



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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September 17, 2002

**MEMORANDUM**

**TO:** The Commissioners

**THROUGH:** James A. Pehrkon  
Staff Director

Robert J. Costa  
Deputy Staff Director

**FROM:** Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Martin L. Favin  
Audit Manager

**SUBJECT:** Report of the Audit Division on the Reform Party 2000 Convention Committee (RPCC)

**AGENDA ITEM**  
For Meeting of: 9-26-02

Attached for your review and approval is the subject report, along with the legal analysis prepared by the Office of General Counsel. The Audit Division has revised the report in response to the legal analysis. A copy of RPCC's narrative response to the Preliminary Audit Report is also included for your information.

**Recommendation**

The Audit staff recommends that the report be approved.

It is requested that this report be placed on the Open Session agenda for September 26, 2002. If you have any questions, please contact Marty Favin at extension 1200.

**Attachments:**

- Report of the Audit Division on the Reform Party 2000 Convention Committee
- Narrative Response to the Preliminary Audit Report dated August 7, 2002
- Legal Analysis prepared by the Office of General Counsel dated September 13, 2002



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION  
ON THE  
REFORM PARTY 2000 CONVENTION COMMITTEE**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of the Reform Party 2000 Convention Committee (RPCC) to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code that directs the Federal Election Commission (the Commission) to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention is held.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if RPCC has materially complied with the limitations, prohibitions and disclosure requirements of the Act.

**B. AUDIT COVERAGE**

The audit covered the period from December 6, 1999 through September 30, 2000. In addition, certain financial transactions and disclosure reports filed with the Commission were reviewed through December 31, 2001 to determine any amounts due to the United States Treasury. RPCC reported an opening cash balance of \$ -0-, total receipts of \$2,559,632, total disbursements of \$2,536,790, and a closing cash balance on September 30, 2000 of \$22,842.<sup>1</sup>

**C. COMMITTEE ORGANIZATION**

RPCC registered with the Commission on October 5, 1999, as a national committee of the Reform Party. Ronald Young was the Treasurer for the period from

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<sup>1</sup> Figures shown for total receipts, disbursements and closing cash were materially misstated. See Finding II.A.

inception through February 12, 2000.<sup>2</sup> Gerald M. Moan, who succeeded Mr. Young as of February 12, 2000, is the current Treasurer. At various times during the period audited, the RPCC maintained offices in Fieldale, VA and Tucson, AZ; records are maintained in Tucson, AZ and Washington, D.C.

The Committee used 8 bank accounts to handle its financial activity. From these accounts it made approximately 120 disbursements. RPCC received \$2,522,690 in federal funds that represented its entitlement established at 26 U.S.C. §9008(b)(2), approximately \$29,000 in interest income, and approximately \$7,800 in offsets to operating expenditures/other receipts.

#### **D. AUDIT SCOPE AND PROCEDURES**

The audit of RPCC included testing of the following general categories as appropriate:

1. the receipt of contributions from prohibited sources;
2. the receipt of contributions or loans in excess of the statutory limitations;
3. proper disclosure of receipts including the itemization of receipts when required, as well as, the completeness and accuracy of the information disclosed (Finding II. A.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (Finding II. A.);
5. proper disclosure of RPCC debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to RPCC bank records (Finding II. A.);
7. adequate record keeping for RPCC transactions;
8. accuracy of the Statement of Net Outstanding Convention Expenses filed by RPCC to disclose its financial condition (Finding III.A.);

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<sup>2</sup> During the period from December 28, 1999 to early January 2000, Mr. Young was temporarily removed as Treasurer. He was duly re-appointed by the National Reform Party Chair, Mr. Gargan, in early January 2000.

9. compliance with requirements concerning expenditures for convention expenses (Finding III.B.);
10. RPCC's compliance with spending limitations; and,
11. other audit procedures that were deemed necessary in the situation (Finding II.B.).

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

## **II. AUDIT FINDINGS AND RECOMMENDATIONS**

### **A. MISSTATEMENT OF FINANCIAL ACTIVITY**

Sections 434(b)(1), (2), and (4) of Title 2 of the United States Code state, in part, that a political committee shall disclose the amount of cash on hand at the beginning of the reporting period and the total amount of all receipts and the total amount of all disbursements for the reporting period and calendar year.

Section 434(b)(5)(A) of Title 2 of the United States Code requires each report under this section to disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount and purpose of such operating expenditure.

Section 104.3(b)(4)(i)(A) and (B) of Title 11 of the Code of Federal Regulations defines "purpose" as a brief statement or description of why the disbursement was made, and gives examples of acceptable descriptions.

Sections 434(b)(3)(F) and (G) of Title 2 of the United States Code require each report under this section to disclose the identification of each person who provides a rebate; refund; or other offset to operating expenditures; or, any dividend; interest; or other receipt, to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipt.

The Audit staff's reconciliation of RPCC's reported activity to its bank records revealed material misstatements with respect to reports filed covering the period January 1, 2000 through September 30, 2000. Specifically, reported receipts were understated by \$2,033,262, reported disbursements were understated by \$2,023,129, and cash at September 30, 2000 was understated by \$10,133. The understatement of receipts resulted mainly from not reporting \$2,033,496 in funds returned to the RPCC that were

held in the Registry of the Court<sup>3</sup> (see Finding III.B). The understatement of disbursements resulted primarily from approximately \$1,411,000 in payments to the Registry of the Court not being reported, and \$614,000 in disbursements that were either not reported or the amount reported was net of any rebate received. The understatement in closing cash resulted from the above-described reporting irregularities. Workpapers detailing these irregularities were provided to RPCC officials during audit fieldwork and on February 3, 2001, RPCC filed amended disclosure reports that corrected the public record.

In the Preliminary Audit Report (PAR) the Audit staff recommended no further action.

#### **B. COMMINGLING OF FUNDS**

Section 432(b)(3) of Title 2 of the United States Code states that all funds of a political committee shall be segregated from, and may not be commingled with, the personal funds of any individual.

Section 432(h) of Title 2 of the United States Code states, in relevant part, that each political committee shall maintain at least one checking account and such other accounts as the committee determines at a depository designated by such committee. All receipts of such committee shall be deposited in such accounts. No disbursements may be made (other than petty cash disbursements) by such committee except by check drawn on such accounts.

Ronald Young, former Treasurer of the RPCC, incurred convention expenses during 1999 and early 2000 and was reimbursed \$11,500 with two checks.<sup>4</sup> Both checks, which represented reimbursement to Mr. Young for convention expenses incurred (primarily for the reimbursement of travel expenses), were apparently deposited into an account at First Citizens Bank used for business purposes by Mr. Young. However, no commingling occurred with respect to these two transactions.

On January 9, 2000 Mr. Young issued a check to himself, drawn on an RPCC account, in the amount of \$10,000 as an advance for expenses. In addition, on January 13, 2000, Mr. Young issued another check to himself in the amount of \$30,000, also described as an advance for expenses. Both of these checks were deposited into Mr. Young's business account in January 2000.

Based on the records currently available regarding Mr. Young's expenses, funds reimbursed and funds advanced, it appears that the deposit by Mr. Young of the \$10,000 and \$30,000 checks into an account he used for business purposes represents

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<sup>3</sup> *Reform Party of U.S. v. Gargan*, 89 F.Supp.2d 751 (W.D.Va. 2000).

<sup>4</sup> One reimbursement check for \$6,500 was dated December 10, 1999; the other for \$5,000 was dated January 9, 2000.

commingling of RPCC funds with personal funds. Also, checks were issued from this account to pay RPCC expenses rather than from a checking account of the RPCC. In one instance, documentation indicated that \$10,500 in currency was given to a vendor, Professionally Yours, when the check drawn on Mr. Young's account was voided. This payment is viewed as undocumented by the Audit staff (see Section III.3.). In another instance, \$35,000 was withdrawn on February 16, 2000; on February 28, 2000 \$37,813.88 was deposited. Included in this deposit was a \$35,000 cashiers check payable to "R. L. Young" and a cashiers check in the amount of \$1,800 payable to Green Valley Farms (records available indicated Mr. Young has an ownership interest in Green Valley Farms). According to a copy of this cashier's check, it was purchased by Thomas L. & April D. Whited, the latter appears to be a signatory for Professionally Yours on a written agreement to provide professional services to RPCC.<sup>5</sup>

In summary, of the \$40,000 (\$10,000 + \$30,000) Mr. Young advanced to himself, it appears that the funds were used as follows: an undocumented \$10,500 cash payment to Professionally Yours; two payments sent to the Registry of the Court, totaling \$21,624 (\$13,617 + \$8,007); and, the remaining funds apparently being used for payments of travel and other convention-related expenses, many by cashier's check. Some of these transactions may be related to a \$23,000 withdrawal that was posted to Mr. Young's account on February 29, 2000, for which there is no documentation.

Our analysis of the records currently available, consisting of bank statements, copies of certain cancelled checks and deposits, expense documentation and worksheets prepared by Mr. Young, indicate that RPCC funds deposited into Mr. Young's business account, although commingled with his funds, were not used to fund Mr. Young's personal or business expenses. However, without all cancelled checks, deposit documentation and other debit and credit memoranda pertaining to his account, plus adequate documentation relative to the currency transaction(s), it is not possible to determine conclusively whether RPCC funds were used to fund Mr. Young's personal or business expenses.

In the PAR the Audit staff recommended that the RPCC obtain and provide the following:

- (a) All cancelled checks (both sides), debit and credit advices or memoranda, and deposit slips (including copies of items deposited) for Mr. Young's account for the period January 1, 2000 through April 30, 2000;
- (b) Photocopies of the pages of the check register(s) for Mr. Young's account for the period January 1, 2000 through April 30, 2000;

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<sup>5</sup> According to deposition testimony provided by Mr. Young related to *Reform Party of U.S. v. Gargan*, Sue Harris DeBauche, Mr. Young's wife, was also a regional representative on the Reform Party's Executive Committee during January 2000. She also worked on a mailing and agenda for the emergency Las Vegas convention (see Finding III.B.) apparently in conjunction with Professionally Yours. Mr. Young confirmed that Ms. DeBauche was going to be paid by Professionally Yours.

- (c) An explanation, including receipted bills and/or other documentary evidence relative to the disposition of the \$23,000 withdrawal posted on February 29, 2000 to Mr. Young's account;
- (d) An explanation, including invoices, statements and other documentary evidence pertaining to the reason(s) for payment and deposit of the \$1,800 cashier's check discussed above;
- (e) An explanation, including a statement from the recipient, pertaining to the \$10,500 currency transaction; and,
- (f) Any additional information pertaining to the operation of Mr. Young's account not already provided or otherwise requested in items (a) through (e) above.

In response to the PAR, RPCC Counsel stated that neither RPCC nor the Reform Party have the power to produce the information requested. He further stated that "[w]e have, however, forwarded your request to Mr. Young and assume that he will satisfy your concerns directly." Although no further documentation was provided with the response to the PAR, it is the opinion of the Audit staff that it is unlikely that any material amount is unaccounted for.

### **III. AUDIT FINDINGS AND RECOMMENDATIONS - AMOUNTS DUE TO THE UNITED STATES TREASURY**

#### **A. DETERMINATION OF NET OUTSTANDING CONVENTION EXPENSES**

Section 9008.10(g) of Title 11 of the Code of Federal Regulations states, in part, a convention committee shall file, no later than sixty days after the last day of the convention, a statement of that committee's net outstanding convention expenses.

The 2000 Reform Party Convention ended on August 13, 2000. RPCC filed a Statement of Net Outstanding Convention Expenses, as of September 27, 2000. The Audit staff reviewed financial activity through June 30, 2002, analyzed winding down costs, and prepared the figures shown on the next page.

**REFORM PARTY 2000 CONVENTION COMMITTEE  
STATEMENT OF NET OUTSTANDING CONVENTION EXPENSES  
AS OF SEPTEMBER 27, 2000  
AS CALCULATED JUNE 30, 2002  
AUDIT ANALYSIS**

**Assets**

Cash in Bank	\$79,949
Capital Assets	\$0
Other Assets	\$0
Accounts Receivable (a)	<u>\$54,851</u>
Total Assets	\$134,800

**Obligations**

Accounts Payable (b)	\$241,380
Winding Down Costs 9/28/00-6/30/02 (c)	\$2,787
Total Obligations	<u>\$244,167</u>

<b>Net Outstanding Convention Expenses- Deficit</b>	<b><u>\$-109,367</u></b>
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**Statement of Net Outstanding Convention Expenses Footnotes**

- (a) All of these amounts have been collected and it appears that there are no other anticipated receivables due to RPCC as of June 30, 2002.
- (b) Of the \$241,380 in accounts payable as of September 27, 2000, \$159,376 relates to legal fees still owed by RPCC as of June 30, 2002.
- (c) No additional winding down costs are anticipated.



Although the RPCC's financial position, as shown above, reflects a deficit, it did not approach the limitation provided for national nominating convention spending (\$13,512,000). Further, the RPCC did not receive funds in excess of its entitlement nor were there any unspent funds. See 11 CFR §§9008.12(b)(1) and (5).

#### **B. PAYMENTS FOR OTHER THAN CONVENTION EXPENSES**

Section 9008.12(b)(4) of Title 11 of the Code of Federal Regulations states that if the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.6 was used for any purposes other than the purposes authorized at 11 CFR 9008.7 or was not documented in accordance with 11 CFR 9008.10, it shall notify the national committee of the amount improperly used or documented and the national committee shall pay to the Secretary an amount equal to the amount specified.

Additionally, 11 CFR 9008.7(a)(1) provides, in part, that any payment made under 11 CFR 9008.6 shall be used only for the following purposes: Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments.

In defining "convention expenses," 11 CFR 9008.7(a)(4) provides that such expenses include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to: salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention; expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space; expenses incurred in securing a convention city and facility; expenses for printing convention programs, a journal of proceedings, agenda, tickets, badges, passes, and other similar publications; and administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention.

#### Background

At the Reform Party National Convention, held on July 23-25, 1999 in Dearborn, Michigan, John J. Gargan was elected to succeed Russell Verney as National Party Chair and Ronald Young was elected to succeed Michael Morris as National Treasurer, both effective January 1, 2000. A meeting of the Executive Committee of the Reform Party was convened on September 1, 1999, during which Long Beach, California

was chosen as the site for the Reform Party's 2000 Presidential Nominating Convention. Also at that meeting, Mr. Young was appointed Chair and Treasurer of the 2000 convention committee, a special committee of the Reform Party formed to carry out the business of effectuating plans for the 2000 Presidential Nominating Convention. During November 1999, the Commission certified to the Secretary of Treasury \$2,468,921 in funds to be paid to the Reform Party 2000 Convention Committee. These funds were deposited into a RPCC depository in December 1999.<sup>6</sup>

Between November 1999 and February 12, 2000, several meetings of the Executive Committee of the Reform Party, as well as the National Committee of the Reform Party occurred. Topics discussed included the site of the presidential nominating convention, removal of officers, and scheduling a National Committee meeting. A list of some of these meetings and related occurrences appear below:

- November 29, 1999: National Committee meeting (conducted by mail ballot) at which St. Paul, Minnesota was selected as the site for the 2000 presidential nominating convention. Certain members of the Reform Party disputed whether a quorum existed.
- December 16, 1999: Executive Committee meeting at which a motion was passed directing Mr. Young to sign a contract with the Long Beach Convention Center by December 23, 1999.
- December 28, 1999: Executive Committee meeting at which Mr. Young was removed as Treasurer of the Reform Party's 2000 Convention Committee and was replaced by Mr. Moan.<sup>7</sup>
- January 9, 2000: Executive Committee meeting at which, after much discussion, the creation of an independent site selection committee was approved as a compromise between Mr. Gargan and other members of the Executive Committee.
- January 18, 2000: Executive Committee meeting at which remaining members present, voted 6-1 to hold a National Committee meeting in Nashville, Tennessee on February 12, 2000. Mr. Gargan, Mr. Young, and Ms. DeBauche left the meeting prior to this vote.
- January 19, 2000: Reform Party National Committee members were informed, via mail, of the date and time of the Nashville National Committee meeting. This notice also included a proposed agenda that included the recall of Mr. Gargan, Mr. Moan, and Mr. Young.

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<sup>6</sup> Additional federal funds in the amount of \$53,769 were forwarded to RPCC and deposited in June 2000.

<sup>7</sup> Mr. Young was duly re-appointed convention committee treasurer by the National Party Chair, Mr. Gargan, in early January 2000.

- February 6, 2000: Mr. Gargan issued a call, by memorandum dated January 31, 2000, for an emergency National Convention of the Reform Party to be held in Las Vegas, Nevada from March 17-19, 2000.
- February 10, 2000: Mr. Young filed suit in the U.S. District Court for the Western District of Virginia, Harrisonburg Division, seeking, among other things, for the court to order Russell Verney, Gerald Moan, and others aligned with Pat Choate to cease interfering with the administration of Mr. Gargan and Mr. Young in their operation of the Reform Party.
- February 12, 2000: National Committee meeting at which Mr. Gargan was removed as Chairman, and Ronald Young was removed as both National Treasurer and the Reform Party's Convention Chair/Treasurer. Mr. Choate was elected to the position of Interim Chair and Mr. McLaughlin was elected to the position of Interim Treasurer. Mr. Moan's December 28, 1999 appointment as Convention Committee Chair/Treasurer was reaffirmed. Lastly, the National Committee voted not to hold the convention called by Mr. Gargan in Las Vegas, and it ratified the Executive Committee's decision to hold the Party's 2000 presidential nominating convention in Long Beach, California.
- February 16, 2000: Reform Party of the U.S.A., Pat Choate, Interim Chair filed suit against Mr. Gargan and Mr. Young in the U.S. District Court for the Western District of Virginia, Lynchburg Division, seeking, among other things, for the Court to enjoin Mr. Gargan and Mr. Young from interfering with the operations of the Reform Party and filed a motion for a temporary restraining order seeking the return of \$2,500,000 in federal funds.
- February 24, 2000: The Court ordered Mr. Gargan and Mr. Young to pay into the Registry of the Court approximately \$2,500,000 in federal funds received until a decision as to the rightful leadership of the Reform Party could be determined at a trial.
- March 27, 2000: The Court ordered that Mr. Gargan and Mr. Young were enjoined from acting as officers or authorized representatives of the Reform Party, including the Convention Committee, and to immediately cease and desist from any and all activities in such representative capacity. Funds held in the Registry of the Court were to be released to the custody of Gerald Moan, as Chairman of the Convention Committee of the Reform Party. The Court further ordered Mr. Gargan and Mr. Young to turn over all documentation regarding convention funding and disbursements made by the RPCC (or on its behalf) to the Reform Party of the United States of America, which is responsible under the Presidential Election Campaign

Fund Act to provide all such information to the Commission for any post-convention audit.

The Audit staff reviewed the records made available during fieldwork and identified activities whose related expenses did not appear to be convention expenses – expenses incurred by or on behalf of a political party’s national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities.

Emergency National Convention – Las Vegas March 17-19, 2000

In early February 2000, Reform Party Chairman Jack Gargan issued an official call for an emergency National Convention and an official call for a National Committee meeting. According to a photocopy of an e-mail containing the text of the letter (apparently dated 2-6-00, and postmarked 2-8-00), Mr. Gargan’s letter, in part, stated:

“I call this an emergency because I feel the present EC [Reform Party Executive Committee] is doing all they can to keep the business of this party from being grassroots and inclusive of all of you. They have usurped my position and my meeting calls at every turn and have attempted to tie my hands and those of Ronn Young, your elected national treasurer, to the point that none of our new ideas can even be discussed. It is time you and I get down to business and stop this foolishness.”

Evidently, planning for the Las Vegas convention began as early as December 15, 1999. Corporate Planners Unlimited, business event coordinators (see III.B.2.), in an invoice dated April 1, 2000, referenced the Las Vegas site, and listed coordination dates of December 15, 1999 through April 5, 2000. As noted above, at the Nashville meeting, held February 12, 2000, the National Committee of the Reform Party voted not to hold the Las Vegas convention called by Mr. Gargan. This action was addressed in the Court decision, issued March 27, 2000, wherein Judge Moon concluded:

“Any action taken by Gargan or Young, allegedly acting as National Officers of the Reform Party (with regard to the Las Vegas convention or otherwise), since their removal as National Officers on February 12, 2000, were *ultra vires*, and without legal effect. Moreover, this Court finds that the Las Vegas convention, held on March 17-19, 2000, was not a duly-constituted or properly convened Convention of the Reform Party of the United States of America, and any and all actions taken there are null and void as they relate to the Reform Party.”

Therefore, it does not appear that the Las Vegas convention was related to any degree with the conduct of the Reform Party's national nominating convention or process. As such, any expenses associated with the Las Vegas convention would not be convention expenses. Payments of expenses identified as related to the emergency Las Vegas convention, as well as other payments for other than convention expenses are discussed below.

#### 1. Payments to The Performance Group

On December 15, 1999, RPCC entered into a consulting agreement with The Performance Group (TPG)<sup>8</sup> whereby TPG would provide consulting and representational services to RPCC in the support, promotion and advancement of initiatives of the RPCC with specific regard to the 2000 Presidential Convention of the Reform Party of the United States of America. Specifically, the following activities to be performed by TPG were enumerated in the agreement:

- (1) Develop a business plan for the Reform Party Convention 2000, including a work schedule, budget and organizational framework.
- (2) Assist in the creation of an objective site selection process.
- (3) Assist in the development of a Host Committee and support its planning.
- (4) Provide support in negotiating a proper contract with a Host Committee for the venue that is selected for the convention.
- (5) Provide for structure of convention committees and review their functions and activities.
- (6) Assist in the creation of a security team and the security plan for the convention.
- (7) Provide for a system of credentials for convention delegates, guests, and the media.
- (8) Guide the Committee [RPCC] in compliance with all Federal Election Commission rules and regulations governing the Convention.

The consulting agreement commenced on December 20, 1999 for a period of nine months through September 20, 2000. Compensation in the form of consulting fees was to be paid as follows: \$100,000 on January 1, 2000, \$200,000 on February 1, 2000, and \$70,000 on August 1, 2000. Further, a reserve account of not less than \$500,000 for the purpose of funding expenses beyond the retainer was required. RPCC paid \$300,000 in consulting fees and also funded a \$500,000 reserve account. This \$500,000, plus interest, was turned over to the Registry of the Court pursuant to the Court's February 24, 2000 order.

Information provided during fieldwork included the consulting agreement, invoices, copies of bank statements for TPG's operating account and reserve account,

<sup>8</sup> TPG was a joint venture between Murray & Murray, Inc., TKC International, Inc., and The Heartland Group. Daniel H. Murray, Robert J. Keefe and Micheal (sic.) Foudy, respectively signed the agreement on behalf of these three entities.

copies of correspondence, meeting notes, and draft work products. In addition, Mr. Daniel H. Murray was deposed on March 8 and March 14, 2000 in relation to the litigation – *Reform Party of the United States of America et al vs. John J. Gargan et al.* Mr. Ronald Young was also deposed in relation to that case on February 29 and March 1, 2000. The Audit staff reviewed these depositions.

Our review focused on whether the activities enumerated in the agreement were undertaken by TPG, given (a) Mssrs. Gargan and Young were removed as officers on February 12, 2000 and (b) RPCC filed suit on February 16, 2000 seeking, among other things, a temporary restraining order directing Mssrs. Gargan and Young to deposit the FECA funds into the Registry of the Court, or into a bank account approved by the Court, and (c) TPG was a named defendant. Documents reviewed were dated between December 1999 and March 2000.

Regarding the eight specific tasks listed above, documentary information provided indicated that few had been completed. As to item (5), documents reviewed included a January 10, 2000 meeting agenda to lay out a positive plan – establishment of time line for the convention, host city obligations, labor and ethics; a draft action agenda dated January 6, 2000; and an outline for the Las Vegas Convention Notebook, dated March 9, 2000. Correspondence reviewed included references to fundraising sources, media coverage and convention planning.

A review of TPG's bank account activity identified payments, totaling \$16,000 to two law firms on behalf of Mr. Young. Related correspondence indicated that Mr. Young assured a reimbursement would be forthcoming; bank statements through February 29, 2000 did not reflect any reimbursement transaction(s). Also paid from the TPG account were four checks for \$5,000 each to cover travel and related expenses for individuals to attend the Las Vegas Convention, not considered the national nominating convention.

Finally, TPG activities were covered in both the Young and Murray depositions, information provided by Mr. Young's was either general in nature or not conclusive. For example, when questioned about the business plan for the nominating convention (item (1) above), Mr. Young replied that he had seen a first draft but nothing else since; concerning the creation of an objective site selection process, Mr. Young commented that "[w]ell, just in their approach to getting a site and contacting the people, to me, is an overall approach of getting the Request for Proposals out, this kind of thing, just kind of setting the framework and educating us." Mr. Young related that TPG had prepared a document on site selection but did not produce it at the deposition. He added that it would be provided later. A document fitting that description was not contained in the materials provided. However, a nine page "Convention Plan" was prepared by Professionally Yours.<sup>9</sup> The invoice, dated November 30, 1999, listed preparation of a convention plan, schedule and requests for proposals at a cost of \$9,500. As part of his

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<sup>9</sup> See footnote 5/.

deposition, Mr. Young was asked if he had requested TPG to stop working on the Las Vegas convention after the temporary restraining order was in place in mid-February in an attempt to get some of the \$300,000 paid to TPG returned to RPCC. He responded in the negative and stated that it was essential that TPG's work continued, otherwise they never would have been able to go forward with the professional type of convention that they wanted to have.

Mr. Murray, both as an individual and representing Murray & Murray (part of the TPG joint venture – see footnote 8 on page 12), was deposed on March 8 and March 14, 2000. In response to questions concerning what he had done to earn his part of the fee paid to TPG, Mr. Murray responded

“Work on an administrative plan to figure what staffs, how to get office space, you need to get to the city about month ahead of time, volunteers, try to -- a lot, most of this is verbal, some of it in there is open questions. Making sure that the time line will fit, talking with Mr. Keefe and Mr. Foudy about what are they going to do, what kind of media supplies are they going to need, are people going to get credentialed before, talk about electronic voting, how to accommodate that, talk communications, will the host city provide what most host cities do.”

Mr. Murray also responded to questions concerning what the two other members of TPG (Mr. Keefe and Mr. Foudy) did to earn their share of the fee. Mr. Foudy, in charge of media, prepared a Media Plan of about 8-10 pages and lined up television coverage. Mr. Murray acknowledged that television coverage “...is difficult to nail down because we don't know what city ... There are a lot of gaps in final things, but there is – we do as much generic work as we can.” Mr. Keefe was working on credentials for the convention, and according to Mr. Murray, was “...endlessly in meetings and discussions with people about how to set up various credentials ...” The Media Plan was not made available; correspondence and e-mails concerning credentials were made available, but not a credential planning document or similar work product.

In response to the exit conference, Mr. Ronald Young, former Treasurer of the RPCC, referred in general to the TPG contract and stated that “[t]he Performance Group was contracted to assist with ALL [emphasis in original] planning and preparation for the 2000 Presidential Nominating Convention.”

On February 16, 2000 a suit was filed seeking, among other things, to recover funds under the control of Gargan and Young. TPG, along with its members, were also named as defendants. Funds, amounting to slightly over \$500,000 in the TPG reserve account, were forwarded to the Registry of the Court on February 25, 2000. Admittedly, TPG was involved in planning and preparations relative to the Las Vegas convention, held March 17-19, 2000; however, the Las Vegas convention was expressly

“not authorized” by the Reform Party’s National Committee during the February 12<sup>th</sup> Nashville meeting, nor was it intended to be a nominating convention.

The section of the suit relating to TPG (and its associated joint venturers) was bifurcated from the original suit and moved to the Circuit Court for Fairfax County (Virginia). The motion filed by Counsel for RPCC against TPG contended that in return for the \$300,000 paid to TPG, the defendants “...agreed to and were obligated to provide [RPCC] with the services necessary to establish the organization and infrastructure to enable [RPCC] to conduct a Presidential Nominating Convention in the summer of 2000.” The jury ruled in favor of the defendants in December 2001.

In conclusion, TPG’s agreement specified a nine-month duration through September 20, 2000 and planning for the presidential nominating convention could have occurred through mid-February 2000. However, little evidence was provided that established whether TPG had performed the services specified in the agreement and it appears that some of the services provided by TPG related to the Las Vegas Emergency National Convention, not to the official nominating convention held in Long Beach, California. As a result, the Audit staff was unable to determine that the \$300,000 paid to TPG qualifies as a permissible use of federal funds. Since RPCC has not met the documentation requirements of 11 CFR 9008.10, the \$300,000 paid to TPG represents payment of other than convention expenses and is subject to a pro rata repayment pursuant to 11 CFR 9008.12.

In the PAR, the Audit staff recommended that the RPCC provide documentation to demonstrate that the \$300,000 paid to TPG was a disbursement incurred by or on behalf of a political party’s national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Absent such evidence, the PAR explained that the Audit staff would recommend that the Commission determine that \$295,623 ( $\$300,000 \times .985411$ )<sup>10</sup> is repayable to the United States Treasury pursuant to 26 U.S.C. §9008(h) and 11 CFR §9008.12.

In response to the PAR, RPCC Counsel stated that the Party and RPCC, through the current RPCC Treasurer, Gerald Moan, believe that the \$300,000 payment was improper and as a result, sought its return in a lawsuit in the Circuit Court for Fairfax County, Virginia. He added that they took the position that the payment of the \$300,000 to TPG was for purposes other than the payment of legitimate convention expenses. He concluded that since “...we agree with the audit staff’s conclusion on that issue, no additional documentation will be forthcoming...”

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<sup>10</sup>  $\text{Repayment Ratio} = \frac{\text{Total Federal Funds received thru Dec. 31, 2000}}{\text{Total deposits thru Dec. 31, 2000}} = \frac{\$2,522,690}{\$2,560,039} = 98.5411\%$



Recommendation #1

The Audit staff recommends that the Commission determine that \$295,623 (\$300,000 x .985411) is repayable to the United States Treasury pursuant to 26 U.S.C. §9008(h) and 11 CFR §9008.12.

2. Payment to Corporate Planners Unlimited

Corporate Planners Unlimited (CPU), according to a Letter of Appointment dated November 4, 1999, was the sole meeting management agent acting on behalf of the RPCC for the purpose of securing hotels, convention space and related vendor contracts as directed for the presidential nominating convention. The original Letter included location options of San Diego, CA, Anaheim, CA and Las Vegas, NV for the period August 10-13, 2000. This document was signed by Ronald Young, the RPCC treasurer at the time, but was not signed by a representative of CPU. An addendum to the original Letter was signed by both Mr. Young and the CEO of CPU in early December 1999 and provided for "...the planning of their 2000 Convention and Conference requirements as directed." No locations or dates were specified; this addendum appeared to be an extension and contained a \$10,000 cancellation clause. By letter dated January 10, 2000, Mr. Young informed CPU to "...go ahead with the Planning Convention we discussed. Please check out Las Vegas and Chicago in March and see what you can do. This should give us plenty of time to prepare for our Nominating Convention to be held later in the summer." As discussed above, the Las Vegas convention was not related to any degree with the conduct of the Reform Party's national nominating convention, consequently expenses related to the Las Vegas convention are not convention expenses.

On February 8, 2000 a check in the amount of \$150,000 was issued to CPU. Subsequently, on March 21, 2000, \$92,000 was deposited into the Registry of the Court, apparently representing unexpended funds from the \$150,000. CPU issued an invoice, dated April 1, 2000, wherein it specified fees of \$42,960 (including a \$10,000 cancellation fee) related to planning for the presidential nominating convention. Also included on this invoice were fees associated with an event in Las Vegas on March 15-18, 2000, coordination for which covered the period December 15, 1999 through April 5, 2000. The fees (\$42,960) associated with planning for the presidential nominating convention are convention related, fees (\$15,040) associated with the Las Vegas convention are not. Mr. Young in his response acknowledged that CPU performed work related to both the national nominating convention and the Las Vegas convention. He also stated that "[t]he \$58,000 retained by Corporation [sic] Planners and the breakdown of expenses should be questioned as it is felt the amount retained is more than that which was actually earned according to the contract."

In the Audit staff's opinion, of the net \$58,000 (\$150,000 - \$92,000) paid to CPU, \$15,040 (\$58,000 - \$42,960) related to work performed on the emergency Las Vegas convention and is viewed as not related with the conduct of the Reform Party's

national nominating convention held in Long Beach, California and therefore, subject to a pro rata repayment to the U.S. Treasury pursuant to 11 CFR §9008.12.

In the PAR, the Audit staff recommended that the RPCC provide documentation demonstrating that the expenses, totaling \$15,040, related to the Las Vegas convention were convention expenses. Absent such evidence, the PAR explained that the Audit staff would recommend that the Commission determine that \$14,821 ( $\$15,040 \times .985411$ ) is repayable to the United States Treasury pursuant to 26 U.S.C. §9008(h) and 11 CFR §9008.12.

In response to the PAR, RPCC Counsel stated that RPCC, through Gerald Moan, "...has consistently taken the position that the funds paid to Corporate Planners [CPU] were not legitimate expenses for the Party's Presidential Nominating Convention for the reasons set out in the Audit Report. In that we agree with the audit staff's determination in this regard, no additional documentation ...will be forthcoming."

### Recommendation #2

The Audit staff recommends that the Commission determine that \$14,821 ( $\$15,040 \times .985411$ ) is repayable to the United States Treasury pursuant to 26 U.S.C. §9008(h) and 11 CFR §9008.12.

### 3. Miscellaneous Undocumented or Non-Convention-related Expenses

The Audit staff identified 7 disbursements in payment of expenses that either do not appear to be convention expenses or are considered undocumented. In the case of 3 payments, totaling \$1,907, the expenses were associated with the creation and mailing of a newsletter entitled *All About Reform*, an official publication from the Reform Party USA. The newsletter, dated February 7, 2000, consisted of 8 pages and was labeled as "Volume 1, Issue 1." It contained a survey and a solicitation of funds on behalf of the RPUSA [Reform Party of the United States of America], not the RPCC. There is a short article on page one about Presidential debates that mentions the 2000 nominating convention. Otherwise, the newsletter contained articles and material related to the Reform Party and its operations. In response to the exit conference, Mr. Young related that the newsletters were prepared to send to members of the Reform Party and to give out in Nashville and Las Vegas. The bulk of the newsletters went to the Communications Chairman for distribution and 500 were mailed to Nashville for distribution.

The fourth item, according to Mr. Young, was a \$500 disbursement to the Reform Party of New Hampshire was "...for travel expenses for a Performance Group representative who had media contacts to promote the Reform party Nominating process (the Reform Party Primary) at the time the Democrats and Republicans were receiving nationwide attention at the New Hampshire Primary. No contract was signed. A [detailed] accounting was requested but none received." The fifth item was a \$550

payment to Jim Mangia, National Secretary of the Reform Party, apparently intended to pay for a mailing related to the Emergency National Convention held in Las Vegas. Mr. Young, in his response, explained that the purpose was "...to mail the Notice and Agenda of the Las Vegas Planning Convention. Mangia did not do the mailing and instead used the money to reimburse himself for the 2-12-00 meeting held in Nashville."<sup>11</sup>

The sixth disbursement, a check for \$10,000 made payable to "Gersten, Savage, et al" for legal services related to a lawsuit filed by Mr. Young on February 10, 2000. According to Mr. Young, the lawsuit was filed because "...after 6 months, no transition had been made of any of the party records to me or to the new National Chairman, Jack Gargan. I could not prepare adequately for the Nominating convention without membership databases, website, reflectors, media contacts, historical convention records, etc., and after repeated requests and demands of the previous administration, it was necessary to file a lawsuit against the previous administration (about 12 Reform Party executives) including former Chairman, Russ Verney, to obtain the party records."

As to the above-described 6 payments, the \$500 payment purportedly related to media operations involving the New Hampshire primary appears inadequately documented. The remaining five items, do not, based on the records and explanations made available, appear to be convention expenses and the stated purposes indicate that the disbursements were made on behalf of the Reform Party of the United States of America, or Mr. Young, not the RPCC.

Finally, the seventh item in question was described by Mr. Young as a cash payment of \$10,500 made to Professionally Yours, a firm that provided professional services to RPCC. Apparently, when a check from Mr. Young's account, issued January 31, 2000, was voided,<sup>12</sup> Mr. Young gave cash in return for the check. The documentation presented by Mr. Young does not appear to be a receipted bill, it does not bear the signature or some other acknowledgment initiated by the intended payee that payment was rendered and received. Thus, it is being viewed as undocumented.

Accordingly, of the \$23,457 discussed above, \$12,457 (\$1,907 + \$550 + \$10,000) is viewed as not related to any degree with the conduct of the Reform Party's national nominating convention, and the remaining \$11,000 (\$500 + \$10,500) is not documented. Therefore, \$23,457 is subject to a pro rata repayment to the United States Treasury pursuant to 11 CFR §9008.12.

In the PAR, the Audit staff recommended that the RPCC provide evidence to demonstrate that the aforementioned \$12,457 in expenses are convention expenses, and provide information, to include a signed statement from the person(s) who received the \$11,000, to document that the expenditures were qualified convention expenses. Absent such evidence, the PAR explained that the Audit staff would recommend that the

<sup>11</sup> A review of reports filed by the Reform Party of the United States of America, Inc. for the period January 1, 2000 through June 30, 2000 did not identify a \$550 receipt from RPCC.

<sup>12</sup> This check did not clear Mr. Young's account as of April 30, 2000.

Commission determine that \$23,114 ( $\$23,457 \times .985411$ ) is repayable to the United States Treasury pursuant to 26 U.S.C. §9008(h) and 11 CFR §9008.12.

In response to the PAR, RPCC Counsel stated that “[t]he miscellaneous, undocumented or non-convention related expenses set out in the draft Report, which the audit staff concludes were improper, are once again expenses made by Mr. Young, the propriety of which we question. In that we have no principled basis to contest the audit staff’s findings on those expenses, we must conclude that the staff’s conclusions in that regard are correct and therefore, no additional documentation ...will be forthcoming.”

Recommendation #3

The Audit staff recommends that the Commission determine that \$23,114 ( $\$23,457 \times .985411$ ) is repayable to the United States Treasury pursuant to 26 U.S.C. §9008(h) and 11 CFR §9008.12.

**IV. SUMMARY OF AMOUNTS DUE TO THE UNITED STATES TREASURY**

Finding III.B.1. Payments to the Performance Group	\$295,623
Finding III.B.2. Payments to Corporate Planners Unlimited	\$ 14,821
Finding III.B.3. Miscellaneous Undocumented or Non-Convention-related Expenses	<u>\$ 23,114</u>
TOTAL	<u>\$333,558</u>

Rec'd in Audit  
Dv. 8/7/2002  
MLF

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August 7, 2002

**BY HAND DELIVERY**

Joseph F. Stoltz  
Assistant Staff Director  
Audit Division  
Federal Election Commission  
Washington, D.C. 20463

Dear Mr. Stoltz:

Please accept this as a response to your letter of June 6, 2002 to Gerald M. Moan, Treasurer of the Reform Party 2000 Convention Committee.

This firm has essentially served as the general counsel for the Reform Party in connection with its election activities in the 2000 Presidential Election. In addition, I spent significant time with the FEC auditor on site and have as much personal knowledge of the relevant facts as anyone. Much of what I know has been communicated orally to FEC staff on several occasions. We understand that a written response to the Preliminary Report of the FEC Audit Division is required, and this is that response.

We are in agreement with the contents of the background section of the Report. There is no recommended activity required in connection with the public filings at the Commission and, therefore, we have no comment on Recommendation #1.

As you know, there were substantial disagreements within the Party involving the activities of Ronn Young as the Treasurer of the Convention Committee for several months. We agree with the factual assertions that Mr. Young improperly commingled funds in violation of the relevant sections of the United States Code. Our view is that Mr. Young's commingling, while improper, does not appear to have caused any loss to the Party or its Convention Committee. As to Recommendation #2, this is to advise you that

Joseph F. Stoltz  
August 7, 2002  
Page No. 2

the Party and its Convention Committee have no power to produce the information requested in Recommendation #2. We have, however, forwarded your request to Mr. Young and assume that he will satisfy your concerns directly.

The Preliminary Audit Report identifies several payments made by the Convention Committee through its then Treasurer, Ronn Young, which your Audit Report concludes were improper in that the funds were spent for purposes other than conducting a presidential nominating convention or convention related activities. The largest question expenditure was a payment of \$300,000 to a joint venture known as the Performance Group. The audit staff recommends that we provide documentation demonstrating that the \$300,000 payment was a disbursement incurred by or on behalf of the Party's National Committee or Convention Committee for the purpose of conducting a Presidential Nominating Convention or convention-related activities. As you know, the Party and its Convention Committee, through Gerald Moan, believes that the \$300,000 payment was improper and as a result, sought its return in a lawsuit in the Circuit Court for Fairfax County, Virginia. The position of the Convention Committee, in that lawsuit, was that the payment of the \$300,000 to the Performance Group was for purposes other than the payment of legitimate convention expenses. In that we agree with the audit staff's conclusion on that issue, no additional documentation will be forthcoming as suggested in Recommendation #3.

Similarly, the Convention Committee, through Mr. Moan, has consistently taken the position that the funds paid to Corporate Planners were not legitimate expenses for the Party's Presidential Nominating Convention for the reasons set out in the Audit Report. In that we agree with the audit staff's determination in this regard, no additional documentation as set forth in Recommendation #4 will be forthcoming.

The miscellaneous, undocumented or non-convention related expenses set out in the draft Report, which the audit staff concludes were improper, are once again expenses made by Mr. Young, the propriety of which we question. In that we have no

Joseph F. Stoltz  
August 7, 2002  
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principled basis to contest the audit staff's findings on those expenses, we must conclude that the staff's conclusions in that regard are correct and, therefore, no additional documentation as suggested by Recommendation #5 will be forthcoming.

If there are any further questions you have, please contact me directly.

Sincerely,



Dale A. Coater



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

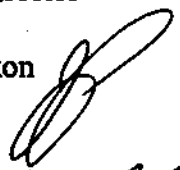
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AUDIT DIVISION


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September 13, 2002

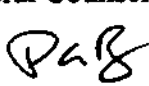
**MEMORANDUM**


TO: Robert J. Costa  
Deputy Staff Director

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence H. Norton   
General Counsel

Gregory R. Baker   
Acting Associate General Counsel

Peter G. Blumberg   
Acting Assistant General Counsel

Beth N. Mizuno   
Attorney

SUBJECT: Final Audit Report on Reform Party 2000 Convention Committee (LRA #571)

The Office of General Counsel has reviewed the proposed Final Audit Report ("Report") on Reform Party 2000 Convention Committee (the "Committee") submitted to this Office on August 15, 2002. The Preliminary Audit Report asked the Committee to provide the Audit Division with documentation to establish that certain expenses were convention-related, documentation relating to what appeared to be the commingling of the Committee's funds and the personal funds of the Committee's Treasurer and documentation for miscellaneous expenses. The Committee responded that it could produce no additional documents and conceded that it incurred non-convention-related expenses. The Final Audit Report reflects the Committee's concessions.

The Final Audit Report states that there is no evidence that the individual who commingled Committee funds used any Committee funds for his personal expenses. However, the Report notes that without access to and review of the individual's financial records, it is not possible to determine the issue conclusively. This Office suggests that the Audit Division state whether it intends to continue efforts to obtain the records and pursue the matter, or whether it



Memorandum to Robert J. Costa  
Proposed Final Audit Report  
Reform Party 2000 Convention Committee (LRA #571)  
Page 2

believes that pursuing the matter would not be an appropriate application of Commission resources and explain the basis for its decision.

Otherwise, this Office agrees with the recommendations and findings in the proposed report and we have no further comments.<sup>1</sup> If you have any questions, please contact Beth N. Mizuno, the attorney assigned to this audit.

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<sup>1</sup> This Office recommends that the Commission consider the proposed Final Audit Report in open session because this document does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4. If, however, the Commission wishes to discuss the likelihood that the Committee will make the repayment and whether and how the Commission should pursue repayment, this Office recommends that those matters be discussed in closed session because they deal with possible litigation strategy and the exercise of agency discretion.