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2011 APR 29 PM 1:20

April 29, 2011

**MEMORANDUM**

**AGENDA ITEM**

To: The Commission

Through: Alec Palmer *fa m*  
Acting Staff Director

**For Meeting of 5-26-11**

From: Patricia Carmona *PC for MC*  
Chief Compliance Officer

Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

Alex R. Boniewicz *AB*  
Audit Manager

By: Jim Miller *JM by JFS*  
Lead Auditor

Subject: Proposed Final Audit Report on the Kansas Republican Party (A08-02)

Attached for your approval is the subject report. The report has been revised in accordance with Directive 70.

This report is being circulated on a 72 hour no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Jim Miller or Alex Boniewicz at 694-1200.

Attachment:  
Proposed Final Audit Report on the Kansas Republican Party



# Proposed Final Audit Report on the Kansas Republican Party

January 1, 2007 – December 31, 2008

## 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.<sup>1</sup> 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 Committee (p. 2)

The Kansas Republican Party is a state party committee headquartered in Topeka, Kansas. For more information, see the chart on the Committee Organization, p. 2.

## Financial Activity<sup>2</sup> (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$ 405,306
○ Contributions from Other Political Committees	50,877
○ Transfers from Affiliated/Other Party Committees	45,475
○ Transfers from Non-federal Accounts	18,738
○ All Other Receipts	9,665
<b>Total Receipts</b>	<b>\$ 530,061</b>
• <b>Disbursements</b>	
○ Operating Disbursements	\$ 533,165
○ All Other Disbursements	6,485
<b>Total Disbursements</b>	<b>\$ 539,650</b>

## Commission Findings (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Receipt of a Prohibited Contribution (Finding 2)
- Payment of Federal Activity Out of Non-federal Accounts (Finding 3)

## Additional Issues

- National Convention Account Activity (Issue 1)
- Receipt of Apparent Prohibited Contributions (Issue 2)
- Payment of Federal Activity Out of Non-federal Accounts (Issue 3)

<sup>1</sup> 2 U.S.C. §438(b).

<sup>2</sup> These figures have been revised to exclude the National Convention Account, see Additional Issue 1.

# **Proposed Final Audit Report on the Kansas Republican Party**

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January 1, 2007 – December 31, 2008



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# **Part I**

## **Background**

### **Authority for Audit**

This report is based on an audit of the Kansas Republican Party (KRP), 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 disclosure of disbursements, debts and obligations.
2. The disclosure of expenses allocated between federal and non-federal accounts.
3. The disclosure of individual contributors' occupation and name of employer.
4. The receipt of contributions from prohibited sources.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

### **Limitations**

In maintaining its disbursement records, KRP satisfied the minimum recordkeeping requirements of 11 CFR §102.9; however, the Audit staff's testing of disbursements was limited by the lack of external documentation, such as invoices. This lack of third party records limited the testing for the proper reporting of debts and obligations; as well as the adequacy of disclosure of information, such as payee, address and purpose for disbursements.

### **Audit Hearing**

KRP declined the opportunity for an audit hearing.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	
• Date of Registration	March 15, 1979
• Audit Coverage	January 1, 2007 - December 31, 2008
<b>Headquarters</b>	
	Topeka, Kansas
<b>Bank Information</b>	
• Bank Depositories	One
• Bank Accounts	Six Federal and Four Non-federal
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Steve Fitzgerald
• Treasurer During Period Covered by Audit	Emmitt Mitchell (thru 2/04/07) David Thorne (2/05/07 thru 12/17/07) Morey Sullivan (12/18/07 thru 2/17/09)
<b>Management Information</b>	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid staff

#### Overview of Financial Activity (Audited Amounts)<sup>3</sup>

<b>Cash on hand @ January 1, 2007</b>	<b>\$ 14,426</b>
<b>Receipts</b>	
○ Contributions from Individuals	\$ 405,306
○ Contributions from Other Political Committees	50,877
○ Transfers from Affiliated/Other Party Committees	45,475
○ Transfers from Non-federal Accounts	18,738
○ All Other Receipts	9,665
<b>Total Receipts</b>	<b>\$ 530,061</b>
<b>Disbursements</b>	
○ Operating Disbursements	\$ 533,165
○ All Other Disbursements	6,485
<b>Total Disbursements</b>	<b>\$ 539,650</b>
<b>Cash on hand @ December 31, 2008</b>	<b>\$ 4,837</b>

<sup>3</sup> These figures have been revised to exclude the National Convention Account, see Additional Issue 1.

## **Part III Summaries**

### **Commission Findings**

#### **Finding 1. Misstatement of Financial Activity**

During audit fieldwork, a comparison of KRP's reported figures with bank records indicated a misstatement of receipts, disbursements and cash on hand in both 2007 and 2008. For 2007, KRP overstated beginning cash on hand by \$4,628, overstated receipts by \$11,885, understated disbursements by \$11,370 and overstated ending cash on hand by \$27,883. In 2008, excluding KRP's National Convention account (See Additional Issue 1. below), KRP overstated receipts by \$137,625, disbursements by \$71,812 and the ending cash on hand by \$93,696. In response to the Interim Audit Report, KRP amended its reports to materially correct the misstatements presented in that report. The Commission approved this finding. (For more detail, see p. 5)

#### **Finding 2. Receipt of a Prohibited Contribution**

During audit fieldwork, a review of contributions received by KRP identified a contribution of \$10,000 that appeared to be from a prohibited source. In response to the Interim Audit Report, KRP indicated it had transferred sufficient funds from its federal to its non-federal account to resolve this contribution. The Commission approved this finding. (For more detail, see p. 8)

#### **Finding 3. Payment of Federal Activity Out of Non-federal Accounts**

Audit fieldwork identified payments totaling \$20,123 from KRP's non-federal accounts that appeared to be for federal expenses. In response to the Interim Audit Report, KRP amended its reports to disclose these disbursements as federal/shared expenses. The Commission approved this finding. (For more detail, see p. 10)

### **Additional Issues**

#### **Issue 1. National Convention Account Activity**

During audit fieldwork, the Audit staff noted that in 2008 KRP maintained a separate account for expenses associated with the Republican National Convention (National Convention account). A portion of the receipts and expenses had been reported while the remainder had not. The Draft Final Audit Report acknowledged that in response to a recommendation in the Interim Audit Report, KRP filed amended reports to include the remainder of the activity.

In light of the lack of information regarding whose convention travel, lodging and subsistence expenses were paid for by the National Convention account, and the absence of any statutory provision or regulation directly addressing the issue of what funds may be used to pay expenses for delegates and non-delegates, the Commission did not approve by the required four votes the Audit staff's recommended finding. The Commission did determine that KRP is not required to take any additional corrective action with respect to amended reports filed in response to the Interim Audit Report.

Pursuant to Commission Directive 70,<sup>4</sup> this matter is discussed in the “Additional Issues” section. (For more detail, see p. 12)

## **Issue 2. Receipt of Apparent Prohibited Contributions**

During audit fieldwork, a review of contributions received by KRP and deposited into a National Convention account, identified three contributions totaling \$42,498, which appeared to be from prohibited sources. In response to the Interim Audit Report, KRP indicated it had transferred some funds from its federal to its non-federal account and, citing insufficient funds, amended its most recent report to disclose a debt to its non-federal account for the remaining prohibited contributions.

In light of the lack of a statutory provision or regulation directly addressing the issue of what funds may be used to pay for expenses associated with a national nominating convention, the Commission did not approve by the required four votes the Audit staff’s recommended finding.

Pursuant to Commission Directive 70, this matter is discussed in the “Additional Issues” section. (For more detail, see p. 13)

## **Issue 3. Payment of Federal Activity Out of Non-federal Accounts**

Audit fieldwork identified payments totaling \$84,736 from KRP’s non-federal accounts for potentially federal expenses. In response to the Interim Audit Report, KRP amended its reports to disclose these disbursements as federal/shared expenses.

In light of the lack of specific information demonstrating that these expenses were Federal in nature, the Commission did not approve the Audit staff’s recommendation by the required four votes.

Pursuant to Commission Directive 70, this matter is discussed in the “Additional Issues” section. (For more detail, see p. 16)

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<sup>4</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).



## Part IV

# Commission Findings

### Finding 1. Misstatement of Financial Activity

#### Summary

During audit fieldwork, a comparison of KRP's reported figures with bank records indicated a misstatement of receipts, disbursements and cash on hand in both 2007 and 2008. For 2007, KRP overstated beginning cash on hand by \$4,628, overstated receipts by \$11,885, understated disbursements by \$11,370 and overstated ending cash-on-hand by \$27,883. In 2008, excluding KRP's National Convention account (See Additional Issue 1. below), KRP overstated receipts by \$137,625, disbursements by \$71,812 and the ending cash on hand by \$93,696. In response to the Interim Audit Report, KRP amended its reports to materially correct the misstatements presented in that report. The Commission approved this finding.

#### Legal Standard

**Contents of Reports.** Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

#### Facts and Analysis

##### A. Facts

The Audit staff reconciled reported activity to bank records for calendar years 2007 and 2008. The following charts outline the discrepancies for the beginning cash balances, receipts, disbursements and ending cash balances for each year. Succeeding paragraphs address the reasons for the misstatements.

<b>2007 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2007	\$19,054	\$14,426	\$4,628 Overstated
Receipts	\$184,566	\$172,681	\$11,885 Overstated
Disbursements	\$172,457	\$183,827	\$11,370 Understated
Ending Cash Balance @ December 31, 2007	\$31,163	\$3,280	\$27,883 Overstated

The beginning cash on hand was overstated by \$4,628 and is unexplained, but likely resulted from prior period discrepancies.

The overstatement of receipts was the result of the following:

• Contribution amount incorrectly reported (see details below)	\$ 8,220
• Non-federal caucus receipts reported in error	(25,000)
• Transfer of funds from non-federal account not reported	2,599
• Unexplained difference	<u>2,296</u>
<b>Net Overstatement of receipts</b>	<b><u>\$ (11,885)</u></b>

The understatement of disbursements was the result of the following:

• Transfer to non-federal account not reported (see details below)	\$ 8,220
• Disbursements not reported	<u>3,150</u>
<b>Understatement of disbursements</b>	<b><u>\$ 11,370</u></b>

KRP received a \$15,000 contribution from an individual and deposited the funds to its federal account on October 24, 2007. KRP reported the amount of this contribution as \$6,780, which represented the \$10,000 contribution limit for individuals less \$3,220, the amount of contributions already received from the individual prior to October 24, 2007, thus understating receipts by \$8,220 (\$15,000-\$6,780). In addition, KRP transferred \$8,220, the excess portion of the contribution, from its federal account to its non-federal account on October 25, 2007, but did not include the disbursement on its November 2007 monthly report.

The \$27,883 overstatement of the closing cash on hand was the result of the misstatements described above.

In 2008, KRP partially disclosed activity from its National Convention account. The Audit staff included all activity from this account in deriving the misstatement presented in the Interim Audit Report. Nearly all receipts and expenditures of this account related to attendance at the Republican National Convention. The Commission did not approve by the required four votes the Audit Staff recommendation that the National Convention account was a Federal account and required disclosure (See Additional Issue 1. below). As a result, the Audit staff has excluded all activity from this account and revised the presentation of the misstatements of financial activity for 2008 in the chart and explanations of differences below.

<b>2008 Committee Activity</b>			
	<b>Reported</b>	<b>Bank Records</b>	<b>Discrepancy</b>
Beginning Cash Balance @ January 1, 2008	\$31,163	\$3,280	\$27,883 Overstated
Receipts	\$495,005	\$357,380	\$137,625 Overstated
Disbursements	\$427,635	\$355,823	\$71,812 Overstated
Ending Cash Balance @ December 31, 2008	\$98,533	\$4,837	\$93,696 Overstated

The overstatement of receipts resulted from the following:

• Reported receipts deposited into National Convention account	\$ (173,636)
• Refund received from Paychex but not reported	2,846
• Receipts deposited into various federal accounts not reported	25,822
• Permissible cash deposit for sale of yard signs but not reported	13,236
• Reported non-federal caucus receipts in error	(10,000)
• Transfers from the non-federal account but not reported	5,236
• Unexplained difference	<u>(1,129)</u>
<b>Net Overstatement of receipts</b>	<b><u>\$ (137,625)</u></b>

The overstatement of disbursements resulted from the following:

• Transfers to the non-federal account not reported	\$ 3,400
• Reported disbursements from the National Convention account	(132,708)
• Disbursements reported not supported by a check or debit	(10,285)
• Other disbursements not reported	<u>67,781</u>
<b>Net Overstatement of disbursements</b>	<b><u>\$ (71,812)</u></b>

The \$93,696 overstatement of the closing cash on hand was the result of the misstatements described above.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the misstatements for 2007 and 2008 with a KRP representative during the exit conference and provided copies of relevant workpapers. The KRP representative stated that corrective amended reports would be filed.

The Audit staff recommended that KRP amend its reports to correct the misstatements for 2007 and 2008. It was also recommended that KRP amend its most recently filed report to correct the cash balance with an explanation that the change resulted from a prior-period audit adjustment and that KRP reconcile the cash balance of its most recent report to identify any subsequent discrepancies that may impact the adjustment recommended by the Audit staff.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, KRP amended its reports correcting the misreporting.

#### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged that KRP amended its reports to materially correct the misstatements presented in the Interim Audit Report.

#### **Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP misstated its financial activity for both 2007 and 2008, including the National Convention account.

The Commission approved the Audit Staff recommendation with the exception of the National Convention account, but concluded that KRP is not required to take any additional corrective action with respect to the amended reports it filed. (See Additional Issue 1. below)

## **Finding 2. Receipt of a Prohibited Contribution**

### **Summary**

During audit fieldwork, a review of contributions received by KRP identified a contribution of \$10,000 that appeared to be from a prohibited source. In response to the Interim Audit Report, KRP indicated it had transferred sufficient funds from its federal to its non-federal account to resolve this contribution. The Commission approved this finding.

### **Legal Standard**

**A. Definition of Limited Liability Company.** A limited liability company (LLC) is a business entity that is recognized as an LLC under the laws of the state in which it was established. 11 CFR §110.1(g)(1).

**B. Application of Limits and Prohibitions to LLC Contributions.** A contribution from an LLC is subject to contribution limits and prohibitions, depending on several factors as explained below:

1. **LLC as Partnership.** The contribution is considered to be from a partnership if the LLC chooses to be treated as a partnership under Internal Revenue Service (IRS) tax rules or if it makes no choice about its tax status. A contribution by a partnership is attributed to each partner by his or her share of the partnership profits. 11 CFR §110.1 (e)(1) and (g)(2).
2. **LLC as Corporation.** The contribution is considered a corporate contribution—and is barred under the Act—if the LLC chooses to be treated as a corporation under IRS rules, or if its shares are traded publicly. 11 CFR §110.1(g)(3).
3. **LLC with Single Member.** The contribution is considered a contribution from a single individual if the LLC is a single-member LLC that has not chosen to be treated as a corporation under IRS rules. 11 CFR §110.1(g)(4).

**C. Limited Liability Company's Responsibility to Notify Recipient Committee.** At the time it makes a contribution, an LLC must notify the recipient committee:

- That it is eligible to make the contribution; and
- In the case of an LLC that considers itself a partnership (for tax purposes), how the contribution should be attributed among the LLC's members. 11 CFR §110.1(g)(5).

**D. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the

refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).

3. The committee must keep a written record explaining why the contribution may be prohibited and include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

## **Facts and Analysis**

### **A. Facts**

The Audit staff reviewed contributions received by KRP and identified one contribution (\$10,000) that was determined to be from a limited liability company, which may choose a corporate tax filing status. As such, the limited liability company was required to affirm to KRP that it was eligible to make the contribution based on its tax filing status being other than corporate. Records provided by KRP did not contain any such affirmations or any follow-up by KRP to verify eligibility.

### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff presented this matter to a KRP representative during the exit conference. The KRP representative stated that a letter requesting the tax filing status would be sent to the limited liability company and that KRP would refund the contribution if it was prohibited.

In the Interim Audit Report, the Audit staff recommended that KRP provide documentation establishing the tax filing status of the limited liability company. Absent such evidence, it was recommended that KRP refund the \$10,000 to the contributor or transfer the funds to a non-federal account and provide documentation of such refund (i.e., copy of the negotiated refund check, front and back) or transfer. If funds were not available, then the refund or transfer should have been disclosed on Schedule D (Debts and Obligations) until funds became available to make the refund or transfer.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report, KRP acknowledged that this contribution was received from a company taxed as a corporation and deposited into its Federal account rather than its non-federal account. KRP transferred sufficient funds on January 25, 2010, from its federal account to its non-federal to resolve this contribution.

### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged KRP's transfer of funds to resolve the prohibited contribution.

### **Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP had received prohibited contributions.

The Commission approved the Audit Division recommendation with respect to this \$10,000 prohibited contribution. (See Additional Issue 2. below)

## **Finding 3. Payment of Federal Activity Out of Non-federal Accounts**

### **Summary**

Audit fieldwork identified payments totaling \$20,123 from KRP's non-federal accounts that appeared to be for federal expenses. In response to the Interim Audit Report, KRP amended its reports to disclose these disbursements as federal/shared expenses. The Commission approved this finding.

### **Legal Standard**

- A. Accounts for Federal and Non-federal Activity.** A party committee that finances political activity in connection with both federal and non-federal elections may establish two accounts (federal and non-federal) and allocate shared expenses—those that simultaneously support federal and non-federal election activity—between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).
- B. Paying for Allocable Expenses.** Commission regulations offer party committees two ways to pay for allocable, shared federal/non-federal expenses.
- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense; or
  - They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses for shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A).
- C. Reporting Allocable Expenses.** A state, district or local committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity). 11 CFR §104.17(b)(3).
- D. Allocation Ratio for Administrative & Non-Candidate Specific Voter Drive Costs.** State and local party committees must allocate their administrative expenses and non-candidate specific voter drive costs according to the fixed percentage ratio. Under this method, if a Presidential candidate and Senate candidate appear on the ballot, the committees must allocate at least 36% of expenses to their federal funds. 11 CFR §106.7(d)(2)(ii) and (3)(ii).

## **Facts and Analysis**

### **A. Facts**

During fieldwork, the Audit staff noted that KRP maintained four non-federal bank accounts. KRP made payments from two of its non-federal accounts totaling \$20,123 that should have been paid from a federal account. These payments were for allocable administrative expenses such as rent, telephone and office supplies. KRP should have paid these expenses from a federal account and reported them on Schedule H-4 using the fixed percentage ratio of 36% federal and 64% non-federal in accordance with 11 CFR §106.7(d)(2)(ii) and (3)(ii).

Available documentation did not indicate that any of these payments were for solely non-federal activities; therefore, they were treated as allocable administrative expenses. The federal share of these expenses is \$7,244 ( $\$20,123 \times 36\%$  Federal share).

The Audit staff compared reimbursements received from the non-federal account for its share of allocable activity. This analysis indicated the non-federal account could have reimbursed an additional amount that is in excess of the amount at issue. Therefore, after considering all adjustments, the Audit staff concluded that there was no net funding of federal activity from the non-federal accounts at the end of the two year audit period and only the disclosure issues need to be addressed by KRP.

### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff addressed this matter and provided a schedule identifying the transactions noted above to a KRP representative. The KRP representative stated that they would file amended reports to include these expenses as memo entries on Schedule H-4 (Disbursements for Allocated Federal/Nonfederal Activity).

In the Interim Audit Report, the Audit staff recommended KRP demonstrate that the identified disbursements paid from the non-federal accounts were solely non-federal expenses. Absent such a demonstration, it was recommended that KRP amend its reports to disclose the above noted disbursements as memo entries on Schedules H-4.

### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report, KRP noted that due to scant records it was unable to demonstrate that these disbursements were for non-federal purposes. In light of the lack of records and the fact that no non-federal overfunding occurred, KRP amended its reports to correctly disclose these disbursements.

### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged that KRP had amended its reports to disclose these transactions as recommended.

## **Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP had paid allocable administrative expenses from its non-federal accounts. It was also

recommended that no transfer from the federal to the non-federal account was necessary since during the audit period the non-federal account had transferred less for shared expenses than was permitted.

The Commission approved this finding with respect to the payment of allocable administrative expenses from the non-federal account. (See Additional Issue 3. below)

## **Part V**

### **Additional Issues**

#### **Issue 1. National Convention Account Activity**

##### **Summary**

During audit fieldwork, the Audit staff noted that in 2008 KRP maintained a separate account for expenses associated with the Republican National Convention (National Convention account). A portion of the receipts and expenses had been reported while the remainder had not. The Draft Final Audit Report acknowledged that in response to a recommendation in the Interim Audit Report, KRP filed amended reports to include the remainder of the activity.

In light of the lack of information regarding whose convention travel, lodging and subsistence expenses were paid for by the National Convention account, and the absence of any statutory provision or regulation directly addressing the issue of what funds may be used to pay expenses for delegates and non-delegates, the Commission did not approve by the required four votes the Audit staff's recommended finding. The Commission did determine that KRP is not required to take any additional corrective action with respect to amended reports filed in response to the Interim Audit Report.

Pursuant to Commission Directive 70,<sup>5</sup> this matter is discussed in the "Additional Issues" section.

##### **Legal Standard**

**Contents of Reports.** Each report must disclose:

- The amount of cash on hand at the beginning and end of the reporting period;
- The total amount of receipts for the reporting period and for the calendar year;
- The total amount of disbursements for the reporting period and for the calendar year; and
- Certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 2 U.S.C. §434(b)(1), (2), (3), (4) and (5).

##### **Facts and Analysis**

###### **A. Facts**

During audit fieldwork, the Audit staff reconciled reported activity to bank records for calendar year 2008. In 2008, one account was used almost exclusively for receipts and disbursements related to attendance at the Republican National Convention. KRP reported a portion of the

<sup>5</sup> Available at [http://www.fec.gov/directives/directive\\_70.pdf](http://www.fec.gov/directives/directive_70.pdf).



activity from this account. In the Interim Audit Report, the Audit staff included all activity from this account as reportable activity. Opened in May of 2008, this account had deposits totaling \$256,674, disbursements totaling \$256,668 and an ending cash balance on December 31, 2008 of \$5.

#### **B. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed the reporting of the National Convention account as well as the misstatements presented in Finding 1 above with a KRP representative during the exit conference and provided copies of workpapers. The KRP representative stated that corrective amended reports would be filed.

The Audit staff recommended that KRP amend its reports to include the remainder of the National Convention account.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report, KRP amended its reports to include the remainder of the National Convention account activity.

#### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged that KRP amended its reports to materially correct the misstatements presented in the Interim Audit Report.

#### **Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP was required to report all receipts and disbursements related to the National Convention account.

The Commission did not approve the Audit staff's recommended finding by the required four votes. Some Commissioners agreed that funds received and disbursed in connection with the National Convention were required to be reported to the Commission. Other Commissioners reasoned that a lack of information regarding whose convention travel, lodging and subsistence expenses were paid for from the National Convention account, as well as any statutory provision or regulation directly addressing the issue of what funds may be used to pay for such expenses for either delegates' or non-delegates' attendance at a National Convention provided inadequate support for the finding.

The Commission agreed that KRP need not file any further amended reports related to the National Convention account.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issues" section.

## **Issue 2. Receipt of Apparent Prohibited Contributions**

#### **Summary**

During audit fieldwork, a review of contributions received by KRP and deposited into a National Convention account, identified three contributions totaling \$42,498, which appeared to be from

prohibited sources. In response to the Interim Audit Report, KRP indicated it had transferred some funds from its federal to its non-federal account and, citing insufficient funds, amended its most recent report to disclose a debt to its non-federal account for the remaining prohibited contributions.

In light of the lack of a statutory provision or regulation directly addressing the issue of what funds may be used to pay for expenses associated with a national nominating convention, the Commission did not approve by the required four votes the Audit staff's recommended finding.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issues" section.

## **Legal Standard**

**A. Receipt of Prohibited Corporate Contributions.** Political committees may not accept contributions made from the general treasury funds of corporations. This prohibition applies to any type of corporation including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative. 2 U.S.C. §441b.

**B. Questionable Contributions.** If a committee receives a contribution that appears to be prohibited (a questionable contribution), it must follow the procedures below:

1. Within 10 days after the treasurer receives the questionable contribution, the committee must either:
  - Return the contribution to the contributor without depositing it; or
  - Deposit the contribution (and follow the steps below). 11 CFR §103.3(b)(1).
2. If the committee deposits the questionable contribution, it may not spend the funds and must be prepared to refund them. It must therefore maintain sufficient funds to make the refunds or establish a separate account in a campaign depository for possibly illegal contributions. 11 CFR §103.3(b)(4).
3. The committee must keep a written record explaining why the contribution may be prohibited and must include this information when reporting the receipt of the contribution. 11 CFR §103.3(b)(5).
4. Within 30 days of the treasurer's receipt of the questionable contribution, the committee must make at least one written or oral request for evidence that the contribution is legal. Evidence of legality includes, for example, a written statement from the contributor explaining why the contribution is legal or an oral explanation that is recorded by the committee in a memorandum. 11 CFR §103.3(b)(1).
5. Within these 30 days, the committee must either:
  - Confirm the legality of the contribution; or
  - Refund the contribution to the contributor and note the refund on the report covering the period in which the refund was made. 11 CFR §103.3(b)(1).

## **Facts and Analysis**

### **A. Facts**

During fieldwork, the Audit staff identified three contributions totaling \$42,498 from apparent corporate entities. The Audit staff verified with the Secretary of State that these entities were incorporated when the contributions were made. These contributions were deposited into the National Convention account.

**B. Interim Audit Report & Audit Division Recommendation**

The Audit staff presented this matter to a KRP representative during the exit conference. The KRP representative stated any prohibited contributions would be refunded.

In the Interim Audit Report, the Audit staff recommended that KRP demonstrate that the three contributions were made with permissible funds. Absent such evidence, it was recommended that KRP refund the \$42,498 to the contributors or transfer the funds to a non-federal account and provide documentation of such refunds (i.e., copies of each negotiated refund check, front and back) or transfer. If funds were not available, then the refunds or transfer due were to be disclosed on Schedule D (Debts and Obligations) until funds became available to make the refunds or transfer.

**C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report, KRP acknowledged that these contributions were received from corporations and deposited into its National Convention account rather than its non-federal account. KRP transferred funds from its federal account to its non-federal account in partial payment of prohibited contributions and also amended its most recent report to disclose the remaining obligation of \$37,498<sup>6</sup> on Schedule D as owed by KRP to its non-federal account.

**D. Draft Final Audit Report**

The Draft Final Audit reported indicated these prohibited contributions (\$42,498) had either been resolved or reported as debt to the non-federal account.

**Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP had received prohibited contributions deposited in its National Convention account in the amount of \$42,498.

The Commission did not approve the Audit staff's recommended finding by the required four votes. Some Commissioners agreed that funds received for the National Convention were required to be permissible under the Act. Other Commissioners reasoned that a lack of any statutory provision or regulation directly addressing the issue of what funds may be used to pay expenses for either delegates' or non-delegates' attendance at a National Convention provided inadequate support for the finding.

The Commission agreed that, under the circumstances, KRP should remove from its next regularly scheduled report the \$37,498 disclosed as debt and that it is not required to make any additional reimbursements from its federal account.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issues" section.

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<sup>6</sup> In its response, KRP noted a portion of a prohibited contribution had been refunded; however, the refund was made from its non-federal account.

### **Issue 3. Payment of Federal Activity Out of Non-federal Accounts**

#### **Summary**

Audit fieldwork identified payments totaling \$84,736 from KRP's non-federal accounts for potentially federal expenses. In response to the Interim Audit Report, KRP amended its reports to disclose these disbursements as federal/shared expenses.

In light of the lack of specific information demonstrating that these expenses were Federal in nature, the Commission did not approve the Audit staff's recommendation by the required four votes.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issues" section.

#### **Legal Standard**

- A. Accounts for Federal and Non-federal Activity.** A party committee that finances political activity in connection with both federal and non-federal elections may establish two accounts (federal and non-federal) and allocate shared expenses—those that simultaneously support federal and non-federal election activity—between the two accounts. Alternatively, the committee may conduct both federal and non-federal activity from one bank account, considered a federal account. 11 CFR §102.5(a)(1)(i).
- B. Paying for Allocable Expenses.** Commission regulations offer party committees two ways to pay for allocable, shared federal/non-federal expenses.
- They may pay the entire amount of the shared expense from the federal account and transfer funds from the non-federal account to the federal account to cover the non-federal share of that expense; or
  - They may establish a separate, federal allocation account into which the committee deposits funds from both its federal and non-federal accounts solely for the purpose of paying the allocable expenses for shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A).
- C. Reporting Allocable Expenses.** A state, district or local committee that allocates federal/non-federal expenses must report each disbursement it makes from its federal account (or separate allocation account) to pay for a shared federal/non-federal expense. Committees report these kinds of disbursements on Schedule H4 (Disbursements for Allocated Federal/Nonfederal Activity). 11 CFR §104.17(b) (3).
- D. Allocation Ratio for Administrative & Non-Candidate Specific Voter Drive Costs.** State and local party committees must allocate their administrative expenses and non-candidate specific voter drive costs according to the fixed percentage ratio. Under this method, if a Presidential candidate and Senate candidate appear on the ballot, the committees must allocate at least 36% of expenses to their Federal funds. 11 CFR §106.7(d)(2)(ii) and (3)(ii).

#### **Facts and Analysis**

##### **A. Facts**

Distinct from the National Convention account addressed previously in Issues 1 and 2, the Audit staff noted that KRP maintained four non-federal bank accounts. KRP made payments from two

of its non-federal accounts totaling \$84,736 that potentially should have been paid from a federal account. Most of these payments were for administrative and non-candidate specific voter drive expenses. Some of the expenses related to the National Convention, others were for postage, consulting, travel and printing where records were not adequate to establish if they were wholly non-federal, wholly federal, or allocable between the two.

The non-federal account did not reimburse as much for shared expenses as was permissible during the audit period, therefore, no net funding of federal activity by the non-federal account occurred. Only the disclosure of the disbursements was at issue.

#### **B. Interim Audit Report & Audit Division Recommendation**

At the exit conference, the Audit staff addressed these matters and provided schedules of the transactions. The KRP representative stated that amended reports would be filed to include the disbursements as memo entries.

In the Interim Audit Report, the Audit staff recommended that KRP demonstrate that the identified disbursements paid from the non-federal account were solely non-federal expenses. Samples or descriptions of printed materials and other items were requested. Absent such a demonstration, it was recommended that KRP amend its reports to disclose, as memo entries, the disbursements on Schedules B (Itemized Disbursements) or H-4 (Disbursements for Allocated Federal/Nonfederal Activity), as appropriate.

#### **C. Committee Response to Interim Audit Report**

In response to the Interim Audit Report, KRP noted that due to scant records it was unable to demonstrate that these disbursements were for non-federal purposes. In light of the lack of records and that no non-federal overfunding occurred, KRP amended its reports to disclose these disbursements.

#### **D. Draft Final Audit Report**

In the Draft Final Audit Report, the Audit staff acknowledged that KRP had amended its reports to disclose these transactions.

#### **Commission Conclusion**

On March 3, 2011, the Commission considered the Audit Division Recommendation Memorandum in which the Audit Division recommended that the Commission adopt a finding that KRP had made potentially federal or allocable expenses from the non-federal accounts.

The Commission did not approve the Audit staff's recommended finding by the required four votes. Some Commissioners agreed that KRP was required to report the disbursements in question. Others concluded that absent evidence that the expenses were in fact federal, the recommendation improperly shifts the burden to audited committees to disprove a negative.

Pursuant to Commission Directive 70, this matter is discussed in the "Additional Issues" section.

## CASE INDEX FORM

**CASE NO. & NAME:** A08-02 Kansas Republican Party

**STAFF ASSIGNED:** Alex Boniewicz, Audit Manager  
Jim Miller, Lead Auditor

**TELEPHONE:** Audit - 202-694-1200

<u>DATE</u>	<u>DOCUMENT</u>
November 15, 2008	RAD Referral
May 27, 2009	Audit Scope Determination
April 14, 2010	Interim Audit Report Legal Analysis
May 14, 2010	Interim Audit Report to Committee
July 2, 2010	Response to Interim Audit Report
August 5, 2010	Legal Analysis on Draft Final Audit Report
August 10, 2010	Draft Final Audit Report to Committee
August 31, 2010	Committee's Waiver for a Hearing
October 19, 2010	Audit Division Recommendation Memorandum
April 29, 2011	Proposed Final Audit Report

**The above documents can be found in the voting ballot matters folder.**

**If you have any questions, please contact Alex Boniewicz at 694-1200.**