



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 8, 1987

MEMORANDUM

TO: FRED EILAND
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA *RJC*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF FINAL AUDIT REPORT-
JOHN GLENN COMMITTEE

Attached please find a copy of the final audit report of the John Glenn Committee which was approved by the Commission on December 2, 1987.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: FEC Library
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
THE JOHN GLENN COMMITTEE
(Joint Fundraising Committee)

I. Background

A. Overview

This report covers an audit of The John Glenn Committee ("the Committee"), 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 9038(a) of Title 26 of the United States Code which states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037."

In addition, Section 9039(b) of Title 26 of the United States Code, and Section 9038.1(b) of Title 11 of the Code of Federal Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

The John Glenn Committee (formerly the Democratic Unity Committee) registered with the Federal Election Commission as a joint fundraising committee, and was authorized by Senator John Glenn, on April 26, 1984. Participants in various fundraising events with The John Glenn Committee were the John Glenn Presidential Committee, Inc., Senator John Glenn Committee, Sloan for Congress Committee, and Americans with Hart, Inc. The John Glenn Committee maintains its headquarters in Washington, D.C.

The audit covered the period from April 26, 1984 through December 31, 1985. The John Glenn Committee reported an opening cash balance of \$-0-, total receipts of \$146,107.31, total expenditures of \$144,241.48, and a closing cash balance of \$1,865.83 during the period.

This report is based on documents and workpapers supporting each of its factual statements. They form part of the record upon which the Commission based its decisions on the matters in this report and were available to Commissioners and appropriate staff for review.

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B. Key Personnel

The principal officer of the Committee during the period audited was Mr. William R. White, Treasurer.

C. Scope

The audit included such tests as verification of total reported receipts and expenditures and individual transactions; review of required supporting documentation and analysis of Committee debts and obligations; and such other audit procedures as deemed necessary under the circumstances.

II. Audit Findings and Recommendations

Distribution of Proceeds

Section 9034.8(c)(1) of Title 11 of the Code of Federal Regulations states, in part, that the participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 C.F.R. § 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity.

Section 9034.8(c)(7) of Title 11 of the Code of Federal Regulations states that the fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

During the review of Committee records, the auditors noted that the Committee scheduled ten joint fundraising events between the following committees:

- Sloan for Congress Committee and the John Glenn Presidential Committee, Inc. (one event),
- Americans with Hart, Inc. and the John Glenn Presidential Committee, Inc. (one event) and,
- Senator John Glenn Committee and the John Glenn Presidential Committee, Inc. (eight events).

The auditors reviewed the Committee's records and documentation to determine whether gross proceeds and expenses had been properly allocated in accordance with the allocation formula(s) stated in the agreement(s). During this review, the following matters were noted.

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A. Sloan For Congress Committee and the John Glenn Presidential Committee, Inc.

The agreement entered into between the above named committees states that fundraising proceeds shall be allocated two-thirds to Sloan For Congress Committee (the Sloan Committee) and one-third to John Glenn Presidential Committee, Inc. (the Presidential Committee), and related expenditures shall be allocated according to the same formula utilized for allocating fundraising proceeds. In addition, the solicitation material states that notwithstanding the above allocation formula, each contributor may designate his/her contribution for a particular participant.

The joint fundraising event involving the two committees was held on October 12, 1984. Based on our review of Committee records, it appears that the proceeds were allocated 100 percent to the Presidential Committee to the extent permitted by the contribution limits of the Act. In the event that the contribution(s) exceeded the Presidential Committee's limit, an allocation was made to the Sloan Committee. The Committee allocated 52 contributions that were made to the joint fundraising event. As a result, 42 contributions, totaling \$2,611, were allocated 100% to the Presidential Committee and 10 contributions totaling \$6,000 were allocated to the Sloan Committee. No contribution was allocated two-thirds to the Sloan Committee and one-third to the Presidential Committee as required by the fundraising agreement. However, based on our review of the records, the 42 contributions could have been allocated two-thirds to the Sloan Committee and one-third to the Presidential Committee without exceeding the 2 U.S.C. § 441a(a)(1)(A) limit for either committee. For the 10 contributions that were allocated to the Sloan Committee, 9 contributors had previously contributed \$1,000 to the Presidential Committee, and one contribution was from the Senator John Glenn Committee.

In addition, 6 of the 52 contributions totaling \$2,300 were made payable to the Sloan Committee. The Committee included these contributions with the other proceeds and based on their allocation method the Presidential Committee received 3 of the contributions totaling \$100.^{1/} There were no checks made payable to the Presidential Committee.

^{1/} The Committee allocated the three other contributions to the Sloan Committee because the contributors had already met the 2 U.S.C. § 441a(a)(1)(A) limitation for the Presidential Committee.

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As a result, gross proceeds adjusted for contributions in excess of the limitation at 2 U.S.C. § 441a(a) (1) (A), totaled \$8,641. The Committee distributed \$8,611 of the gross proceeds among the participants. The Audit staff determined that, in accordance with the agreement, the correct allocation of the gross proceeds should have been \$1,170.18 to the Presidential Committee and \$7,440.82 to the Sloan Committee.

Based on the allocation shown above, the Sloan Committee should have received 86.41% of the proceeds and the Presidential Committee 13.59%. Applying these percentages to total allocable expenses relative to the event (\$1,300.90), the Sloan Committee's proportionate share of the allocable expenses should have been \$1,124.11 and the Presidential Committee's share \$176.79. The correct allocation of net proceeds to the Sloan Committee, adjusted for its proportionate share of expenses, should have been \$6,316.71 (\$7,440.82 - \$1,124.11) and the Presidential Committee's share should have been \$993.39 (\$1,170.18 - \$176.79). However, the Committee disbursed \$2,220.73 to the Presidential Committee and \$5,089.37 to the Sloan Committee.

It is the opinion of the Audit staff that the disbursement of proceeds to the Presidential Committee was \$1,227.34 (\$2,220.73 - \$993.39) more, and the disbursement of proceeds to the Sloan Committee was \$1,227.34 (\$6,316.71 - \$5,089.37) less than the amount to which the committees were entitled under the fundraising agreement. (See Attachment I).

It is also our opinion that the Committee's method of allocating the proceeds to the Presidential Committee maximized the matchability of each contribution.^{2/} For example, if an individual contributed \$250 to the event and did not previously contribute to either participating committee, the \$250 contribution should be allocated \$166.75 to the Sloan Committee (2/3) and \$83.25 to the Presidential Committee (1/3). However, in every instance this contribution would have been allocated entirely to the Presidential Committee, and if submitted for matching would result in \$250 being matched instead of \$83.25, the amount which was actually matchable. The Committee's method of allocating the proceeds also resulted in an overpayment of matching funds totaling \$1,190.67, the repayment of which is addressed in the Addendum to the Final Audit Report for the John Glenn Presidential Committee, Inc.

^{2/} The Commission determined that Senator John Glenn and the John Glenn Presidential Committee, Inc. satisfied the eligibility requirements to receive Presidential Primary Matching Payments on October 6, 1983. (See 26 U.S.C. §§ 9033(a) and (b) and 11 C.F.R. §§ 9033.1, 9033.2, and 9036.1(b)).

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The Audit staff recommended in the Interim Audit Report that the Committee justify its method of allocation in accordance with 11 C.F.R. § 9034.8(c)(7). Absent such a showing, the Audit staff recommended that the Committee obtain a reimbursement from the Presidential Committee of \$1,227.34 and make a distribution to the Sloan Committee in the amount of \$1,227.34. In addition, the Audit staff recommended that the Committee amend their reports to disclose the proper allocation(s) and inform the participating committees to file amended reports reflecting the correct allocation.

The Committee responded to the Interim Audit Report that "fundraising proceeds" was intended to mean the total amount of money raised by the event. Further, the Committee states "it was never intended to mean each and every individual contribution considered separately." In addition the Committee asserts that "there is nothing in the law or regulations, that would have prohibited the participating committees from adopting [this] interpretation." Finally, the Committee argues that in the law of interpretation of contracts words are given the meaning which best effectuates the intention of the parties.

The Audit staff notes that the solicitation material sent to the contributors specifically stated that the proceeds would be distributed two-thirds to the Sloan Committee and one-third to the Presidential Committee. The solicitation also informed the contributor that he could designate his contribution to a particular candidate, and advised the contributor that the allocation may change if a contribution is received that would exceed the amount a contributor may give to any participant. In addition, the Audit staff notes that an internal memorandum found in the Committee's files summarizes a communication with an Audit Division staff member. The Committee was advised that, in the opinion of the staff member, they were bound by the information printed on the contribution card, rather than distributing the checks as the committee intended. The Audit staff is of the opinion that the regulations and advisory opinions advocate the individual allocation of contributions. Furthermore, in this case the contributors were 1) informed of the allocation formula, 2) given notice that they may designate their contribution, and 3) advised that the allocation formula may change if a contribution would exceed the amount a contributor may give to any participant. These notices appear to suggest to the contributor a contribution-by-contribution allocation.

It is also the Audit staff's opinion that the Committee's assertions are contrary to the requirements set forth in the regulations. Specifically, 11 C.F.R. § 9034.8(c)(7) states that proceeds [contributions received] shall be allocated in accordance with the formula stated in the fundraising

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agreement. This section also states that "funds may not be distributed or reallocated so as to maximize the matchability of the contributions." (Emphasis not in original).

Recommendation #1

In view of 1) the relatively small misallocation in joint fundraising proceeds (\$1,227.34), and 2) the fact that the Commission is seeking repayment under Title 26 U.S.C. § 9038(b) (1) of the excessive matching funds received by the Presidential Committee (\$1,190.67) due to the misallocation, the Audit staff recommends no further action.

B. The John Glenn Presidential Committee, Inc. (the Presidential Committee) and Americans with Hart, Inc. (the Hart Committee)

The agreement entered into between the above named committees states that total proceeds from the event will be divided between the committees in direct proportion to the percentage of the total proceeds raised by each committee. If a contributor gives an amount which, if allocated in accordance with the above formula, would cause that contributor to exceed the maximum that can be contributed to one of the committees, the excessive portion of that contribution will be allocated to the other committee. Furthermore, the agreement states "in the event that checks are received that are payable to either of the [Presidential candidate's] committees as a result of a solicitation authorized by the agreement, it is agreed and understood that such checks may be endorsed over to the Democratic Unity Committee and deposited in that committee's account the same as if they were originally written to the Democratic Unity Committee."

A joint fundraising event involving the two committees was held on December 14, 1984. The Committee reported receipts from this event totaling \$42,355 and allocated 87.7% of the contributions to the Presidential Committee and 12.3% of the contributions to the Hart Committee. Subsequent to paying the fundraising expenses, the Committee disbursed \$33,042.15 to the Presidential Committee and \$17,300.32 to the Hart Committee. It should be noted that amounts disbursed include the checks that were sent directly to the participating committees.

The Audit staff's review of records relating to this event indicated that gross proceeds from the event totaled \$56,100 (net of \$1,000 in contribution refunds made). The difference in the amount of proceeds per the Committee's records (\$56,100) and the amount reported by the Committee (\$42,355) represents the value of contributions made by checks payable to

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either candidate. The Committee forwarded these checks directly to the participants without reporting or depositing the contributions.

The Audit staff included these contributions with other contributions received and deposited by the Committee in our analysis, resulting in an allocation ratio for all contributions of 65% for the Presidential Committee and 35% for the Hart Committee.

Based on Audit analysis (as opposed to the Committee's ratio of 87.7% Presidential/12.3% Hart), and taking into consideration the payment of the expenses and other adjustments required by the joint fundraising agreement, the Audit staff determined that the Presidential Committee received \$5,437.43 in proceeds which should have been allocated to the Hart Committee.

	<u>Presidential Committee</u>	<u>Hart Committee</u>
Allocation of Net Proceeds by the Committee	\$33,042.15	\$17,300.32
Allocation of Net Proceeds by the Audit Staff	<u>27,604.72</u>	<u>22,737.75</u>
Overpayment/ (Underpayment)	<u>\$ 5,437.43</u>	<u>(\$ 5,437.43)</u>

In the Interim Audit Report the Audit staff recommended that the Committee justify its allocation of the joint fundraising proceeds. Absent such a showing, the Audit staff recommended that the Committee obtain a reimbursement from the Presidential Committee of \$5,437.43 and disburse \$5,437.43 to the Hart Committee. In addition, the Audit staff recommended that the Committee should amend its reports to disclose the proper allocation(s) and the contributions that were sent directly to the participating committees. Further, the Committee should inform the participating committees to file amended reports reflecting the correct allocation.

The Committee responded to the Interim Audit Report by asserting that the checks written to the candidates were unrelated to the joint fundraising event, were not received as a result of the solicitation, and were delivered inadvertently to the fundraising representative. The Committee further contended

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that these checks should not be included in the allocation operation "merely because the checks were sent to the joint fundraising representative."

The Committee also provided an affidavit from a staff member who was involved with fundraising activities and the related accounting and compliance functions during the period. The affidavit asserts that the candidate checks were forwarded to the fundraising representative in error, and, following discussions between the two committees, were returned to the committee to which they should have been forwarded in the first place.

The Audit staff reviewed the Committee response and documentation related to the event and determined the following:

1. Fundraising efforts for the event began at least 2 weeks before the event was held on December 14, 1984.
2. The fundraising agreement was signed on December 5, 1984 after negotiations between the committees lasting several weeks.
3. The majority of the checks written to the candidates were written the day of the event. Most of the candidate contributions were written within a week of the event and 72 of the 80 ^{3/} contributions designated to the candidates were written on or after November 20, 1984.
4. The checks written to candidates are shown as contributions for the event on schedules generated by the Committee.
5. Of the 80 checks made payable to the candidates, 26 of the contributions could not be associated with a fundraising representative "host"; of the remaining 54, 47 contributions were submitted through 5 "hosts" who, according to Committee documentation, submitted only checks made payable to a particular candidate.

3/ Eight contributor checks made payable to the Hart Committee were not reviewed by the Audit staff.

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In addition, the fundraising agreement explicitly states that "Total proceeds from the event will be divided between the committees in direct proportion to the percentage of the total proceeds raised by each committee for the event." Because solicitation for the event was underway before the fundraising agreement was signed, this clause in the contract appears designed to protect the fundraising efforts already begun by either committee. Furthermore, it appears unlikely that 5 fundraising representative "hosts" for the event would inadvertently receive only checks payable to the candidates.

In summary, the checks written to the candidates appear to be date-correlated to both the event and the solicitation period for the event. In addition, the majority of these checks were collected by certain joint fundraising representative "hosts" who, according to Committee documentation, collected only contributions made payable to a particular candidate.

The Audit staff is of the opinion that the Committee has failed to demonstrate that the checks written to the candidates 1) were delivered inadvertently to the fundraising representative; 2) were not related to the joint fundraising event; and 3) were not a result of the solicitation for the event.

The Audit staff is therefore of the opinion that the contributions written to the candidates in late November and December are properly included with other contributions received and deposited by the Committee. The Committee has not provided evidence to substantiate its contention that their contributions were unrelated to the fundraising event or the solicitation for the event.

Recommendation #2

In view of 1) the relatively small amount of misallocation involved, 2) the indeterminate allocation formula within the joint fundraising agreement, and 3) the various possible interpretations of that agreement, the Audit staff recommends no further action in this matter.

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SCHEDULE OF ALLOCATION OF GROSS PROCEEDS AND EXPENSES
JOHN GLENN PRESIDENTIAL COMMITTEE, INC./SLOAN FOR CONGRESS COMMITTEE

	<u>Presidential Committee</u>	<u>Percentage of Gross Proceeds (per Audit)</u>	<u>Sloan Committee</u>	<u>Percentage of Gross Proceeds (per Audit)</u>
<u>Gross Proceeds (Distributed) - \$8,611.00</u>				
Allocation per Committee	\$2,611.00		\$6,000.00	
Allocation per Audit	<u>1,170.18</u>	13.59%	<u>7,440.82</u>	86.41%
Differences - Overpayment/(Underpayment)	<u>1,440.82</u>		<u>(1,440.82)</u>	
 <u>Expenses - \$1,300.90</u>				
Allocation per Committee	\$ 390.27		\$ 910.63	
Allocation per Audit	<u>176.79</u>		<u>1,124.11</u>	
Differences - Overpayment/(Underpayment)	<u>213.48</u>		<u>(213.48)</u>	
 <u>Net Proceeds</u>				
Total Distribution per Committee	\$2,220.73		\$5,089.37	
Total Distribution per Audit	<u>993.39</u>		<u>6,316.71</u>	
 Total Amount of Overpayment - Presidential Committee	 <u>\$1,227.34</u>			
 Total Amount of Underpayment - Sloan Committee			 <u>(1,227.34)</u>	

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