

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Audit Division Recommendation) Agenda Documents No. 11-10, No. 11-
Memorandum on the Georgia Federal) 10-A and No. 11-10-B
Elections Committee (A07-14))

CERTIFICATION

I, Shawn Woodhead Werth, recording secretary of the Federal Election Commission open meeting on March 03, 2011 do hereby certify that the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 2-4 to:

Approve Agenda Document No. 11-10.

Commissioners Bauerly and Walther voted affirmatively for the motion. Commissioners Hunter, McGahn II, Petersen and Weintraub dissented.

2. Failed by a vote of 3-3 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):

- a) 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

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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.

- b) Find that GFEC is not required to further amend its reports in relation to the transactions involving the payroll escrow account.

Commissioners Hunter, McGahn II and Petersen voted affirmatively for the motion.

Commissioners Bauerly, Walther and Weintraub dissented.

3. Failed by a vote of 3-3 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.

Commissioners Hunter, McGahn II and Petersen voted affirmatively for the motion.

Commissioners Bauerly, Walther and Weintraub dissented.

4. Decided by a vote of 6-0 to:

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):

- a) With respect to Finding 1 ("Misstatement of Financial Activity") --

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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.

b) With respect to Finding 2 ("Payment of Federal Activity with Non-Federal Funds") – approve this finding as 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).

c) Approve Finding 3.

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther and Weintraub voted affirmatively for the decision.

Attest:

March 7, 2011
Date

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