



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

October 31, 2005

MEMORANDUM

TO: ROBERT W. BIERSACK  
PRESS OFFICER  
PRESS OFFICE

FROM: JOSEPH F. STOLTZ *ACF J.F.S.*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON  
THE DOLE NORTH CAROLINA VICTORY COMMITTEE INC.

Attached please find a copy of the final audit report on the Dole North Carolina Victory Committee Inc., which was approved by the Commission on October 7, 2005.

Informational copies of the report have been received by all parties involved and the report may be released to the public on November 1, 2005.

Attachment as stated

cc: Office of General Counsel  
Office of Public Disclosure  
Reports Analysis Division  
FEC Library  
Web Manager



# Report of the Audit Division on the Dole North Carolina Victory Committee Inc.

May 31, 2002 – December 31, 2002

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## 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.<sup>1</sup> 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 any of the matters discussed in this report.

## About the Committee (p. 3)

The Dole North Carolina Victory Committee Inc. is a fundraising representative for several 2002 events with fundraising participants Dole for Senate Committee Inc. and North Carolina Republican Executive Committee. For more information, see the chart on the Committee Organization, p.3.

## Financial Activity (p. 3)

- **Receipts**

○ Contributions from Individuals	\$ 2,371,384
○ Contributions from Political Committees	170,316
○ Transfers from Other Party Committees	41,300
○ All Other Receipts	<u>426</u>
○ <b>Total Receipts</b>	<b>\$ 2,583,426</b>
  
- **Disbursements**

○ Operating Expenditures	\$ 527,356
○ Transfers to Affiliates	1,899,468
○ All Other Disbursements	<u>76,250</u>
○ <b>Total Disbursements</b>	<b>\$ 2,503,074</b>

## Findings and Recommendations (p. 4)

- Receipt of Corporate Contributions/Timely Deposit of Contributions (Finding 1)
- Disclosure of Occupation/Name of Employer (Finding 2)

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<sup>1</sup> 2 U.S.C. §438(b).

**Report of the Audit Division  
on the  
Dole North Carolina Victory  
Committee Inc.**

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May 31, 2002 – December 31, 2002



# Table of Contents

	<b>Page</b>
<b>Part I. Background</b>	
Authority for Audit	1
Scope of Audit	1
Changes to the Law	1
Misappropriation of Committee Funds	1
<b>Part II. Overview of Committee</b>	
Committee Organization	3
Overview of Financial Activity	3
<b>Part III. Summaries</b>	
Findings and Recommendations	4
<b>Part IV. Findings and Recommendations</b>	
Finding 1. Receipt of Corporate Contributions/ Timely Deposit of Contributions	5
Finding 2. Disclosure of Occupation/Name of Employer	8

# Part I

## Background

### Authority for Audit

This report is based on an audit of the Dole North Carolina Victory Committee Inc. (DNCVC), 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 if 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

The audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts, and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

### Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for the period November 6, 2002, through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are primarily those that were in effect prior to November 6, 2002.

### Misappropriation of Committee Funds

During the period covered by the audit, the Assistant Treasurer of DNCVC, Earl Allen Haywood, wrote unauthorized checks from the committee's account designating himself as payee. The payments to Mr. Haywood were not reported or reported as postage expenses on original reports filed by DNCVC.

Mr. Haywood's duties included collecting and recording contributions to DNCVC, depositing the funds in the appropriate bank accounts, accounting for funds received by DNCVC, tracking all disbursements from DNCVC, and reporting this information to the Commission.

DNCVC retained the services of an outside consultant to determine the extent of the misappropriation and to file amended reports with the Commission. That review identified a total of \$70,750 in misappropriated funds during 2002<sup>2</sup>. No additional amounts were noted during the audit. Mr. Haywood pleaded guilty to the resulting criminal charges.

Amended reports were filed prior to DNCVC being notified of the Commission's audit. The audit compared the corrected reports to the financial records.

In communications with the Commission, DNCVC legal Counsel has taken the position that Mr. Haywood was hired by DNCVC for the sole purpose of insuring proper accounting, bookkeeping, and reporting to the Commission of the Committee's receipts and disbursements. Counsel further states that the DNCVC relied upon Mr. Haywood's reputation and had therefore taken all reasonable steps in establishing proper internal controls based upon that reputation.

Regardless of Mr. Haywood's reputation, in the opinion of the Audit Staff, the lack of basic internal controls (e.g. separation of duties) and oversight by DNCVC created an environment that contributed to the misappropriation of funds and the misreporting to the Commission.

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<sup>2</sup> In 2003 Mr. Haywood misappropriated an additional \$104,001.

## Part II

### Overview of Committee Committee Organization

<b>Important Dates</b>	<b>Dole North Carolina Victory Inc.</b>
• Date of Registration	May 31, 2002
• Audit Coverage	May 31, 2002 – December 31, 2002
<b>Headquarters</b>	Alexandria, Virginia
<b>Bank Information</b>	
• Bank Depositories	2
• Bank Accounts	2 Accounts (1 Checking; 1 Sweep)
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Mr. Mike Mitchell
• Treasurer During Period Covered by Audit	Mr. Mike Mitchell
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ May 31, 2002</b>	<b>\$ 0</b>
○ Contributions from Individuals	\$ 2,371,384
○ Contributions from Political Committees	170,316
○ Transfers from Other Party Committees	41,300
○ All Other Receipts	426
<b>Total Receipts</b>	<b>\$ 2,583,426</b>
○ Operating Expenditures	\$ 527,356
○ Transfers to Affiliates	1,899,468
○ All Other Disbursements	76,250
<b>Total Disbursements</b>	<b>\$ 2,503,074</b>
<b>Cash on hand @ December 31, 2002</b>	<b>\$ 80,352</b>

## **Part III**

### **Summaries**

#### **Findings and Recommendations**

##### **Finding 1. Receipt of Prohibited Contributions/Timely Deposit of Contributions**

DNCVC received 55 contribution checks totaling \$104,720 dated between April and November 2002, which were not deposited until 2003. Thirty-one of these contributions totaling \$81,320 were verified as being from corporations. In response to the interim audit report DNCVC reiterated its position that it was not responsible for returning the contributions because Mr. Haywood stole the proceeds and its reliance on his reputation constituted adequate internal controls. (For more detail, see p. 5)

##### **Finding 2. Disclosure of Occupation/Name of Employer**

A review of receipts indicated that DNCVC did not disclose the occupation and/or name of employer for 421, or 29%, of the contributions from individuals itemized on its disclosure reports. The required information for these items was not maintained in DNCVC's records; however, subsequent to the exit conference DNCVC staff obtained the missing information for 189 of the 421 errors. In response to the interim audit report, DNCVC filed amended reports that included most of the information they had obtained. (For more detail, see p. 8)



## Part IV

# Findings and Recommendations

### Finding 1. Prohibited Contributions/Timely Deposit of Contributions

#### Summary

DNCVC received 55 contribution checks totaling \$104,720 dated between April and November 2002, which were not deposited until 2003. Thirty-one of these contributions totaling \$81,320 were verified as being from corporations. In response to the interim audit report DNCVC reiterated its position that it was not responsible for returning the contributions because Mr. Haywood stole the proceeds and its reliance on his reputation constituted adequate internal controls.

#### Legal Standards

**A. Receipt of Prohibited Corporate Contributions.** Political committees may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

**B. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or

- Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

### C. Contributions from Limited Liability Companies (LLCs)

- Section 110.1(g)(1) of the Code of Federal Regulations defines a “limited liability company” (LLC) as a business entity that is recognized as a limited liability company under the laws of the state in which it is established.
- Section 110.1(g)(2) states that a contribution by an LLC that elects to be treated as a partnership by the Internal Revenue Service pursuant to 26 CFR 301.7701-3, or does not elect treatment as either a partnership or a corporation pursuant to that section, shall be considered a contribution from a partnership pursuant to 11 CFR 110.1(e).
- Section 110.1(g)(3) states that an LLC that elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 CFR 301.7701-3, or an LLC with publicly-traded shares shall be considered a corporation pursuant to 11 CFR Part 114.
- Section 110.1(g)(4) states that a contribution by an LLC with a single natural person member that does not elect to be treated as a corporation by the Internal Revenue Service pursuant to 26 CFR 301.7701-3 shall be attributed only to that single member.
- Section 110.1(g)(5) states, in part, that an LLC that does not elect to be treated as a corporation by the Internal Revenue Service shall, at the time it makes a contribution, provide information to the recipient committee as to how the contribution is to be attributed, and affirm to the recipient committee that it is eligible to make the contribution.

### Facts and Analysis

On its amended reports covering the first half of 2003, DNCVC reported the receipt of numerous contributions, many from business entities. The Audit staff reviewed contributions deposited into DNCVC’s bank accounts and determined that 55 contribution checks, totaling \$104,720, dated between April and November 2002, were apparently held for many months before being deposited into a DNCVC account in January and April 2003. Verification with the appropriate Secretary of State offices revealed that 31 of the 55 items, totaling \$81,320, were corporate contributions.

These 31 corporate checks ranged in amount from \$25 to \$25,000. It should be noted that 12 of the 31 checks totaling \$18,150 were made out to DNCVC and that 18 checks totaling \$62,670 were made out to Dole Victory Committee. Additionally, there was one check with no payee. The Dole Victory Committee was a different joint fundraising committee headquartered in Washington, DC affiliated with Senator Dole and the National Republican Senatorial Committee. It is not clear whether these checks were

intended for the other committee with a similar name or were the result of the contributors using an abbreviated payee. If the checks were meant for the other committee it is not clear how they came into the possession of the DNCVC.<sup>3</sup> These contributions were not transmitted to any other committees or joint fundraising participants and contribution refunds were not issued. Included in the 12 contributor checks made out to DNCVC were two from one corporation totaling \$9,075 (\$9,000 + \$75). Included in the 18 checks made out to Dole Victory Committee were two from a corporation totaling \$10,000 (\$1,000 + \$9,000), a \$10,000 corporate check, and a \$25,000 check from another corporation.

Among the 31 apparent corporate contributions were three totaling \$800 from Limited Liability Companies (LLCs). No documentation was located within DNCVC files to establish the permissibility of these contributions. As noted above, an LLC must provide information to the committee that it is eligible to make such contributions.

Further, North Carolina State Law prohibits corporate contributions except from "...independent, non-profit corporations that promote social, educational, or political ideas, which are limited to \$4,000 per candidate campaign or other political committee per primary, second primary, and general election."<sup>4</sup> None of these corporate contributions were acceptable to any of the joint fundraising participants.

As discussed above in the Part I (Background), the DNCVC Assistant Treasurer, Mr. Haywood, wrote unauthorized disbursements to himself during the period covered by the audit. In 2003, shortly after these contributions were deposited, he wrote additional unauthorized checks to himself totaling \$104,001, according to 2003 DNCVC reports. This matter was discussed with DNCVC officials at an end of fieldwork meeting and they stated that they did not know how Mr. Haywood obtained these contribution checks, especially the ones payable to Dole Victory Committee. They added that as far as they were concerned, these checks were never intended for DNCVC and therefore DNCVC should not be responsible for making contribution refunds. When the Audit staff pointed out that at least 12 of the 31 checks were made out to DNCVC and that all 31 were deposited into a DNCVC bank account, DNCVC officials responded that they should not be held accountable for Mr. Haywood's actions because he had held these checks for his embezzlement scheme and that by the time these checks were deposited, the joint fundraising activities had concluded.

### **Interim Audit Report Recommendation**

The Audit staff recommended that DNCVC provide evidence that the 31 contributions totaling \$81,320 were not prohibited. Regarding the three contributions from LLCs, such documentation was to include a statement from each LLC or a copy of an IRS form 8832 (Entity Classification Election) indicating that it had not elected to be treated as a corporation by the Internal Revenue Service and was therefore eligible to make such a contribution. Absent such evidence, DNCVC was to issue refunds and document such

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<sup>3</sup> According to DNCVC representatives, Mr. Haywood did not have any association with the Dole Victory Committee.

<sup>4</sup> Campaign Finance Laws 2002 (Federal Election Commission)

refunds by submitting copies of the front and back of each refund check negotiated by the contributor. If funds were not available to make the necessary refunds, then the refund amount due was to be disclosed on Schedule D (Debts and Obligations) until funds became available to make the refunds. It was further recommended that, if necessary, DNCVC should have sought the return of funds previously disbursed to the participants in order to execute the refunds.

### **Committee Response and Audit Staff Assessment**

In response to the interim audit report, DNCVC reiterated its position that the acceptance, failure to report and subsequent embezzlement of the prohibited contributions was the sole responsibility of Mr. Haywood. The response further stated that if refunds are required, he should be responsible for making them. DNCVC claimed that its reliance on Mr. Haywood's reputation constituted sufficient internal controls to safeguard the contributions, fulfill the committee's obligation to its contributors, and ensure compliance with the Commission's regulations. DNCVC further stated that nothing in the Act or the regulations required it to maintain any specific level of internal controls and that it was being treated unfairly given that it was the victim of the crime.

The Audit staff agrees that the regulations do not require specific internal controls, however, the regulations do require that a committee file accurate and complete reports, pursuant to 11 CFR§104. DNCVC chose to rely on one person's reputation and honesty rather than establishing a system where duties were segregated to provide checks and balances. That reliance allowed the embezzlement to occur and inaccurate disclosure reports to be filed.

The Audit staff notes that DNCVC recovered \$19,001 in May of 2003 and that the United States District Court for the District of Columbia ordered Mr. Haywood to make restitution to DNCVC in the amount of \$155,750, the remainder of the stolen funds. The amount of the ordered restitution included the contributions identified as prohibited by the Audit staff. Mr. Haywood made a payment of \$50,000 that was allocated between DNCVC and a second committee that Mr. Haywood embezzled funds from. Of this amount, \$18,950 was allocated to the other committee (100% of the amount taken) and \$31,050 was allocated to the DNCVC. The DNCVC reported the receipt of the \$31,050 in its July 2005 Quarterly Report.

The Audit staff concludes that DNCVC still bears the responsibility for the return of the prohibited contributions.

## **Finding 2. Disclosure of Occupation/Name of Employer**

### **Summary**

A review of receipts indicated that DNCVC did not disclose the occupation and/or name of employer for 421, or 29%, of the contributions from individuals itemized on its disclosure reports. The required information for these items was not maintained in DNCVC's records; however, subsequent to the exit conference DNCVC staff obtained

the missing information for 189 of the 421 errors. In response to the interim audit report, DNCVC filed amended reports that included most of the information they had obtained.

### **Legal Standard**

**A. Required Information for Contributions from Individuals.** For each itemized contribution from an individual, the committee must provide the contributor's occupation and the name of his or her employer. 2 U.S.C. §434(b)(3)(A).

**B. Best Efforts Ensures Compliance.** When the treasurer of a political committee shows that the committee used best efforts (see below) to obtain, maintain, and submit the information required by the Act, the committee's reports and records will be considered in compliance with the Act. 2 U.S.C. §432(h)(2)(i).

**C. Definition of Best Efforts.** The treasurer and the committee will be considered to have used "best efforts" if the committee satisfied all of the following criteria:

- All written solicitations for contributions included:
  - A clear request for the contributor's full name, mailing address, occupation, and name of employer; and
  - The statement that such reporting is required by Federal law.
- Within 30 days after the receipt of the contribution, the treasurer made at least one effort to obtain the missing information, in either a written request or a documented oral request.
- The treasurer reported any contributor information that, although not initially provided by the contributor, was obtained in a follow-up communication or was contained in the committee's records or in prior reports that the committee filed during the same two-year election cycle. 11 CFR §104.7(b).

### **Facts and Analysis**

The Audit staff reviewed all contributions from individuals itemized on Schedules A and determined that DNCVC did not adequately disclose the occupation and/or name of employer for 421, or 29%, of the contributions from individuals itemized on its disclosure reports. The 421 items totaled \$634,743.

Most of the original written solicitations for contributions were provided by DNCVC officials and the Audit staff determined that the required information was requested on these materials. DNCVC was unable to demonstrate that it had made any follow-up requests for the missing information. Subsequent to the exit conference, DNCVC obtained the missing occupation and /or name of employer information for 189 of the 421 items. Most of this information was retrieved from the files of DNCVC's fundraising partners. At the exit conference, this matter was presented to DNCVC officials who stated that they would submit corrective amendments.

### **Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that DNCVC amend its reports to disclose the missing information. In response to the interim audit report, DNCVC filed amended reports which included most of the information they had obtained.