll costs. This information should be noted in the proposed report.

We agree that payroll costs paid from the federal account appear to be Type IV FEA. Payroll for employees who spend more than 25 percent of their compensated time in a given month on activity in connection with a federal election is Type IV FEA and

must be paid entirely with federal funds. 2 U.S.C. § 431(20)(A)(iv), 2 U.S.C. § 441i(b)(1). Payroll for employees who engage in some activity in connection with a Federal election in a given month, but spend 25 percent or less of their compensated time doing so, may be allocated as an administrative expense between a party committee's federal and non-federal accounts. 11 C.F.R. § 106.7(c)(1). Payroll for employees who engage in no activity in connection with a federal election in a given month may be paid entirely with funds permissible under state law. 11 C.F.R. § 300.33(d)(1). We agree that at this stage of the audit it is permissible to assume that if the Committee paid 100% of a payroll expense with federal funds, that expense was for Type IV FEA and should be reported as such. The Committee's reporting would be correct only if those payroll expenses reported as line 21(b) operating expenses were for expenses that the Committee could have allocated, or paid entirely with non-federal funds, but chose not to. However, we understand that thus far, the Committee has not provided documentation such as a log or affidavits demonstrating that the payroll costs paid from the federal account related to staff who spent less than 25% of their time on activities in connection with a federal election. Moreover, we understand some of these expenses were coded in the Committee's internal records as FEA and were not reported as such. The Committee should be given the opportunity to explain the discrepancies between its internal records and its reporting.

The chart provided by the Audit staff lists other expenses paid with 100% federal funds that were coded as FEA on the Committee's database including per diem (\$3,050), equipment (\$36,933), travel (\$38,192) and miscellaneous (\$3,702). The chart also lists expenses that were not coded as FEA including travel (\$61,500) and state convention and other events (\$31,341). We suggest that the finding provide more information about these expenses and why the auditors concluded they were FEA.

Specifically, determining whether travel and per diem costs were FEA would depend upon what activities the individuals were doing when they incurred these expenses and whether their activities were related to a clearly identified federal candidate. For the travel and per diem expenses coded as FEA by the Committee, we suggest that the finding note that these expenses were potential FEA, but the Committee should clarify the discrepancy between its reports and its internal records. However, we question whether there is any basis to conclude that travel costs not coded as FEA by the Committee were also FEA rather than federal operating expenses or allocable administrative costs.

Equipment costs also might or might not be FEA depending upon the type of equipment and how the equipment was used. Again, since the Committee coded the equipment costs as FEA, the finding should note that these costs were potentially FEA and give the Committee the opportunity to explain the discrepancy between its records and its reports. Similarly, the miscellaneous expenses coded as FEA were potential FEA depending on the nature of the expenses.

We do not agree, however, that expenses described on the spreadsheet as state convention and other events were necessarily FEA. Expenses for a state party political

convention, meeting or conference are exceptions to the definition of FEA. 11 C.F.R. § 100.24(c)(3). You informed us that there was no external documentation or samples to confirm that these expenses were for the state convention and that previous payments to the same vendor were for McCain Palin yard signs. But we note that yard signs are similar to the kinds of signs commonly waved by delegates to state and national political conventions. Assuming that these payments were to a printer of signs, we do not believe the mere fact that other expenses to the same vendor were for yard signs provides a sufficient basis for determining that these particular expenses were not for expenses associated with a state convention. Therefore, we recommend that you do not include these expenses in the finding as potential FEA.

Finally, we suggest that the proposed report provide more information about the expenses paid from the non-federal account categorized as voter identification costs. The spreadsheet you provided indicates a payment of \$19,000 to "National Republican" on April 25, 2008 for Voter ID and states that the Committee's records indicated "volunteer connect." The spreadsheet notes that this expense was considered FEA because it was for voter identification and was incurred within the FEA period for voter identification (March 15, 2008-November 4, 2008). In order to pay this expense as a non-federal expense, the Committee would have to demonstrate that it qualified under section 100.24(a)(1)(iii). Absent such a demonstration, the expense is potential Type II FEA and could be paid with a combination of federal and Levin funds. See 11 C.F.R. § 300.32(b)(1)(ii).