



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 30, 2003

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: JOSEPH F. STOLTZ *JFS*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON THE
AMERICANS FOR SOUND ENERGY POLICY

Attached please find a copy of the final audit report and related documents on the Americans For Sound Energy Policy that was approved by the Commission on June 19, 2003.

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



Report of the Audit Division On Americans for Sound Energy Policy

January 1, 1999 – December 31, 2000

Why the Audit Was Done

Federal law permits the Commission to conduct an audit and field investigation 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.¹ 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. 2)

Americans for Sound Energy Policy (AFSEP) is a non-connected political committee headquartered in Washington, DC. AFSEP achieved multi-candidate status on May 30, 2000. For more information, see the chart on the Committee Organization, p.2.

Financial Activity (p.2)

• Receipts	
○ From Individuals	\$58,275
○ From Political Committees	75,000
○ In-kind Contributions	14,332
○ Contribution Refund	2,500
○ Other Receipts	<u>9,000</u>
○ Total Receipts	\$159,107
• Disbursements	
○ Operating Expenses	\$133,959
○ In-kind Expenditures	<u>14,332</u>
○ Total Disbursements	\$148,291

Findings and Recommendations (p.3)

- Receipt of Apparent Prohibited Contributions (Finding 1)
- Misstatement of Financial Activity (Finding 2)
- Timely Deposit of Contributions (Finding 3)
- Disclosure of Disbursements (Finding 4)

¹ 2 U.S.C. §438(b).

Report of the Audit Division on Americans for Sound Energy Policy

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Part I

Background

Authority for Audit

This report is based on an audit of the Americans for Sound Energy Policy (AFSEP), 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 and other receipts.
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. The period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are those that were in effect during the audit period.

Part II

Overview of Committee

Committee Organization

Important Dates	
• Date of Registration	April 21, 1987
• Audit Coverage	January 1, 1999 – December 31, 2000
Headquarters	
Washington D.C.	
Bank Information	
• Bank Depositories	1
• Bank Accounts	1
Treasurers	
• Treasurer When Audit Was Conducted	Gregg D. Renkes
• Treasurer During Period Covered by Audit	Gregg D. Renkes
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	A consultant

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 1999	\$ 575
Receipts	
• Contributions from Individuals	\$58,275
• Contributions from Political Committees	75,000
• Other Receipts	11,500
• In-Kind Contributions	14,332
Total Receipts	\$159,107
Disbursements	
• Operating Disbursements	\$133,959
• In-Kind Expenditures	14,332
Total Disbursements	\$148,291
Cash on hand @ December 31, 2000	\$ 11,391

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Apparent Prohibited Contributions

The Audit staff identified ten contributions, totaling \$19,302, that appear to be illegal. Subsequent to the exit conference, AFSEP submitted copies of non-negotiated checks totaling \$10,500 to refund eight of these contributions. In response to the interim audit report, AFSEP contended that the remaining transactions (\$8,802) were not contributions. The Audit staff disagrees with this assessment. (For more details, see p. 4)

Finding 2. Misstatement of Financial Activity

A comparison of AFSEP's reported figures with its bank records revealed that AFSEP misstated its receipts and disbursements on its disclosure reports for calendar years 1999 and 2000, and its cash balances in 2000. In response to the interim audit report, AFSEP filed amended reports but substantial differences remain. (For more details, see p. 7)

Finding 3. Timely Deposit of Contributions

The Audit staff determined that 67% of the contributions from individuals and 66% of the contributions from political committees were not deposited within ten days of receipt, as required by law. In response to the interim audit report, AFSEP demonstrated that internal control procedures have been established and implemented to correct this problem. (For more details, see p. 8)

Finding 4. Disclosure of Disbursements

AFSEP failed to properly disclose 13% of its disbursements totaling \$30,673. The majority of the errors resulted from insufficient purposes for disbursements. In response to the interim audit report, AFSEP filed amended reports that correctly disclosed the disbursements. (For more details, see p. 9)

Part IV

Findings and Recommendations

Finding 1. Receipt of Apparent Prohibited Contributions

Summary

The Audit staff identified ten contributions totaling \$19,302 that appear to be illegal. Subsequent to the exit conference, AFSEP submitted copies of non-negotiated checks totaling \$10,500 to refund eight of these contributions. In response to the interim audit report, AFSEP contended that the remaining transactions (\$8,802) were not contributions. The Audit staff disagrees with this assessment.

Legal Standard

Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and
 - Foreign Nationals (including individuals who are not U.S. citizens and not lawfully admitted for permanent residence; foreign governments and foreign political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b)). 2 U.S.C. §§441b, 441c, 441e, and 441f.

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).

Facts and Analysis

The review of AFSEP's receipt records identified:

- Six contributions totaling \$8,000 from incorporated businesses,
- One check made payable to the Friends of Senator Frank Murkowski Committee for \$1,000 and deposited into the AFSEP bank account and,
- Three in-kind contributions totaling \$10,302 from corporations.

Corporations paying for dinners associated with AFSEP fundraising events made two of the prohibited in-kind contributions totaling at least \$8,802. AFSEP contends that these dinners were not committee events rather they were community events. As a result, they believe corporations could sponsor these dinners and they are not corporate in-kind contributions.

Information about the Dinners:

1999 Dinner

The AFSEP 1999 solicitation stated that AFSEP would "plan a dinner and reception" to be held the night before the AFSEP fundraising cruise. The Treasurer argued that this dinner was not political and not an AFSEP event. He stated "[t]his is a community dinner for the visiting members of Congress and those who have arrived in Ketchikan for the PAC event along with members of the local community..." The Audit staff disagrees that the dinner and reception were not AFSEP events because the AFSEP solicitation specifically identified "a dinner and reception" for the participants and gave no indication that another entity sponsored this event or that the event might have been a joint activity.

2000 Dinner

The AFSEP 2000 solicitation invited the possible participants to join Senator Murkowski who invited "Senate Majority Leader Trent Lott and House Speaker Dennis Hastert and Senators Kit Bond and Phil Gram ... for dinner in Ketchikan Friday evening and a special brunch Saturday morning." AFSEP does not acknowledge this dinner as political and argues that in order to participate in the AFSEP-sponsored brunch the following day it was necessary for attendees to arrive in Alaska the night before.

The solicitation specifies the necessary arrangements needed to ensure participation for both the dinner and the brunch; it makes no distinction between the two events. The Audit staff is of the opinion that the dinner is an AFSEP event for the same reasons mentioned above.

The Audit staff asked AFSEP numerous times to document the costs associated with these events. Subsequent to the exit conference, AFSEP submitted documentation of the total costs of each of the events and the corporations who paid for them. They did not submit information detailing what makes up the total costs.

AFSEP did not maintain a separate account for all the questionable contributions, nor did it maintain a sufficient bank balance to cover the refund of these contributions throughout the election cycle.

At the exit conference and in subsequent communications, the Audit staff detailed the possible prohibited contributions.

Following the exit conference, AFSEP submitted copies of non-negotiated refund checks totaling \$10,500.

Interim Audit Report Recommendations

The Audit staff recommended:

- That AFSEP submit documentation detailing the expenses of the 1999 and the 2000 Dinners;
- That AFSEP demonstrate that the \$8,802 (or other amount documented in response to the item above) paid by corporations for expenses associated with the 1999 and 2000 Dinners do not represent contributions or that AFSEP refund these contributions and provide evidence of the refunds (copies of the front and back of the negotiated refund check);
- If funds are not currently available to make the necessary refunds, that AFSEP disclose those contributions requiring refunds as debts on Schedule D (Debts and Obligations) until such time that funds become available to make the refunds; and
- That AFSEP supply copies of the front and back of the negotiated refund checks issued to date (\$10,500).

Committee Response to Recommendations and Audit Staff's Assessment

In response to the recommendation:

- AFSEP submitted copies (front and back) of refund checks totaling \$9,000.
- AFSEP did not submit the negotiated refund check for one \$1,500 check.
- AFSEP did not refund the cost of the dinners (\$8,802) to the corporations. It believes the cost of the dinners are not contributions to the committee. According to AFSEP, Senator Murkowski and his wife have hosted a charity fundraiser for Breast Cancer in Ketchikan, Alaska since 1993 and these dinners have occurred the night before the charity event since its inception in 1993. Furthermore, they assert participants had to arrive in Alaska the night before in order to participate in the events the following day. Lastly, AFSEP contends that only one-third (approximately) of those who attended the 1999 and the 2000 Dinners were participants in the AFSEP events that occurred the proceeding day, the rest were members of the local community or members of Congress and had these AFSEP participants not attended, the Dinners would have still been held.

The AFSEP solicitation is the only invitation or reference to the Dinners in any of the materials submitted to date. The solicitations suggest that AFSEP was the sponsor of the Dinners and no documentation has been submitted demonstrating that any other entity played a role. Those attending the Dinners did include members of the Ketchikan community along with members of Congress and individuals associated with AFSEP. Many of those individuals were representatives of the energy industry. None of these facts establishes that the Dinners were other than what the solicitation suggests, AFSEP events. The cost of the Dinners (\$8,802) is still considered a prohibited in-kind contribution to AFSEP. Finally, AFSEP did not provide the requested breakdown of the expenses that make up the \$8,802.

Finding 2. Misstatement of Financial Activity

Summary

A comparison of AFSEP's reported figures with its bank records revealed that AFSEP misstated its receipts and disbursements on its disclosure reports for calendar years 1999 and 2000, and its cash balances in 2000. In response to the interim audit report, AFSEP filed amended reports but substantial differences remain.

Legal Standard

Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
 - The total amount of receipts for the reporting period and for the calendar year; and
 - The total amount of disbursements for the reporting period and for the calendar year.
- 2 U.S.C. §434(b)(1), (2) and (4).

Facts and Analysis

A comparison of AFSEP's reported financial activity to its bank records for calendar years 1999 and 2000 revealed misstatements of reported receipts, disbursements and ending cash on hand. The chart below explains the misstatements in more detail.

Calendar Year	Reported	Bank Records	Discrepancy
Cash on Hand at 01/01/99	\$575	\$575	0
1999 Receipts	\$40,962	\$46,489	\$5,527 Understated
1999 Disbursements	\$7,056	\$12,583	\$5,527 Understated
2000 Receipts	\$103,275	\$112,618	\$9,343 Understated
2000 Disbursements	\$129,365	\$135,708	\$6,343 Understated
Cash on Hand at 12/31/00	\$8,391	\$11,391	\$3,000 Understated

Explanation of Discrepancies

Receipts and Disbursements-1999

The understatement of receipts and disbursements was the result of in-kind contributions reported as neither receipts nor disbursements.

Receipts-2000

The understatement of receipts was the result of the following transactions:

• Contribution Not Reported	2,000
• Contribution under Reported	1,000
• In-kind Contributions Not Reported as a Receipt	<u>6,343</u>
• Net Understatement	\$9,343

Disbursements-2000

The understatement of disbursements was the result of the following transactions:

• In-kind Contributions Not Reported As an Expenditure	\$6,343
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Closing Cash on Hand

The understatement of the closing cash on hand resulted from the understatement (\$3,000) of receipts.

The unreported in-kind contributions relate primarily to expenses for the AFSEP dinners discussed in Finding 1.

The Audit staff provided AFSEP representatives with a schedule explaining the misstatements.

Interim Audit Report Recommendations and Committee Response

In response to recommendations in the interim audit report, AFSEP filed amended reports for calendar years 1999 and 2000. However, as discussed in Finding 1 above, AFSEP disputes that the Dinners were AFSEP events and did not include the in-kind contributions associated with them in the amended reports.

Finding 3. Timely Deposit of Contributions

Summary

The Audit staff determined that 67% of the contributions from individuals and 66% of the contributions from political committees were not deposited within ten days of receipt, as required by law. In response to the interim audit report, AFSEP demonstrated that internal control procedures have been established and implemented to correct this problem.

Legal Standard

Deposit of Receipts. Within 10 days after the treasurer receives a contribution, it must be either:

- Returned to the contributor without being deposited; or
- Deposited into a committee bank account. 11 CFR §103.3

Facts and Analysis

The Audit staff reviewed all contributions from individuals and political committees and determined a majority of contributions was not deposited timely. The date on the check was compared to the date of deposit². The number of days between the check date and deposit date ranged from 21 to 110 days for 67% of the contributions from individuals and 21 to 122 days for 66% of the contributions from political committees.

At the exit conference, the Audit staff provided AFSEP representatives a schedule detailing the untimely deposits. The representatives stated a new consulting firm has been hired to correct this problem and to manage AFSEP's reporting.

Interim Audit Report Recommendations and Committee Response

In its response to the interim audit report, AFSEP explained that in addition to a new consulting firm mentioned at the exit conference, it plans to terminate its activities and will not be collecting contributions in the future.

Finding 4. Disclosure of Disbursements

Summary

AFSEP failed to properly disclose 13% of its disbursements totaling \$30,673. The majority of the errors resulted from insufficient purposes for disbursements. In response to the interim audit report, AFSEP filed amended reports that correctly disclosed the disbursements.

Legal Standard

Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(4)(i)(A).

Facts and Analysis

A review of all disbursements that required itemization on AFSEP's disclosure reports determined that AFSEP failed to adequately disclose 13% of its disbursements, totaling \$30,673. A majority of these errors was the result of not identifying the purpose of these expenditures as costs associated with fundraising. AFSEP reported the purposes as "administrative fees". Thus, the public record did not reflect the fact that AFSEP held fundraising events and incurred other fundraising costs. Other errors included incorrect name and purpose.

At the exit conference the Audit staff provided AFSEP representatives a schedule of the omission of disclosure errors. Representatives stated they would file amended disclosure reports to correct the errors.

² AFSEP did not maintain the date that it received contributions.

Interim Audit Report Recommendations and Committee Response

In response to the recommendation in the interim audit report, AFSEP filed Schedules B that properly disclosed the disbursements noted. However, these schedules were filed past the extended due date for the response to the interim audit report.