

August 27, 2009

MEMORANDUM

TO:

John D. Gibson

Chief Compliance Officer

Joseph F. Stoltz

Assistant Staff Director

Audit Division

THROUGH:

Robert A. Hickey A for R+1

FROM:

Christopher Hughey

Deputy General Counsel

Lawrence L. Calvert, Jr

Associate General Counsel General Law and Advice

Lorenzo Holloway
Assistant General Counsel

Public Finance and Audit Advice

Allison T. Steinle ATS

Attorney

SUBJECT:

Proposed Interim Audit Report on the Georgia Federal Elections

Committee (LRA 793)

I. INTRODUCTION

The Office of the General Counsel has reviewed the proposed Interim Audit Report ("IAR") on the Georgia Federal Elections Committee ("the Committee"). Our comments address Findings 1 and 2. We concur with any findings not specifically discussed in this memerandum. If you have any questions, please contact Allison T. Steinle, the attorney assigned to this audit.

Memorandum to John D. Gibson and Joseph F. Stoltz Proposed Interim Audit Report Georgia Federal Elections Committee (LRA 793) Page 2 of 5

Both Findings 1 and 2 involve the Committee's payroll account. While the cover memorandum to the proposed IAR only requests a legal analysis for Finding 2, we also are providing a legal analysis for Finding 1 bocause we believe the two findings are interrelated. Specifically, our ultimate analysis of Finding 1 will depend on the documentation, if any, that the Committee can provide in response to Finding 2. Therefore, we address Finding 2 first.

As background, we understand that the Committee established the payroll account in question to accommodate the restrictions imposed by its payroll vendor, Paychex, which would not draw the Committee's payroll from both its federal and non-federal operating accounts. Accordingly, the Committee elected to set up a seperate account from which it makes its federal and non-federal payroll disbursements. The Committee states that this payroll account functions as an "eserow account" because it is used exclusively to pay salaries and payroll taxes. The Committee states that it calculates the appropriate amount of federal and non-federal funds for each payroll period and transfers these funds from the federal and non-federal operating accounts to the payroll account, from which it pays all its federal, non-federal, and allocable employees. The Committee states it reports the federal and allocable payroll disbursements from this account on Schedule B or Schedule H4 as appropriate. However, the Committee claims that this payroll account is neither a federal account nor an allocation account, and therefore it is not required to report entirely non-federal activity to the Commission.

II. FINBING 2 – PAYMENT OF FEDERAL ACTIVITY WITH NON-FEDERAL FUNDS

Finding 2 addresses the Committee's failure to maintain supporting documentation detailing the time spent on federal activities for employees whose salaries and related expenses were paid from the payroll account. State party committees must keep a monthly log documenting the percentage of time each employee spends in connection with a federal election. 11 C.F.R. § 106.7(d)(1). If employees spend more than 25 percent of their time on federal election activity ("FEA") or in connection with a federal election, their salaries and related expenses must be paid only from a federal account. 11 C.F.R. § 106.7(d)(1)(ii). If employees spend 25 percent or less of their time on FEA or activities in connection with a federal election, they may be paid either entirely with federal fonds or at the same allocation rate as the committee's administrate expenses. 11 C.F.R. § 106.7(d)(1)(i). If employees spend all of their time on entirely non-federal activity, they may be paid entirely with non-federal funds. 11 C.F.R. § 106.7(d)(1)(iii).

In this case, the Committee claims that a portion of the payroll account—perhaps as much as 98 percent of the funds that passed through the account—was used to pay salaries and payroll taxes for employees who were engaged in exclusively non-federal activity. However,

The proposed IAR states that "[the Committee], which did not consider [the payroll] account to be a federal account, made several trunsfers into this account from both its non-federal and federal accounts and paid both its federal and non-federal employees from the account. However, very little of this activity (less than 2%) was reported on [the Committee's] disclosure reports to the Commission." It is our understanding that this means the Committee is claiming that less than two percent of its salaries or related expenses were for employees who spent time on FEA or activities in connection with a federal election. However, we recommend that the Audit Division clarify this point.

Memorandum to John D. Gibson and Joseph F. Stoltz Proposed Interim Audit Report Georgia Federal Elections Committee (LRA 793) Page 3 of 5

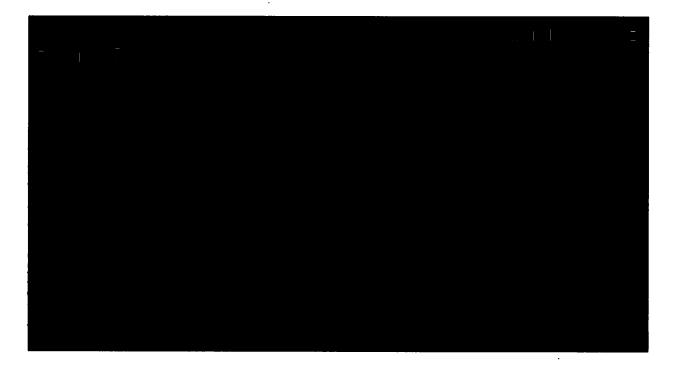
the Committee has not provided the monthly logs required by 11 C.F.R. § 106.7(d)(1) or any other documentation supporting this assertion. In the absence of this documentation, the proposed IAR concludes that all of the activity in the payroll account must be treated as 100 percent federal activity, as much as 98 percent of which was impermissibly paid with non-federal funds.

In two recent audits of state party committees, the Commission has permitted committees to use affidavits as supporting documentation, despite the fact that they had not maintained the monthly logs required under 11 C.F.R. § 106.7(d)(1). See Tennessee Republican Party IAR; Missouri State Democratic Committee Final Audit Report ("FAR"). To be consistent with these two andits, we recommend that the Audit Division expand its recommendation to provide more guidance to the Committee regarding what ulternate documentation the Commission may accept.

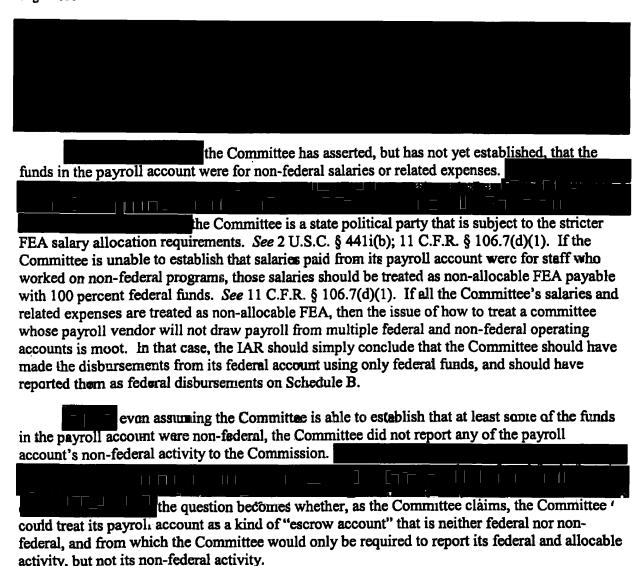
IIL FINDING 1 – MISSTATEMENT OF FINANCIAL ACTIVITY

Assuming that the Committee establishes that at least some of the funds in the payroll account were for non-federal salaries or related expenses, Finding 1 addresses the Committee's failure to report that activity. The Committee states it did not report the payroll account's non-federal activity to the Commission because it did not believe the payroll account was either a federal account or an allocation account. The proposed IAR concludes that the payroll account functioned as an allocation account, from which all activity, including non-federal activity, was reportable to the Commission. To assist the Commission in resolving this issue, we address

this Committee.



Memorandum to John D. Gibson and Joseph F. Stoltz Proposed Interim Audit Report Georgia Federal Elections Committee (LRA 793) Page 4 of 5



We concur with the Audit Division that the Committee should be required to report its non-federal activity from its payroll account. Because (again assuming the Committee can document its assertions) the Committee used the payroll account to make both federal and non-federal disbursements using funds from both its federal and non-federal operating accounts, the payroll account served as the functional equivalent of an allocation account. Allocation accounts are federal accounts from which committees must report all activity, including their non-federal activity. See 11 C.F.R. §§ 104.17, 106.7(f). Accordingly, we are of the view that the payroll account here is a federal account, and the Committee is required to report its non-federal activity. See id.

Provided the Committee is required to report its non-federal activity, we also concur with the Audit Division that the Committee should be permitted to establish a separate account from which it may make its federal and non-federal payroll disbursements.

Memorandum to John D. Gibson and Joseph F. Stoltz Proposed Interim Audit Report Georgia Federal Elections Committee (LRA 793) Page 5 of 5

the Committee could not use its federal account to make its payroll disbursements because it was prohibited from transferring funds from its non-federal account to reimburse the federal account for non-allocable non-federal activity, but it could not use the non-federal account to make its payroll disbursements because it was prohibited from allocating federal disbursements and from transferring funds from its federal account to reimburse those disbursements. See 11 C.F.R. §§ 102.5(a), 106.7(f)(1).

Therefore, the Commission could reasonably determine that the Committee's use of the payroll account was permissible, provided that it amend its reports to disclose the non-federal activity that was not reported.

While we are of the view that the Committee should be permitted to establish a separate payroll account in light of the restriction it faced, this issue may come up again given that Paychex is a commonly used payroll vendor. On their face, the Commission's regulations prohibit committees from transferring funds from a non-federal account to reimburse a federal account for non-allocable activity, and permit committees to use allocation accounts "solely for the purpose of paying the allocable expenses of joint federal and non-federal activities." See 11 C.F.R. § 106.7(f)(1). Therefore, looking forward, we note that the only way committees could ensure that they were in compliance with the law would be to ensure that they choose a payroll vendor that will draw their payroll from their faderal and non-federal operating accounts in compliance with the regulations.