



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 7, 2006

MEMORANDUM

TO: ROBERT W. BIERSACK
PRESS OFFICER
PRESS OFFICE

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

SUBJECT: PUBLIC ISSUANCE OF THE REPORT OF THE AUDIT DIVISION ON
THE COMMITTEE TO ELECT PATSY KEEVER

Attached please find a copy of the audit report on the Committee to Elect Patsy Keever which was approved by the Commission on January 27, 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 Committee to Elect Patsy Keever

October 7, 2003 – December 31, 2004

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.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 Campaign (p. 2)

The Committee to Elect Patsy Keever is the principal campaign committee for Patricia Keever, Democratic candidate for the U.S. House of Representatives from the state of North Carolina, Eleventh District, and is headquartered in Asheville, North Carolina. For more information, see chart on the Campaign Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ From Individuals	\$ 883,689
○ From Political Committees	329,777
○ From the Candidate	9,479
○ Loans	43,153
○ Other Receipts	748
○ Total Receipts	\$ 1,266,846
• Disbursements	
○ Operating Expenditures	\$ 1,175,394
○ Loan Repayments	43,153
○ Total Disbursements	\$ 1,218,547

Findings and Recommendations (p. 3)

- Receipt of Contributions that Exceed Limits (Finding 1)
- Misstatement of Financial Activity (Finding 2)
- Documentation for Receipts (Finding 3)
- Inadequate Disclosure – Form 3Z-1 (Finding 4)

¹ 2 U.S.C. §438(b).

Report of the Audit Division on the Committee to Elect Patsy Keever

October 7, 2003 – December 31, 2004



Table of Contents

	Page
Part I. Background	
Authority for Audit	1
Scope of Audit	1
Part II. Overview of Campaign	
Campaign Organization	2
Overview of Financial Activity	2
Part III. Summaries	
Findings and Recommendations	3
Part IV. Findings and Recommendations	
Finding 1. Receipt of Contributions that Exceed Limits	4
Finding 2. Misstatement of Financial Activity	6
Finding 3. Documentation for Receipts	7
Finding 4. Inadequate Disclosure - Form 3Z-1	8

Part I

Background

Authority for Audit

This report is based on an audit of the Committee to Elect Patsy Keever (CPK), 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

Following Commission approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

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

Part II

Overview of Campaign

Campaign Organization

Important Dates	Committee to Elect Patsy Keever
• Date of Registration	October 21, 2003
• Audit Coverage	October 7, 2003 through December 31, 2004
Headquarters	Asheville, North Carolina
Bank Information	
• Bank Depositories	2
• Bank Accounts	3 Checking
Treasurer	
• Treasurer When Audit Was Conducted	Frances Ellis
• Treasurer During Period Covered by Audit	Frances Ellis
Management Information	
• Attended FEC Campaign Finance Seminar	No
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting, Recordkeeping Tasks and Other Day-to-Day Operations	Paid Staff, Volunteer CPA

Overview of Financial Activity (Audited Amounts)

Cash on hand @ October 7, 2003	\$ 0
Receipts	
○ From Individuals	\$ 883,689
○ From Political Committees	329,777
○ From the Candidate	9,479
○ Loans	43,153
○ Other Receipts	748
○ Total Receipts	\$ 1,266,846
Disbursements	
○ Operating Disbursements	\$ 1,175,394
○ Loan Repayments	43,153
○ Total Disbursements	\$ 1,218,547
Cash on hand @ December 31, 2004	\$ 48,299

Part III

Summaries

Findings and Recommendations

Finding 1. Receipt of Contributions that Exceed Limits

CPK received \$18,890 in excessive contributions from 12 individuals. The Audit staff recommended that CPK demonstrate that these contributions were not excessive or make appropriate refunds to the identified donors. In response to the interim audit report, the Candidate offered why she felt the contributions were not excessive. In addition, the Candidate provided copies of refund checks prepared, but not negotiated, for \$14,140 of the excessive contributions; and, stated the refund checks will be sent to the contributors and the remaining refunds will be issued from her personal account once the final audit report is approved. (For more detail, see page 4.)

Finding 2. Misstatement of Financial Activity

CPK understated its December 31, 2004, cash-on-hand balance by \$9,914. The Audit staff recommended that CPK amend the cash balance on its most recently filed report with an explanation that the change resulted from a prior period audit adjustment. In response to the interim audit report, CPK amended its latest report. (For more detail, see page 6.)

Finding 3. Documentation for Receipts

A sample review of contributions from individuals indicated that almost 16% were not properly documented. All errors represented contributions in excess of \$50 for which a copy of the contributor's check was not retained. The Audit staff recommended that CPK provide any comments it may have relative to this matter. In response to the interim audit report, the Candidate reiterated that checks were not copied during the initial months, but could not explain why other copies of checks were missing from campaign records. (For more detail, see page 7.)

Finding 4. Inadequate Disclosure – Form 3Z-1

CPK failed to file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year End Report. The Audit staff recommended that CPK demonstrate that the required forms were correctly filed or provide any comments it may have relative to this matter. In response to the interim audit report, the Candidate stated CPK staff were not aware of this form. (For more detail, see page 8.)

Part IV

Findings and Recommendations

Finding 1. Receipt of Contributions That Exceed Limits

Summary

CPK received \$18,890 in excessive contributions from 12 individuals. The Audit staff recommended that CPK demonstrate that these contributions were not excessive or make appropriate refunds to the identified donors. In response to the interim audit report, the Candidate offered why she felt the contributions were not excessive. In addition, the Candidate provided copies of refund checks prepared, but not negotiated, for \$14,140 of the excessive contributions; and, stated the refund checks will be sent to the contributors and the remaining refunds will be issued from her personal account once the final audit report is approved.

Legal Standard

A. Authorized Committee Limits: An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

B. Handling Contributions That Appear Excessive. If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
 - o Keep enough money in the account to cover all potential refunds;
 - o Keep a written record explaining why the contribution may be illegal;
 - o Include this explanation on schedule A if the contribution has to be itemized before its legality is established;
 - o Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in Commission regulations (see below for explanations of reattribution and redesignation); and
 - o If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

C. Presumptive Redesignation of Excessive Contributions: When an authorized political committee receives an excessive contribution from an individual or a non-multi-candidate committee, the committee may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and

- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the excessive portion of an undesignated contribution made after the primary, but before the general election may be automatically applied to the primary if the campaign's net debts outstanding from the primary equal or exceed the amount redesignated.

The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent as required. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (1)(4)(ii).

Facts and Analysis

Prior to the primary election, CPK received contributions from twelve individuals that exceeded the \$2,000 limitation for individuals for the primary election. The amounts in excess of the limitation totaled \$18,890. Copies of the contributors' checks located by the Audit staff carried no election designation; no other supporting documentation, such as response cards, was made available. CPK presumptively redesignated the excessive portions of these contributions, but failed to notify contributors of its actions by a written notification that also offered a refund.

At the exit conference, the Audit staff discussed the matter with the Candidate and she was provided a schedule of the excessive contributions. The Candidate indicated that required refunds would be made to the extent funds were available.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CPK:

- Provide evidence that the identified contributions were not excessive; or,
- Refund \$18,890 and provide evidence of such refunds (copies of the front and back of the negotiated checks); or
- If funds were not available to make the necessary refunds, CPK should report the amounts to be refunded as debts on Schedule D (Debts and Obligations Excluding Loans) until funds became available to make the refunds.

In response to the interim audit report, the Candidate expressed concern that the Audit staff recommended that refunds be made to donors who had not contributed more than allowed by law; noting that none of the contributors had given more than the total allowable amount for the primary and general elections combined. She stated that these donations were accurately reported to the FEC and that refunds appeared unnecessary. In addition, since the Candidate was unaware of this potential liability until well after the election, she had donated much of her excess campaign funds. CPK's 2005 October 15th Quarterly Report² discloses donations of: \$10,000 to the North Carolina Democratic Party, \$5,000 to Emily's List, \$1,000 to Friends of Nussbaum for Congress and \$1,000 to

² This disclosure report was filed eight days prior to the Candidate being advised of the excessive contributions.

the Canary Coalition. Had she known about the need to make refunds, she would have held back sufficient funds.

The response points out a complicating factor. For this race the primary election in North Carolina was postponed from May, 2004 until July, 2004 as the result of court rulings. The Candidate contends that had the primary election occurred in May, there would have been no excessive contribution problem.³ CPK was aware that donations above \$2,000 collected prior to the primary election could not be spent during the primary election and must be reported for use in the general election. However the Candidate contends that CPK was not aware of the requirement for donors to designate the contribution to a particular election or receive a letter informing them of CPK's designation if not for the next election. The Candidate notes the campaign's inexperience with "obscure federal elections regulations;" and states that by the time she found out about this rule on October 24, 2005, it was too late to contact the donors who would have gladly verified their understanding that the donations were meant for the general election cycle.

The Commission's regulations on the election designation of contributions are not complicated or obscure. Rather, for the 2004 election cycle they were relaxed allowing the campaign to make designations without prior approval of the contributor. Instead, a simple unacknowledged notification to the contributor is all that is necessary in most cases. That requirement appears not only in the published regulations, but is explained in less technical terms in the campaign guides available from the Commission in either print or from the Commission Web site. The requirements are also contained in the instructions for the disclosure forms.

However, the Candidate's response concluded that, in order to comply with the audit recommendation, she has enclosed copies of the checks written from the campaign account in the amount of \$14,140. The Candidate states these will be sent to the contributors and the remaining refunds will be issued from her personal account once the recommendation is final.

Finding 2. Misstatement of Financial Activity

Summary

CPK understated its December 31, 2004, cash-on-hand balance by \$9,914. The Audit staff recommended that CPK amend the cash balance on its most recently filed report with an explanation that the change resulted from a prior period audit adjustment. In response to the interim audit report, CPK amended its latest report.

Legal Standard

Contents of Reports. Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;

³ The Audit staff's analysis indicates that even if the primary had been held on May 4th, a material, albeit lessened (\$9,390), problem would have existed.

- The total amount of receipts for the reporting period and for the election cycle; and
- The total amount of disbursements for the reporting period and for the election cycle. 2 U.S.C. §434(b)(1), (2) and (4).

Facts and Analysis

The Audit staff reconciliation of reported activity to bank records for the audit period indicated that the ending cash-on-hand balance for calendar year 2004 had been misstated by \$9,914.

It appears that this misstatement resulted primarily from CPK under reporting receipts and reporting disbursements that were not supported by a cancelled check or bank debit.

At the exit conference, the Audit staff discussed the misstatement and provided CPK with copies of our bank reconciliations. CPK representatives indicated a willingness to correct the misstatement. Although CPK filed amended reports during the response period following the exit conference, those amendments did not correct the misstatement.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CPK amend the cash balance on its most recent report with an explanation that the change resulted from an audit adjustment from a prior period. In response to the interim audit report, CPK amended its report as recommended.

Finding 3. Documentation for Receipts

Summary

A sample review of contributions from individuals indicated that almost 16% were not properly documented. All errors represented contributions in excess of \$50 for which a copy of the contributor's check was not retained. The Audit staff recommended that CPK provide any comments it may have relative to this matter. In response to the interim audit report, the Candidate reiterated that checks were not copied during the initial months, but could not explain why other copies of checks were missing from campaign records.

Legal Standard

A. Recordkeeping Requirements for Receipts. Political committees must keep records of:

- All contributions received by or on behalf of the committee;
- The name and address of any person who makes a contribution in excess of \$50, together with the date and amount of the contribution; and
- The occupation and name of employer of any individual whose contributions aggregate more than \$200 during a calendar year, together with the date and amount of any such contributions. 2 U.S.C. §432(c).

B. Retention of Check Copies. For contributions in excess of \$50, committees must maintain a photocopy or digital image of the check or written instrument. 2 U.S.C. §102.9(a)(4)

C. Preserving Documents. Committees must preserve these records for 3 years after a report is filed. 2 U.S.C. §432(d).

Facts and Analysis

The Audit staff reviewed contributions from individuals on a sample basis and determined that almost 16% of the items tested lacked a copy of the contributor's check. A significant portion of the errors resulted from the lack of copies of contributor checks during the initial months of the campaign.

The Audit staff discussed this matter with CPK representatives at the exit conference, who indicated they were surprised that some of the check copies could not be located. Subsequently, representatives acknowledged that campaign staff did not make copies of contributor checks deposited during the initial months of the campaign; rather they simply recorded the contributor information.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CPK demonstrate the documentation was maintained or submit any comments it may have relative to this matter. In response to the interim audit report, the Candidate reiterated that campaign staff did not make copies of contributor checks deposited during the initial months of the campaign; rather they simply recorded the contributor information; further, she had no idea why the other copies of checks were missing from campaign records.

Finding 4. Inadequate Disclosure – Form 3Z-1

Summary

CPK failed to file Form 3Z-1 (Consolidated Report of Gross Receipts for Authorized Committees) with its 2003 Year End Report. The Audit staff recommended that CPK demonstrate that the required forms were correctly filed or provide any comments it may have relative to this matter. In response to the interim audit report, the Candidate stated CPK staff were not aware of this form.

Legal Standard

Special Reporting Requirements. Principal campaign committees of candidates for the U.S. House and the U.S. Senate must file FEC Form 3Z-1 as part of their July Quarterly and Year-End Reports in the year preceding the year in which the general election for the office sought is held. The information in this form allows opposing candidates to compute their "gross receipts advantage" used to determining whether a candidate is entitled to an increased contribution limit. The following information must be disclosed:

1. Gross receipts to date for the primary and general elections,
2. Aggregate amount of contributions from personal funds of the candidate for the primary and general elections, and,
3. A calculation of gross receipts less the candidate's personal contributions for each election. 11 CFR §104.19.

Facts and Analysis

The Audit staff reviewed all filings by CPK and noted that it did not provide a Form 3Z-1 with its 2003 Year End Report, as required.

Using the electronic data provided by CPK, the Audit staff determined that gross receipts for the primary of \$82,538 should have been disclosed on Form 3Z-1. There were no receipts that had been designated for the general, and there were no personal contributions by the Candidate as of this date.

The Audit staff discussed this matter with CPK representatives at the exit conference; the representatives indicated they were unfamiliar with this filing requirement.

Interim Audit Report Recommendation and Committee Response

The Audit staff recommended that CPK demonstrate that Form 3Z-1 was correctly filed or provide any comments it may have relative to this matter. In response to the interim audit report, the Candidate stated, "According to the auditors, the 3Z-1 form is new. We did not know anything about it, and it is obviously too late to file it now."