




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 26, 2006

MEMORANDUM

TO: ROBERT W. BIERSACK
PRESS OFFICER
PRESS OFFICE

FROM: JOSEPH F. STOLTZ 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON THE
2004 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

Attached please find a copy of the audit report on the 2004 Democratic National Convention Committee, Inc. which was approved by the Commission on August 3, 2006.

All parties involved have received informational copies of the report and the report may be released to the public.

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 2004 Democratic National Convention Committee, Inc.

September 30, 2002 – December 31, 2004

Why the Audit Was Done

Federal law requires the Commission to audit the national committee of a party who receives payments for presidential nominating conventions.¹ The audit examines the receipt and use federal funds and whether the committee otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

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. 2)

The 2004 Democratic National Convention Committee, Inc. (DNCC) was responsible for the day to day arrangements and operations of the Democratic Presidential nominating convention. The DNCC is headquartered in Washington, DC. For more information, see chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

- **Receipts**
 - Federal Funds \$ 14,924,000
 - Loans Received 753,214
 - Offsets to Convention Expenditures 197,721
 - **Total Receipts** \$ 15,874,935
- **Disbursements**
 - Convention Expenditures \$ 15,097,469
 - Loan Repayments 753,214
 - **Total Disbursements** \$ 15,850,683

Findings and Recommendations (p. 3)

- Net Outstanding Convention Expenses - Surplus (Finding 1)
- Receipt of an Impermissible Contribution (Finding 2)
- Inadequate Disclosure – Statement of Organization (Finding 3)

¹ 26 U.S.C. §9008(g).

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Part I

Background

Authority for Audit

This report is based on an audit of the 2004 Democratic National Convention Committee, Inc. (DNCC), undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9008(g) of Title 26 of the United States Code. That section directs 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 nomination convention is held.

Scope of Audit

This audit examined:

1. The disclosure of receipts and loans.
2. The disclosure of disbursements, debts and obligations.
3. The recordkeeping process and completeness of records.
4. The consistency between reported figures and bank records.
5. The accuracy of the Statement of Net Outstanding Convention Expenses.
6. The committee's compliance with requirements concerning expenditures for convention expenses.
7. Other committee operations necessary to the review.

Inventory of Committee Records

The Audit staff routinely conducts an inventory of committee records before it begins the audit fieldwork. The DNCC records were materially complete and the fieldwork began immediately.

Part II

Overview of Committee

Committee Organization

Important Dates	DNCC
• Date of Registration	August 16, 2002
• Audit Coverage	September 30, 2002 – December 31, 2004
Headquarters	Washington, DC
Bank Information	
• Bank Depositories	Five
• Bank Accounts	Seven Checking Accounts
Treasurer	
• Treasurer When Audit Was Conducted	Andrew Tobias
• Treasurer During Period Covered by Audit	Andrew Tobias
Management Information	
• 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)

Cash on hand @ September 30, 2002	\$ 0
Receipts	
○ Federal Funds	\$ 14,924,000
○ Loans Received	753,214
○ Offsets to Convention Expenditures	197,721
Total Receipts	\$ 15,874,935
Disbursements	
○ Convention Expenditures	\$ 15,097,469
○ Loan Repayments	753,214
Total Disbursements	\$ 15,850,683
Cash on hand @ December 31, 2004	\$ 24,252

Part III

Summaries

Findings and Recommendations

Finding 1. Net Outstanding Convention Expenses - Surplus

The DNCC received \$14,924,000 to finance the Democratic National Convention. The preliminary audit report presented a Statement of Net Outstanding Convention Expenses (NOCE), as calculated by the Audit staff, which showed a surplus or unspent funds of \$8,621. In response to the preliminary audit report, the DNCC has submitted two NOCE statements. The latter NOCE reflected unspent funds of \$14,002 and included \$14,000 in estimated wind down expenses for legal fees. Since all legal matters have been resolved, the Commission determined that \$28,002 is repayable to the United States Treasury. (For more detail, see p. 4)

Finding 2. Receipt of an Impermissible Contribution

The cost of a biographical film (\$207,000), produced for use at the Democratic National Convention, was split between the DNCC, the Democratic National Committee (DNC) and Kerry-Edwards 2004, Inc. (KE04). The Commission considered whether the allocation percentages used by the three committees were reasonable. After considering the available information the Commission concluded that the cost of the film had been reasonably allocated. (For more details, see p. 6)

Finding 3. Inadequate Disclosure – Statement of Organization

The DNCC failed to adequately disclose certain depositories on its original Statement of Organization. During the audit, it filed an amended Statement of Organization that disclosed all the depositories. The Audit staff recommended the DNCC provide any comments it may yet have relative to this matter. In response to the preliminary audit report recommendation, the DNCC acknowledged it did not timely disclose bank depository information and indicated it had taken steps to ensure that such disclosures are made timely. (For more detail, see p. 9)

Amount Owed to the U.S. Treasury

• Finding 1	Net Outstanding Convention Expenses - Surplus	\$ 28,002
	Less Payment Received 1/19/06	13,453
	Net Amount Owed to the U.S. Treasury	\$ 14,549

Part IV

Findings and Recommendations

Finding 1. Net Outstanding Convention Expenses - Surplus

Summary

The DNCC received \$14,924,000 to finance the Democratic National Convention. The preliminary audit report presented a Statement of Net Outstanding Convention Expenses (NOCE), as calculated by the Audit staff, which showed a surplus or unspent funds of \$8,621. In response to the preliminary audit report, the DNCC has submitted two NOCE statements. The latter NOCE reflected unspent funds of \$14,002 and included \$14,000 in estimated wind down expenses for legal fees. Since all legal matters have been resolved, the Commission determined that \$28,002 is repayable to the United States Treasury.

Legal Standard

Entitlement to Payments From the Fund. The national committee of a major party shall be entitled to payments with respect to any presidential nominating convention, in amounts that, in the aggregate shall not exceed \$4,000,000, as adjusted by the Consumer Price Index. The major party entitlement for the 2004 nominating convention was \$14,924,000. 26 U.S.C §9008(b)(1).

Unspent Funds - Any portion of the entitlement that remains unspent after all convention expenses have been paid shall be returned to the Secretary of the Treasury. The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the ninth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. The interim repayment shall be made no later than 30 calendar days after the end of the ninth month following the last day of the convention. 11 CFR §9008.12(b)(5).

Repayment Determination Procedures. The Commission will follow the same repayment determination procedures, and the committee has the same rights and obligations as are provided for repayment determinations involving publicly funded candidates under 11 CFR 9007.2(c) through (h). 11 CFR §9008.12(c).

Net Outstanding Convention Expenses (NOCE). 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". This statement must contain, among other things:

- The total of all committee assets, including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
- The total of all outstanding obligations for qualified convention expenses; and
- An estimate of necessary winding-down costs. 11 CFR §9008.10.

Facts and Analysis

The 2004 Democratic National Convention ended July 29, 2004. The DNCC filed a Statement of Net Outstanding Convention Expenses as of September 12, 2004. In the preliminary audit report, the Audit staff's NOCE reflected a surplus of \$8,621. The figures below reflect the DNCC's NOCE prepared using actual transactions except that windown costs of \$14,000 have been excluded as directed by the Commission.

Statement of Net Outstanding Convention Expenses As of September 12, 2004 Prepared on March 31, 2006

Assets

Cash on Hand	\$645,044	
Accounts Receivable	<u>154,447</u>	
Total Assets		\$799,491

Obligations

Accounts Payable for Qualified Convention Expenses	\$ 211,978	
Actual Wind Down Expenses	<u>559,511</u>	
Total Obligations		<u>\$771,489</u>

Net Outstanding Convention Expenses (Surplus) \$ 28,002²

The NOCE as calculated by the DNCC, and adjusted by the Audit staff, shows a surplus or an amount of unspent funds of \$28,002. Pursuant to 11 CFR §9008.12, the Committee shall make an interim repayment of unspent funds no later than 30 calendar days after the end of the ninth month following the last day of the convention. For the DNCC, this interim repayment was due May 30, 2005; however, no payment was made.

Preliminary Audit Report Recommendation and Committee Response

The Audit staff recommended that the DNCC provide documentation demonstrating that either: (a) no repayment of unspent funds is due, or (b) a lesser amount is due. The DNCC submitted two NOCE statements in response to the preliminary audit report. The first calculated an unspent funds balance of \$13,453 and included a check made payable to the U.S. Treasury in the same amount. The second increased the unspent funds amount to \$14,002. Both of these NOCE statements included estimated wind down expenses of \$14,000 for legal fees.

Audit Staff Analysis of the Committee's Response

After reviewing the DNCC's response to the preliminary audit report, the Audit staff updated its NOCE statement. The majority of the difference between DNCC's calculation and the calculation in the preliminary audit report calculation is due to voided checks totaling \$4,531 that had been classified as outstanding. A review of the checks

² There is a minor difference between the Audit staff's updated NOCE surplus (\$27,183) and the DNCC's NOCE surplus (\$28,002) of \$819. The Audit staff considers this difference immaterial.

indicates that they were properly voided. In addition, an unanticipated vendor refund of \$549 was received. The remaining difference of \$819 is not explained, but not material.

Recommendation

The Commission made a determination that unspent funds of \$28,002 are repayable to the U.S. Treasury.

Finding 2. Receipt of an Impermissible Contribution

Summary

The cost of a biographical film (\$207,000), produced for use at the Democratic National Convention, was split between the DNCC, the Democratic National Committee (DNC) and Kerry-Edwards 2004, Inc. (KE04). The Commission considered whether the allocation percentages used by the three committees were reasonable. After considering the available information the Commission concluded that the cost of the film had been reasonably allocated.

Legal Standard

Cost of Biographical Films. The convention committee is permitted to produce biographical films, or similar materials, of the candidate for nomination for use during the convention. However, if any other committee uses part or all of the films or similar materials, it shall pay the convention committee for the reasonably allocated cost of the films. 11 CFR §9008.7(a)(4)(xiii).

Payment of Convention Expenses. The convention committee shall receive all public funds for the purpose of defraying convention expenses. All expenditures on behalf of the national committee for convention expenses shall be made by the convention committee. 11 CFR §9008.3(a)(2).

Repayments. If the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, the national committee shall make a payment to the U.S. Treasury of the amount of such contributions. 11 CFR §9008.12(b)(3).

Facts and Analysis

The Audit staff reviewed the cost allocation of a biographical film, “A Remarkable Promise”, about Senator John Kerry. The DNCC showed the film during the 2004 Democratic National Convention. Both the DNC and KE04 represent that they utilized excerpts in ads. The cost of the film was allocated 29% to the DNC, 29% to KE04 and 42% to the DNCC.

The Commission considered whether the derivation of the allocation percentages was reasonable. It concluded that the cost of the biographical film had been reasonably allocated among the DNC, KE04 and the DNCC. As such, the DNCC did not receive an impermissible contribution from the DNC or KE04.

Finding 3. Inadequate Disclosure – Statement of Organization

Summary

The DNCC failed to adequately disclose certain depositories on its original Statement of Organization. During the audit, it filed an amended Statement of Organization that disclosed all the depositories. The Audit staff recommended the DNCC provide any comments it may yet have relative to this matter. In response to the preliminary audit report recommendation, the DNCC acknowledged it did not timely disclose bank depository information and indicated it had taken steps to ensure that such disclosures are made timely.

Legal Standard

Registration. Each convention committee established by a national committee shall register with the Commission on FEC Form 1 as a political committee. FEC Form 1 is the Statement of Organization. 11 CFR §§102.2(a) and 9008.3(b).

Contents. The Statement of Organization shall be signed by the treasurer and include a listing of all banks, safe deposit boxes, or other depositories used by the committee. 11 CFR §102.2(a)

Facts and Analysis

On August 12, 2002, the DNCC filed a Statement of Organization (the Statement) with the Commission. In the Statement, the DNCC listed one depository (NationsBank), which was the operating account. In 1998, NationsBank merged with Bank of America and assumed its name. The Statement did not reflect this name change, nor was an amendment filed to correct this matter. In addition, the Audit staff identified five additional depositories utilized by the DNCC for convention purposes that had not been disclosed on the Statement; one of which (Fleet Bank) also merged with Bank of America during the audit period.

At the Entrance Conference, the Audit staff discussed this matter with DNCC representatives. Shortly thereafter, the DNCC amended its Statement of Organization to disclose all the depositories; however, the name change had not been properly addressed.

Preliminary Audit Report Recommendation and Committee Response

The Audit staff recommended the DNCC provide any comments it may yet have relative to this matter. In its response to the preliminary audit report, the DNCC acknowledged it did not timely file an amended statement of organization to disclose the additional depositories. The DNCC states that although such an amendment had been prepared on its electronic filing software, for reasons unknown, this information was inadvertently not “uploaded” to the Commission. The response further notes that the DNCC has filed a miscellaneous report with the Commission to clarify the name changes with respect to Fleet Bank and Bank of America.