



AGENDA DOCUMENT NO. 11-15
APPROVED MARCH 16, 2011

**MINUTES OF AN OPEN MEETING
OF THE
FEDERAL ELECTION COMMISSION
THURSDAY, MARCH 3, 2011**

PRESENT:

Cynthia L. Bauerly, Chair, presiding

Caroline C. Hunter, Vice Chair

Donald F. McGahn II, Commissioner

Matthew S. Petersen, Commissioner

Steven T. Walther, Commissioner

Ellen L. Weintraub, Commissioner

Alec Palmer, Acting Staff Director

Christopher Hughey, Acting General Counsel

Shawn Woodhead Werth, Secretary and Clerk

Chair Cynthia L. Bauerly called the Federal Election Commission to order in an open meeting at 10:52 A.M. on Thursday, March 3, 2011 with a quorum present.

I. CORRECTION AND APPROVAL OF MINUTES

**Minutes for February 17, 2011
Agenda Document No. 11-11**

Chair Bauerly recognized Commissioner Hunter who

MOVED to approve Agenda Document No. 11-11, minutes for the Open Session held on February 17, 2011.

The motion carried on a vote of 6-0 with Commissioners

Bauerly, Hunter, McGahn, Petersen, Walther, and Weintraub voting affirmatively.

Chair Bauerly recognized Commissioner Hunter who

MOVED to suspend the rules on the timely submission of agenda documents in order to consider the late submission of Agenda Document Nos. 11-05-B, 11-05-C, 11-10-A, and 11-10-B.

Without objection, the motion carried.

II. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE KANSAS REPUBLICAN PARTY (A08-02)

**Agenda Document Nos. 11-05 and 11-05-A
(Held over from the meeting of February 17, 2011)**

**Agenda Document Nos. 11-05-B and 11-05-C
(Submitted Late)**

Chair Bauerly recognized Commissioner Hunter who

**MOVED to approve the motion as set forth in Agenda
Document No. 11-05-B:**

Approve Agenda Document No. 11-05, subject to appropriate changes pursuant to Directive 70, with the following modifications (and all necessary technical and conforming changes):

- 1) In Finding 1 ("Misstatement of Financial Activity") - for the reasons stated in Finding 2 below**
 - A) On p.5, delete the third full paragraph relating to receipts and expenditures related to attendance at the Republican National Convention, and the \$74,320 understatement in receipts related to the convention account;**
 - B) On p.6, delete the first full paragraph relating to possible prohibited contributions relating to the convention account, and the \$105,243 understatement in disbursements related to the same;**
- 2) In Finding 2 ("Receipt of Apparent Prohibited Contributions") - delete the language in Finding 2 relating to the three receipts totaling \$42,498 received by KRP's National Convention account, on the grounds that there was a lack of information regarding whose convention travel, lodging, and subsistence expenses were paid for by the account, as well as the lack of any statutory provision or regulation directly addressing the issue of what funds may be used to pay for such expenses for delegates and non-delegates**
- 3) In Finding 3 ("Payment of Federal Activity Out of Non-federal Accounts") - delete the following portions of Finding 3 relating to:**
 - A) "Payment and Disclosure of Lodging Expense" - this relates to the same issue in Finding 2 above;**
 - B) The following expenses described on p.10, on the grounds that the proposed Audit findings improperly shift the burden to audited committees to disprove a negative instead of properly requiring the Audit Division to demonstrate its findings:**
 - i. "Payment and Disclosure of Non Allocable Federal Election Activity" - this regards \$1,639 in pins that**

Audit speculates were used for the national convention, for which there is no concrete evidence whatsoever that they were actually used for such purpose;

- ii. "Payment and Disclosure of Allocable Administrative Costs" - with the exception of rent, phone service, and office supplies - this portion regards expenses (*i. e.*, postage, consulting, travel reimbursements, and printing) that allegedly had to be paid with an allocation of Federal and non-Federal funds, but which Audit fails to demonstrate with any concrete evidence were actually expended for allocable activities and not for solely non-Federal activities;**
- iii. "Payment and Disclosure of Printed Materials" – this portion regards \$14,359 in printed materials that Audit fails to demonstrate with any concrete evidence was actually Federal Election Activity.**

- 4) Find that KRP is not required to take further action with respect to any of the findings.**

The motion failed on a vote of 3-3 with Commissioners

Hunter, McGahn, and Petersen voting affirmatively for the motion.

Commissioners Bauerly, Walther and Weintraub dissented.

Chair Bauerly recognized Commissioner Weintraub who

MOVED to approve Agenda Document No. 11-05.

The motion failed on a vote of 3-3 with Commissioners

Bauerly, Walther and Weintraub voting affirmatively for the motion.

Commissioners Hunter, McGahn, and Petersen dissented.

Chair Bauerly recognized Commissioner Hunter who

MOVED to approve the motion as set forth in Agenda Document No. 11-05-C:

Approve Agenda Document No. 11-05, subject to appropriate changes pursuant to Directive 70, with the following modifications (and all necessary technical and conforming changes):

- 1) In Finding 1 ("Misstatement of Financial Activity") – approve this finding, *with the exception of:***
 - A) The language regarding receipts and expenditures related to attendance at the Republican National Convention, and the \$74,320 understatement in receipts related to the convention account;**
 - B) The language regarding possible prohibited contributions relating to the convention account, and the \$105,243 understatement in disbursements related to the same;**
- 2) In Finding 2 ("Receipt of Apparent Prohibited Contributions") - approve this finding, *with the exception of* the language relating to the three receipts totaling \$42,498 received by KRP's National Convention account.**
- 3) In Finding 3 ("Payment of Federal Activity Out of Non-Federal Accounts") - approve this finding *with the exception of* the language relating to:**
 - A) "Payment and Disclosure of Lodging Expense" for the \$5,000 disbursement for lodging at the national party convention;**
 - B) The following expenses described on p.10:
 - i. "Payment and Disclosure of Non Allocable Federal Election Activity" for the \$1,639 disbursement for pins;**
 - ii. "Payment and Disclosure of Allocable Administrative Costs" for all disbursements relating to postage, consulting, travel reimbursements, and printing.**
 - iii. "Payment and Disclosure of Printed Materials" for the \$14,359 in printed materials.****
- 4) Find that KRP is not required to take any additional corrective action with respect to amending its reports in**

relation to the receipts to and disbursements from its National Convention account, nor is KRP required to make any additional reimbursements from its Federal account to the National Convention account. Additionally, KRP should remove from its next regularly scheduled report the \$37,498 disclosed as debt owed by its Federal account to the National Convention account.

The motion carried on a vote of 6-0 with Commissioners

Bauerly, Hunter, McGahn, Petersen, Walther and Weintraub voting affirmatively for the decision.

III. AUDIT DIVISION RECOMMENDATION MEMORANDUM ON THE GEORGIA FEDERAL ELECTIONS COMMITTEE (A07-14)

Agenda Document No. 11-10

**Agenda Document Nos. 11-10-A and 11-10-B
(Submitted Late)**

Chair Bauerly recognized Mr. Terrence O'Brien of the Audit Division who presented the subject documents. A discussion followed.

Chair Bauerly recognized Commissioner Walther who

MOVED to approve Agenda Document No. 11-10.

The motion failed on a vote of 2-4 with Commissioners Bauerly and Walther voting affirmatively for the motion. Commissioners Hunter, McGahn, Petersen, and Weintraub dissented.

Chair Bauerly recognized Commissioner Hunter who

**MOVED to approve the motion as reflected in Agenda
Document No. 11-10-A:**

**Approve Finding 1 ("Misstatement of Financial Activity") in
Agenda Document No. 11-10, subject to appropriate changes
pursuant to Directive 70, with the following modifications (and
all necessary technical and conforming changes):**

- 1) Find that GFEC's payroll escrow account did not violate the
Act or Commission regulations because the account was not
an allocation account established pursuant to
11 C.F.R. 106.7 to pay for allocable activities, but rather was
a pass-through escrow account established to accommodate
GFEC's payroll vendor and used for non-allocable
disbursements. Moreover, with respect to its truly allocable
payroll disbursements, GFEC transferred non-Federal funds
to its Federal operating account pursuant to Section 106.7(f)
and reported those allocations on Schedule H4 before it
transferred funds from the Federal operating account to the
payroll escrow account. Although the Commission amended
the regulations in 1990 to require state party committees to
pay for allocable expenses using either a Federal account or
a separate allocation account, those regulations do not
apply here because GFEC's escrow account was not used to
pay for allocable expenses, and the "functional equivalent"
of an allocation account is not a cognizable legal concept
under the Act or Commission regulations. Additionally, the
Commission determined not to pursue enforcement action
against a committee faced with the same problem caused by
the same payroll vendor in an internally generated matter
in 2006.**
- 2) Find that GFEC is not required to further amend its reports in
relation to the transactions involving the payroll escrow
account.**

The motion failed on a vote of 3-3 with Commissioners

Hunter, McGahn, and Petersen voting affirmatively for the motion.

Commissioners Bauerly, Walther, and Weintraub dissented.

Chair Bauerly recognized Commissioner Hunter who

MOVED to approve the motion as set forth in Agenda Document No. 11-10-B:

Approve Finding 2 ("Payment of Federal Activity with Non-Federal Funds") in Agenda Document No. 11-10, subject to appropriate changes pursuant to Directive 70, with the following modifications (and all necessary technical and conforming changes):

Delete (1) the Summary paragraph captioned "Funding by the Non-Federal Account for Possible Federal Activity" (DFAR at 10); (2) the Facts and Analysis paragraphs captioned "Funding by the Non-Federal Account for Possible Federal Activity" (DFAR at 12); and (3) delete and/or modify the bullet points in the paragraph captioned "Interim Audit Report Recommendation and Committee Response" (DFAR at 12) relating to funding by the non-Federal Account for possible Federal activity; on the grounds that the Commission does not have jurisdiction to impose recordkeeping and documentation requirements on employee activity that a State party committee claims is solely non-Federal.

The motion failed on a vote of 3-3 with Commissioners

Hunter, McGahn, and Petersen voting affirmatively for the motion.

Commissioners Bauerly, Walther and Weintraub dissented.

Chair Bauerly recognized Commissioner Weintraub who

MOVED to take the following actions:

Approve Agenda Document No. 11-10, subject to appropriate changes pursuant to Directive 70, with the following modifications (and all necessary technical and conforming changes):

- 1) With respect to Finding 1 ("Misstatement of Financial Activity") – approve this finding with respect to the misstatement issues other than the payroll escrow account.**

With respect to amendments based on the payroll accounts issue, the Commission concludes that the GFEC is not required to further amend its reports in relation to the transactions involving the payroll escrow account.

- 2) With respect to Finding 2 (“Payment of Federal Activity with Non-Federal Funds”) – approve this finding as to the issue of GFEC’s failure to provide documentation of its payroll expenses reported as allocated on Schedules H4 (as described in the sections captioned “Disclosure of Salaries and Related Expenses” on Pages 9 and 11).**
- 3) Approve Finding 3.**

The motion carried on a vote of 6-0 with Commissioners Bauerly, Hunter, McGahn, Petersen, Walther and Weintraub voting affirmatively for the decision.

IV. MANAGEMENT AND ADMINISTRATIVE MATTERS

There being no further business to come before the Commission, the meeting adjourned at 11:09 A.M.

Signed:



**Cynthia L. Bauerly
Chair of the Commission**

Attest:



**Shawn Woodhead Werth
Secretary and Clerk of the Commission**