FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

August 31, 2001

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA
DEPUTY STAFF DIRECTOR

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON MISSOURI DEMOCRATIC STATE COMMITTEE

Attached please find a copy of the final audit report and related documents on Missouri Democratic State Committee which was approved by the Commission on August 23, 2001.

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: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library
Information Division

REPORT OF THE AUDIT DIVISION

ON

MISSOURI DEMOCRATIC STATE COMMITTEE

Approved August 23, 2001

FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

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MISSOURI DEMOCRATIC STATE COMMITTEE

EXECUTIVE SUMMARY

Missouri Democratic State Committee (the Committee) registered with the Federal Election Commission on September 15, 1980.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings arising from the audit were presented to Committee representatives at an exit conference held at the conclusion of fieldwork on May 17, 2000, and later in an interim audit report. The following is an overview of the findings contained in the audit report.

Possible Earmarked Contributions – 2 U.S.C. §§441a(a) & (f), 11 CFR §§110.1(h), 110.6(a), (b) & (c), and 102.8(a) & (c). The Nixon Campaign Fund was the principal campaign committee for Jay Nixon, the democratic senatorial candidate for the 1998 election. The Audit staff identified $183,810 in such contributions that appeared to be earmarked for the Nixon Campaign Fund deposited into the Committee's federal account and $171,500 deposited into the non-federal account.

In response to the interim audit report, the Committee stated it received no earmarked contributions during the 1998 election cycle and that the interim audit report failed to present any evidence that supported the presence of earmarked contributions.

Apparent Excessive Expenditures on Behalf of a Senatorial Candidate – 2 U.S.C. §§441a(a), (c) & (d), 11 CFR §§110.2(b), and 110.7(b) & (c). The Committee and the DSCC each could spend up to $260,140 in coordinated expenditures on behalf of Jay Nixon. As of the date of the 1998 general election, the DSCC transferred $79,000 of its expenditure limitation to the Committee; the Committee's expenditure limitation increased to $339,140.

The Audit staff identified $372,840 in coordinated expenditures made by the Committee on behalf of Jay Nixon. Accordingly, as of the date of the 1998 general election, the Committee exceeded the expenditure limitation by $28,700 ($372,840 - $339,140 - $5,000 [441a(a)(2)(A) limit]). It should be noted that on May 25, 1999, the DSCC transferred an additional $40,000 of its limit to the Committee.

In response to the interim audit report, the Committee stated the report failed to demonstrate that the Committee made excessive coordinated expenditures in support of Jay Nixon. The Committee further stated "the fact that both committees together remained within their combined limit demonstrates the absence of any intent to violate the Act."

RECEIPT OF APPARENT EXCESSIVE CONTRIBUTION – 2 U.S.C. §441a(a)(1) & (2), 11 CFR §§103.3(b) and 110.1(k). The Committee received contributions that exceeded the limitation by $62,965. Excessive portions, totaling $61,000, were transferred to the non-federal account; however, at the time of the transfers, the Committee had neither notified the contributors of the transfers nor informed the contributors that a refund could have been requested. The remaining excessive contributions, totaling $1,965, were refunded, albeit untimely, to the contributors.

The Committee received Requests for Additional Information (RFAI) from the Commission's Reports Analysis Division related to apparent excessive contributions identified with respect to activity covering the 1995 – 1996 period. Although a refund of the above excessive contributions ($61,000) would normally be warranted, the Commission is not requiring refund because the language of RFAI letters sent to the Committee may not have fully clarified the requirements for transfers of excessive contributions.

ALLOCATION OF FEDERAL AND NON-FEDERAL EXPENSES – 11 CFR §§104.3(a), 104.10(b), and 106.5(a) & (g). The Audit staff reviewed activity from the non-federal accounts and identified allocable expenses, totaling $189,571. The federal share of these allocable expenses was $54,976. However, in this instance no reimbursement by the federal account for its share of expenses paid directly from the non-federal account was necessary since the Committee's federal account paid $194,000 in unrelated expenses that could have been defrayed using non-federal funds.

In addition, $24,130 representing refunds and rebates of allocable expenses was deposited into the Committee's federal account; the non-federal share was $17,132. The Committee did not demonstrate that the refunds and rebates in question were not related to payments for allocable expenses. Therefore, the $17,132 owed to the non-federal account was offset against the overpayment of shared expenses by the federal account discussed above.

REPORTING OF DEBTS AND OBLIGATIONS – 2 U.S.C. §434(b)(8) and 11 CFR §104.11(a) & (b). Our review identified 76 payments, totaling $140,673, which should have been reported as debts. In response to the interim audit report the Committee filed amended Schedules D (Debts and Obligations) that materially disclosed the debts in question.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON MISSOURI DEMOCRATIC STATE COMMITTEE

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Missouri Democratic State Committee (the Committee), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by the selected committees to determine if reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period January 1, 1997 through December 31, 1998. During this period, the Committee reported a beginning cash balance of $2,449; total receipts for the period of $2,666,371; total disbursements for the period of $2,662,216; and an ending cash balance of $6,604[1].

C. CAMPAIGN ORGANIZATION

The Committee registered with the Federal Election Commission as Missouri Democratic State Committee on September 15, 1980. The Treasurer for the Committee, during the audit period and currently, is Ms. Donna Knight. The Committee maintains its headquarters in Jefferson City, Missouri.

[1] The amounts presented in this report have been rounded to the nearest dollar.

To manage its financial activity, the Committee maintained four federal checking accounts and five non-federal checking accounts. The Committee did not maintain a separate allocation account to pay for shared federal/non-federal expenses. The Committee's receipts were composed of contributions from individuals, other political committees (such as PACs), transfers from affiliated and other party committees, and offsets to operating expenditures (such as refunds and rebates).

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A and C.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of campaign debts and obligations, including loans (see Finding II.E.);
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping of committee transactions;
8. proper reporting and funding of allocable expenses (see Finding II.D.); and,
9. other audit procedures that were deemed necessary in the situation (see Finding II.B.).

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A Possible Earmarked Contributions

Section 441a(a)(8) of Title 2 of the United States Code states that all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

Section 110.1(h) of Title 11 of the Code of Federal Regulations states that a person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting the same candidate in the same election, as long as the political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee; the contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and the contributor does not retain control over the funds.

Section 110.6(a) of Title 11 of the Code of Federal Regulations states that all contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

Section 110.6(b)(1) of Title 11 of the Code of Federal Regulations states that earmarked means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

Section 110.6(b)(2) of Title 11 of the Code of Federal Regulations states that a conduit or intermediary means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee.

Section 110.6(c)(1) of Title 11 of the Code of Federal Regulations states the intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission or the Secretary of the Senate, as appropriate, and to the recipient candidate or authorized committee.

Section 102.8(a) and (c) of Title 11 of the Code of Federal Regulations states that every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of the contribution is in excess of $50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of $200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution. The provisions of 11 CFR 102.8 concerning receipt of contributions for political committees shall also apply to earmarked contributions transmitted by an intermediary or conduit.

During our review of Committee receipts, the Audit staff identified 78 contributions, totaling $183,810 that appeared to be earmarked for the Nixon Campaign Fund.[2] These contributions were deposited between March 25, 1998 and November 2, 1998.[3] Even though the contributor checks were made payable to the Committee, certain deposit batches were annotated "Nixon $." Other deposit batches contained Nixon Campaign Fund return address envelopes. Furthermore, memo lines on some contributor checks were annotated Nixon, Jay Nixon Campaign Contribution or J. Nixon Fund. One contribution included a letter addressed to Jay Nixon stating "enclosed is my check in the amount of $1,000.00 to aid in your campaign." Contributions that are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit are contributions from the person to the candidate.

Of the $183,810 deposited into the Committee's federal account,[4] $96,000 was received from 28 contributors who previously gave the maximum amount permitted by law to the Nixon Campaign Fund. Further, 26 contributions ($106,000) ranged from $2,000 to $5,000. It is evident that the majority of the apparent earmarked contributions, if forwarded by the Committee to the Nixon Campaign Fund, would have resulted in excessive contributions.

Since the earmarked contributions were not forwarded to the Nixon Campaign Fund, the Committee may have applied them to coordinated expenditures on behalf of Jay Nixon. The 1998 coordinated expenditure limitation for the office of Senator from the state of Missouri was $260,140. Both the Committee and the Democratic Senatorial Campaign Committee (DSCC) could spend that amount on behalf of Jay Nixon. The Committee expended a total of $372,840 (See Finding II.B). In part, transfers from the DSCC funded those expenditures. On four occasions between August 10, 1998 and October 15, 1998 the DSCC transferred a total of $284,000 to the Committee for the sole purpose of making coordinated expenditures on behalf of Jay

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2 Jay Nixon was the democratic senatorial candidate for the 1998 election. The Nixon Campaign Fund was his authorized principal campaign committee.

3 The majority of the contributions (97%) were deposited between 8/18/98 and 11/2/98.

4 It should be noted that the Audit staff identified an additional $171,500 in contributions, similar to the above, that were deposited in the Committee's non-federal account.

Nixon. For example, on October 15, 1998, the DSCC transferred $75,000 to the Committee. On October 16, 1998, the Committee made a $75,000 payment for media and reported this transaction as a coordinated expenditure on behalf of Jay Nixon[5].

Based on the notations and correspondence described above, it is apparent that some contributors believed their contributions would be spent on behalf of Jay Nixon and the Nixon Campaign Fund. If so, the Committee has received earmarked contributions for the benefit of Jay Nixon. These contributions may have been part of a "tally" system. Several newspaper articles published in the state of Missouri during the election cycle indicated this type of activity occurred. The Commission has determined that "tallying" in itself is permissible.[6] However, the Commission has also determined that, depending on the circumstances, tallying could result in the receipt of earmarked contributions from contributors who intend that their contributions will be used to support the designated candidate.

This issue was discussed with Committee representatives at the exit conference. Subsequent to the response period following the exit conference, the Committee stated it does not accept contributions designated for use on behalf of specific candidates and does not act as the agent of a candidate in its fundraising activities. The Committee stated further, that candidates often raise money for the Party in support of its general coordinated campaign activities. Finally, it stated that the contributions raised for the Party are used at the Party's discretion to pay for all Party activities, including those in support of specific candidates.

In the interim audit report, the Audit staff recommended that the Committee demonstrate that it did not receive contributions earmarked for making coordinated expenditures on behalf of Jay Nixon and/or the Nixon Campaign Fund and submit any other explanation or documentation that the Committee believed was relevant to the matter.

In response, the Committee stated, it received no earmarked contributions during the 1998 election cycle and that the interim audit report failed to present any evidence that supported the presence of earmarked contributions. The Committee further stated the obvious reason why a deposit batch was annotated Nixon $ or why some

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5 On 8/10/98 the Committee received $70,000 and made a payment of $70,000 for media on 8/17/98. On 9/8/98 the Committee received $9,000 and made a payment of $9,000 for polling on 9/9/98. On 9/15/98 the Committee received $130,000 and made a payment of $130,000 for media on 9/16/98.

6 Some party committees maintain a record or a "tally" of the amount of money a particular candidate has helped raise for the party committee. The Commission has determined that this practice is permissible as long as the contributions are in no way earmarked for a particular candidate or the contributors are not led to believe that the contributions will benefit a specific candidate.

contributors placed Jay Nixon's name in the memo lines of their checks was because Jay Nixon raised the funds.[7] The Committee also stated the following:

> "The Interim Report's calculation of $183,810 in earmarked contributions is so spurious as to cast doubt on the entire claim. For example, nearly half of the contributors in question would have had no incentive to earmark contributions to Jay Nixon through the Committee. Because they had not yet given the maximum to Nixon, they could have given to him directly. Moreover, the Interim Report asserts that most of the Committee's coordinated expenditures were financed by transfers from the DSCC, and that the Committee paid for a majority of the coordinated expenditures with earmarked contributions that it raised on its own. See Interim Report at 5. Obviously, both of these assertions cannot be true at the same time."

With respect to the calculation of the $183,810 amount, the Committee's reasoning is flawed. The calculation was a result of batch deposits that contained annotations for Nixon and is therefore based on the Committee's own records. The motivation for a particular contributor to make an earmarked contribution and whether or not the contributor gave the maximum directly to Jay Nixon is not the issue. Further, the interim audit report (at page 5) did not state as the Committee claims, "most of the Committee's coordinated expenditures were financed by transfers from the DSCC, and that the Committee paid for a majority of the coordinated expenditures with earmarked contributions that it raised on its own."

It is the opinion of the Audit staff that the Committee's response did not demonstrate that it did not receive contributions earmarked for making coordinated expenditures on behalf of Jay Nixon and/or the Nixon Campaign Fund.

B. Apparent Excessive Expenditures on Behalf of a Senatorial Candidate

Section 441a(d)(1) of Title 2 of the United States Code states, in part, that notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraph (3) of this subsection.

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[7] According to the Committee, Mr. Nixon "was not simply a candidate for the United States Senate in 1998," but "he was the Attorney General of Missouri—one of the most visible and significant Democrats in the state." In addition, Mr. Nixon "played a significant role in the Committee's activities, including its fundraising, both before and after the 1998 election cycle."

Sections 441a(c) and (d)(3) of Title 2 of the United States Code states, in part, that the national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Senator the greater of: (i) 2 cents multiplied by the voting age population of the State; or (ii) $20,000, as adjusted for the increases in the Consumer Price Index.

Section 110.7(b) and (c) of Title 11 of the Code of Federal Regulations states that the national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party. The expenditure shall not exceed in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of two cents multiplied by the voting age population of the State; or twenty thousand dollars. Any expenditure under paragraph (b) shall be in addition to any contribution by a committee to the candidate permissible under §110.1 or §110.2. For limitation purposes, State committee includes subordinate State committees. State committees and subordinate State committees combined shall not exceed the limits in paragraph (b)(2) of this section.

Section 441a(a)(7)(B)(i) of Title 2 of the United States Code states that expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees or their agents, shall be considered to be a contribution to such candidate.

Section 110.2(b)(1) of Title 11 of the Code of Federal Regulations states that no multicandidate political committee shall make contributions to any candidate, his or her authorized political committee or agents with respect to any election for Federal office which, in the aggregate, exceeds $5,000.

The 1998 coordinated expenditure limitation for the office of Senator from the state of Missouri was $260,140. The Committee and the Democratic Senatorial Campaign Committee (DSCC)[8] could each spend up to the legal limit on behalf of Jay Nixon, Senatorial candidate in the 1998 general election. As of the date of the 1998 general election, the DSCC transferred $79,000 of its expenditure limitation to the Committee. As a result, the Committee's expenditure limitation increased to $339,140 ($260,140 + $79,000).

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[8] By letter dated April 24, 1998, the Democratic National Committee (DNC) designated the DSCC as the agent of the DNC for the exclusive purpose of making expenditure pursuant to 2 U.S.C. §441a(d) on behalf of the Democratic candidates in connection with the 1998 general elections for the United State Senate. As of December 31, 1998, the DSCC did not report making any coordinated expenditures.

The Audit staff reviewed coordinated expenditures reported by the Committee, totaling $372,840, made on behalf of Jay Nixon. Documentation in support of these expenditures indicated they were made for polling and media advertisements. It appears that as of the date of the 1998 general election, the Committee exceeded the expenditure limitation by $28,700 ($372,840 - $339,140 - $5,000 [441a(a)(2)(A) limit]). Further, it should be noted that on May 25, 1999, the DSCC transferred an additional $40,000 of its limit to the Committee.

Even though the DSCC authorized the Committee to spend an additional $40,000 (of its limit), such authorization did not occur until approximately 7 months after the limit was exceeded.

In the interim audit report the Audit staff recommended that the Committee demonstrate that expenditures totaling $28,700 made on behalf of Jay Nixon were not in excess of the expenditure limitation at 2 U.S.C. §441a(d)(1) and (3).

In response, the Committee stated, the interim audit report failed to demonstrate that the Committee made excessive coordinated expenditures in support of Jay Nixon. The Committee further stated, "the fact that both committees together remained within their combined limit demonstrates the absence of any intent to violate the Act.

The interim audit report does, in fact, demonstrate that the Committee made excessive coordinated expenditures on behalf of Jay Nixon. Further, the amount in excess of the limitation was not addressed [the DSCC authorized the Committee to spend an additional $40,000 of the DSCC's limit] until approximately 7 months after the election. It is the opinion of the Audit staff that the Committee has not demonstrated the above expenditures did not exceed the limitation at 2 U.S.C. §441a(d)(1) and (3).

C. Receipt of Apparent Excessive Contributions

Section 441a(a)(1)(C) of Title 2 of the United States Code and Section 110.1(d) of Title 11 of the Code of Federal Regulations state that no person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

Section 441a(a)(2)(C) of Title 2 of the United States Code and Section 110.2 (d) of Title 11 of the Code of Federal Regulations state that no multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their

face, but which exceed the contribution limits set forth in 11 CFR 110.1 and 110.2 when aggregated with other contributions from the same contributor ... may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 110.1(k)(3)(i)(ii)(A) and (B) of Title 11 of the Code of Federal Regulations states that if a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if - the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be reattributed to each contributor if equal attribution is not intended.

The Audit staff's review of contributions revealed that the Committee received contributions from six individuals and three political action committees which exceeded the limitation by $62,965. For 7 of the contributions, excessive portions totaling $61,000 were transferred timely to a non-federal account. However, at the time of the transfers, the Committee had neither notified the contributors of the transfers nor informed the contributors that a refund could have been requested. As of the close of fieldwork, no action had been taken on the remaining 5 excessive contributions, totaling $1,965. The Committee maintained sufficient funds in its federal accounts to make the necessary refunds.

Apparently, in April 2000, the Committee obtained signed statements from 4 contributors which authorized the transfer of $46,000 (excessive portions) to the non-federal account. These statements also provided the contributors the option of receiving a refund. Three of the four statements were dated by the contributors in April 2000. Although the Committee's letters were not dated, one contributor apparently stamped the letter as being received on April 25, 2000.

Although the transfers to the non-federal account were timely, the contributors were not notified of the transfers or of the opportunity to request a refund until 17 to 25 months after the date of the transfers.

Subsequent to the exit conference, the Committee apparently refunded the remaining excessive contributions ($1,965) but copies of only the non-negotiated refund checks were available. In addition, the Committee stated it was not aware of any requirement to obtain permission from the donor to transfer amounts of a particular contribution to the non-federal account.

It should be noted that this Committee received Requests for Additional Information (RFAI) from the Commission's Reports Analysis Division related to apparent excessive contributions identified with respect to activity covering the 1995-96 period. Although a refund of the above described excessive contributions would normally be warranted, the Commission is not requiring refund of these contributions because the language of RFAI letters sent to the Committee may not have fully clarified the requirements for transfers of excessive contributions.

This finding did not contain a recommendation or require a response from the Committee. However, the Committee responded stating the interim audit report repeats a claim made in a previous audit – that the Act requires a political party committee to obtain a written authorization from donors before transferring the excessive portion of their contributions from the Federal account to the non-federal account. Commission regulations do not expressly prohibit the transfer of the excessive share of a federal contribution into a non-federal account, nor do they expressly require a written statement from a contributor to authorize such a transfer.

Finally, the Committee stated, "[I]n short, what the Commission described as a 'recommendation' in 1997 has now become a requirement in 2001 – a classic example of retroactive rulemaking. The Committee is not content with the Commission's decision not to require refunds of the contributions in question. See Interim Report at 9. Rather, having been forced unfairly to deal with this very same question in a previous audit and MUR, the Committee respectfully requests that the final audit report contain a statement acknowledging that the Committee complied with the Act as understood at the time – both by the Committee and the Commission."

The Commission's position on a Treasurer's responsibility regarding the receipt of excessive contributions is clear and guidance has been provided in various contexts (see 11 CFR 103.3(b) and the Campaign Guide for Political Party Committees, August 1996 at page 20).

Further, the factual record developed does not support complying with the Committee's request to include in this report a statement acknowledging "that the Committee complied with the Act as understood at the time – both by the Committee and the Commission."

The Committee also asserted that the interim audit report claims "that the Act requires a political party committee to obtain a written authorization from donors before transferring the excessive portion of their contributions from the Federal account

to the nonfederal account." The interim audit report does not claim the Act requires written authorization. However, the Commission has allowed party committees to transfer the excessive portion of a contribution to their non-federal account, provided that the contributor was notified prior to the transfer and informed that a refund could be requested.

The Committee is correct in stating "Commission regulations do not expressly prohibit the transfer of the excessive share of a federal contribution into a nonfederal account, nor do they expressly require a written statement from a contributor to authorize such a transfer." Simply stated, the Regulations do not provide expressly for such an option; however, 11 CFR 103.3(b) states that if an excessive contribution is deposited, the treasurer may request reattribution of the contribution and if the reattribution is not obtained the treasurer shall, within sixty days of receipt of the contribution, refund the contribution to the contributor.

D. ALLOCATION OF FEDERAL AND NON-FEDERAL EXPENSES

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations states, in part, that committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows: the committee shall pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense.

Section 106.5(a)(2)(i) and (iv) of Title 11 of the Code of Federal Regulations states that committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity: administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate; and Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations states that a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for joint federal and non-federal expense or activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for payment

of administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

Section 104.3(a)(4)(v) of Title 11 of the Code of Federal Regulations states, in part, that unauthorized committees must report the identification of each contributor and the aggregate year to date total for such contributor including each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such receipt.

If a committee receives a refund or a rebate of an allocable expense, the refund or rebate must be deposited in the federal account or allocation account. The refund or rebate must then be allocated between the federal and non-federal accounts according to the same allocation ratio used to allocate the original disbursement. The federal account must transfer the non-federal portion to the non-federal account. Advisory Opinion (AO) 1995-22 discusses methods for reporting refunds and rebates of allocable expenses.

1. Payment of Allocable Expenses From the Non-Federal Accounts

The Committee maintained separate federal and non-federal accounts and did not utilize a separate allocation account. Under this account structure, the regulations require that all allocable activity be paid initially from a federal account and reimbursements may be made from a committee's non-federal accounts solely to cover the non-federal share of the allocable expense.

The Audit staff reviewed disbursements from the non-federal accounts and identified disbursements totaling $189,571 which were for allocable expenses. The disbursements were for administrative and generic voter drive expenses such as contract services, travel reimbursements, salaries, printing and voter registration. Based on the ballot composition ratio, the correct allocation percentage for these expenses for the audit period was 29% federal and 71% non-federal. As a result, the federal share of these allocable expenditures made from the non-federal accounts was $54,976. However, based on our testing of shared activities originating from the federal accounts, it was determined that the Committee overpaid its portion of such expenditures by $194,000. Therefore, no reimbursement by the federal account for its share of expenses paid directly from the non-federal accounts is necessary.

Although these transactions were not handled in accordance with the regulations, nevertheless, these payments should be reported as memo entries on Schedule H4 (Joint Federal/Non-Federal Activity Schedule).

2. Allocation of Refunds and Rebates

The Audit staff's review of offsets to operating expenditures (refunds/rebates) revealed that the Committee received and deposited into a federal account 35 refunds/rebates from vendors, totaling $24,130. The refunds/rebates were related to payments of shared federal/non-federal expenses. The non-federal share of this amount was $17,132. The Committee did not reimburse or otherwise make any adjustments to account for the non-federal share of these receipts.

The Audit staff recommended that the Committee provide documentation that demonstrates the aforementioned payments from the non-federal accounts ($189,571) related solely to non-federal activities or file memo Schedules H4 disclosing these shared expenditures. With respect to the refunds and rebates in question, the Audit staff recommended that the Committee provide evidence that they were not related to payments of allocable expenses. Absent such a demonstration, the amount owed to the non-federal account will be offset against the overpayment of shared expenses by the federal account discussed at D.1.

In response to the interim audit report, the Committee filed amended reports disclosing the shared expenditures on memo Schedules H4. As to refunds and rebates, the Committee stated it addressed this subject before with the Commission, and continues to contend that the rules do not specifically prescribe how a party committee is to dispose of a refund that a vendor has made from a previously allocated expense, other than to require its disclosure generally.

Again, the Committee's assertion regarding refunds and rebates is incorrect. The Campaign Guide for Political Party Committee, August 1996, Section 10 [Refunds and Rebates of Allocable Expenses], page 61 addresses this very subject and also illustrates two acceptable methods of reporting refunds and rebates of allocable expenses.

E. Reporting of Debts And Obligations

Section 434(b)(8) of Title 2 of the United States Code states, in relevant part, that the amount and nature of outstanding debts and obligations owed by or to such political committee shall be reported.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished.

Section 104.11(b) of Title 11 of the Code of Federal Regulations states that a debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is $500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred,

whichever comes first. A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over $500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

The Committee did not report any debts or obligations on Schedule D (Debts and Obligations). However, our review of disbursements and associated vendor documentation identified 76 payments, totaling $140,673, which should have been reported as debt.

The Audit staff recommended that the Committee file amended Schedules D for each reporting period in which debt should have been reported. In response to the interim audit report the Committee filed amended Schedules D that materially disclosed the debts in question.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 17, 2001

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Staff Director

FROM: Lois G. Lerner
Acting General Counsel

BY: Gregory R. Baker
Acting Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Delanie DeWitt Painter
Attorney

SUBJECT: Final Audit Report on the Missouri Democratic State Committee (LRA # 597) - Revised

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report of the Missouri Democratic State Committee (the "Committee"), which was submitted to this Office on May 18, 2001.[1] This memorandum presents our comments on the proposed Report.[2] Generally, we concur with any findings not specifically discussed in this memorandum. If you have any questions concerning our comments, please contact Delanie DeWitt Painter, the attorney assigned to this review.

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[1] This Office provided comments on the Interim Audit Report ("IAR") on October 25, 2000. Based on developments in other matters following our initial comments, this Office provided supplemental comments dated January 11, 2001.

[2] This Office recommends that the Commission consider the proposed Final Audit Report in open session because the document does not include matters exempt from public disclosure. *See* 11 C.F.R. § 2.4.

II. POSSIBLE EARMARKED CONTRIBUTIONS (II. A.)[3]

This Office concurs with the Audit Division's conclusion that the Committee has not demonstrated that it did not receive contributions earmarked on behalf of Senate candidate Jay Nixon and the Nixon Campaign Fund. However, we suggest that the discussion of this finding include specific examples of the notations on contribution checks and the letters accompanying contributions. We also suggest that the proposed Report summarize and address more of the Committee's arguments.

For example, in addition to the summary of the Committee's arguments included in the proposed Report, the Committee contended that the facts in the IAR are consistent with its explanation that the Committee and candidates raised money to support its general activities and it spent the funds at its discretion. The Committee also asserted that Jay Nixon was not only a Senate candidate but was also the Missouri Attorney General, "one of the most visible and significant Democrats in the state" who has "played a significant role in the Committee's activities, including its fundraising, both before and after the 1998 election cycle," and that the candidate may legally raise funds for the Committee and contributors may state who solicited their contributions.

The available evidence is not consistent with the Committee's explanation that the Committee and candidates raised money to support its general activities, that it spent the funds at its sole discretion, and that none of the contributions at issue was earmarked. Although it was permissible for Mr. Nixon to raise funds for his party, the notations on contribution checks raise the possibility that contributions received by the Committee were earmarked for his campaign. *See* 2 U.S.C. § 441a(a)(8); 11 C.F.R. § 110.6; *see also* 11 C.F.R. § 110.1(h).

The Committee's explanation is contradicted by notations on contribution checks referring to Mr. Nixon and letters accompanying some contributions. *See* 11 C.F.R. § 110.6(b)(1). Because these notations and letters are inconsistent with the Committee's explanation and indicate that these contributors intended to make contributions to Mr. Nixon, this Office suggests that examples of language from them be included in the proposed Report. While the annotations of "Nixon" on deposit tickets are not themselves earmarking, they also provide supporting evidence that Committee staff may have been aware that the deposited contributions were intended to benefit Mr. Nixon. Although Mr. Nixon, as a significant figure in the state Democratic party, may have raised funds for the Committee's general use, it does not mean that all of the funds he raised were for the Committee's general use and that none of them were earmarked.

This Office is not convinced by the Committee's arguments concerning the IAR calculation of possible earmarked contributions. Even if a contributor had not contributed the maximum amount to Mr. Nixon directly, the contributor may have had other reasons to make an earmarked contribution. The Committee also ignores the $96,000 from contributors who had

[3] The parenthetical reference corresponds to the section number in the proposed Report.

made the maximum amount of contributions to Mr. Nixon. Moreover, the IAR does not state that either the DSCC or the Committee paid the majority of the coordinated expenditures on behalf of Mr. Nixon. The precise amount of the earmarked contributions remains unclear and it is possible that some earmarked contributions were not used to pay for coordinated expenditures on his behalf. Further, while the exact amount of earmarked contributions is not clear given the available evidence, the calculation in the proposed Report is reasonable because it is based on the amounts of batch deposits that contained references to Nixon on checks, deposit slips or letters.

III. APPARENT EXCESSIVE EXPENDITURES ON BEHALF OF A SENATORIAL CANDIDATE (II. B.)

This Office concurs with the proposed Report's conclusion that the Committee has not demonstrated that it did not exceed the 2 U.S.C. § 441a(d) coordinated party expenditure limitation by $28,700 for expenditures on behalf of Senate candidate Jay Nixon because the DSCC did not authorize the Committee to spend an additional $40,000 before the Committee made the expenditures.[4]

Finally, we note that the Supreme Court's imminent decision in *FEC v. Colorado Republican Federal Campaign Committee*, 213 F.3d 1221 (10th Cir. 2000), *cert. granted*, 68 U.S.L.W. 1679 (U.S. Oct. 10, 2000) (No. 00-191) may affect this finding because that case involves the 2 U.S.C. § 441a(d) expenditure limitations. Although Missouri is not in the Tenth Circuit, the Supreme Court's opinion could have a broad impact. The Supreme Court held oral argument on February 28, 2001, and this Office anticipates that the Supreme Court will issue its decision by the end of June 2001. This Office may prepare supplemental comments, if necessary, to address the effects of the Supreme Court's opinion.

IV. RECEIPT OF APPARENT EXCESSIVE CONTRIBUTIONS (II. C.) AND ALLOCATION OF FEDERAL AND NONFEDERAL EXPENSES (II. D.)

This Office generally concurs with the Audit staff's analysis of the Committee's arguments concerning the transfers of excessive contributions to its nonfederal account. The IAR did not require refunds of these contributions because the language of Request For Additional Information ("RFAI") letters sent to the Committee may not have fully clarified the transfer requirements for excessive contributions. Although the IAR did not require a Committee response, the Committee made several arguments and the proposed report addresses those arguments. We concur that the Committee's arguments are not persuasive.

This Office notes, however, that the discussion of the committee treasurer's responsibility to deal with excessive contributions cites section 103.3(b) of the regulations and the *Campaign Guide for Political Party Committees* (August 1996) ("*Campaign Guide*"). Similarly, the analysis of federal and nonfederal allocation of refunds and rebates in the proposed Report (II. D.

[4] The Commission approved a consistent analysis of a similar issue in the Final Audit Report on the California State Republican Party on May 24, 2001.

2.) also cites the *Campaign Guide*.[5] The *Campaign Guide* does not have the legal authority of the statute and regulations, case law or Commission precedents and should be used with caution. Where possible, the audit analysis should rely on the statute and regulations and other precedents rather than the *Campaign Guide*.

[5] We also note that similar issues concerning transfers of excessive contributions to the Committee's nonfederal account and federal and nonfederal allocation were referred to this Office from the audit of the Committee for the preceding election cycle, and this matter was recently resolved with a conciliation agreement and closed. *See* MUR 5150.

FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

August 28, 2001

Ms. Donna Knight, Treasurer
Missouri Democratic State Committee
419 East High Street
Jefferson City, Missouri 65102

Dear Ms. Knight:

Attached please find the Report of the Audit Division on Missouri Democratic State Committee. The Commission approved the report on August 23, 2001.

The Commission approved Final Audit Report will be placed on the public record on August 31, 2001. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to matters covered during the audit or in the report should be directed to Leroy Clay or Tom Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Deputy Staff Director

Attachment as stated

cc: Brian G. Svoboda, Counsel
Ms. Whitney Burns, Consultant

CHRONOLOGY

MISSOURI DEMOCRATIC STATE COMMITTEE

Missouri Fieldwork	03/13/00--05/17/00
Interim Audit Report to the Committee	03/06/01
Response Received to the Interim Audit Report	04/25/01
Final Audit Report Approved	08/23/01

FEC
DOCUMENT
SEPARATOR