




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 24, 2004

MEMORANDUM

TO: ROBERT W. BIERSACK
PRESS OFFICER
PRESS OFFICE

FROM: JOSEPH F. STOLTZ 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
THE DEMOCRATIC PARTY OF ARKANSAS

Attached please find a copy of the final audit report and related documents on the Democratic Party of Arkansas, which was approved by the Commission on May 10, 2004.

Informational copies of the report have been received by all parties involved and the report may be released to the public on May 24, 2004.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library
Web Manager



Report of the Audit Division on the Democratic Party of Arkansas

January 1, 1999 – December 31, 2000

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.¹ 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 Democratic Party of Arkansas is a state party committee headquartered in Little Rock, Arkansas. For more information, see chart on the Committee Organization, p. 2.

Financial Activity (p. 2)

• Receipts	
○ From Contributors	\$ 462,151
○ Transfers From Affiliates	1,619,290
○ Transfers From Non-Federal	3,658,657
○ Other Receipts	41,689
○ Total Receipts	\$ 5,781,787
• Disbursements	
○ Operating Disbursements	\$ 5,510,949
○ Other Disbursements	23,428
○ Total Disbursements	\$ 5,534,377

Findings and Recommendations (p. 3)

- Filing Fees (Finding 1)
- Disclosure of Transfers Received (Finding 2)
- Allocation of Federal and Non-federal Expenses for Media (Finding 3)
- Recordkeeping for Disbursements (Finding 4)
- Disclosure of Disbursements (Finding 5)

¹ 2 U.S.C. §438(b).

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Part I

Background

Authority for Audit

This report is based on an audit of the Democratic Party of Arkansas (DPA), 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 receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received and other receipts.
4. The disclosure of disbursements, debts and obligations.
5. The disclosure of expenses allocated between federal and non-federal accounts.
6. The consistency between reported figures and bank records.
7. The completeness of records.
8. Other committee operations necessary to the review.

Changes to the Law

On March 27, 2002, President Bush signed into law the Bipartisan Campaign Reform Act of 2002 (BCRA). The BCRA contains many substantial and technical changes to the federal campaign finance law. Most of the changes became effective November 6, 2002. Except for November 7, 2002 through December 31, 2002, the period covered by this audit pre-dates these changes. Therefore, the statutory and regulatory requirements cited in this report are those that were in effect prior to November 7, 2002.

Part II

Overview of Committee

Committee Organization

Important Dates	Democratic Party of Arkansas
• Date of Registration	October 16, 1972
• Audit Coverage	January 1, 1999 – December 31, 2000
Headquarters	Little Rock, AR
Bank Information	
• Bank Depositories	4
• Bank Accounts	6 Federal and 8 Non-federal Accounts
Treasurers	
• Treasurer When Audit Was Conducted	Marcus Vaden
• Treasurer During Period Covered by Audit	Ron Oliver
Management Information	
• Attended Commission Campaign Seminar	No, DNC Sponsored Conferences
• Used Commonly Available Campaign Management Software Package	Yes
• Who Handled Accounting and Recordkeeping Tasks	Volunteer Staff and Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 1999	\$ 31,148
• From Contributors	462,151 ²
• Transfers from Affiliates	1,619,290
• Transfers from Non-federal Account	3,658,657
• Other Receipts	41,689
Total Receipts	\$ 5,781,787
• Operating Disbursements	\$ 5,510,949
• Other Disbursements	23,428
Total Disbursements	\$ 5,534,377
Cash on hand @ December 31, 2000	\$ 278,558

² This number includes contributions from individuals totaling \$355,601 and from political committees totaling \$106,550.

Part III

Summaries

Findings and Recommendations

Finding 1. Filing Fees

The DPA accepted 194 filing fees from persons seeking non-federal offices and deposited the fees into its federal account. The checks for these non-federal filing fees were drawn on personal accounts; however, there is a possibility that the personal accounts may have been reimbursed with impermissible funds. The DPA provided documentation demonstrating that the filing fees do not contain monies prohibited under the Act for all but 34 of the filing fees in question totaling \$34,019. The DPA transferred that amount to its non-federal account. (For more detail, see p. 5)

Finding 2. Disclosure of Transfers Received

The DPA had disclosure errors in the amount of \$603,476 for transfers from affiliated committees. The DPA complied with the Audit staff's recommendation by filing amended reports to correct the disclosure errors. (For more detail, see p. 7)

Finding 3. Allocation of Federal and Non-federal Expenses for Media

A. Underpayment of Federal Share of Allocable Expenses. The Audit staff reviewed disbursements classified as shared expenses by the DPA totaling \$5,471,212. The DPA's documentation was inadequate to determine the proper allocation of some media disbursements which, as a result, were considered potentially 100% federal activity. This meant that the DPA may have underpaid its federal share by \$289,040. The DPA provided documentation to show that the disbursements were allocable expenses for all but one in the amount of \$2,211, and transferred that amount to its non-federal account. (For more details, see p. 8)

B. Use of Non-Federal Funds to Pay Allocable Expenses. The review of disbursements from the non-federal account identified a payment in the amount of \$25,000 for potentially shared federal/non-federal activity. Using the Admin/Voter Drive allocation ratio (33% Federal/67% Non-Federal), the minimum federal share of this payment is \$8,250. In response to the interim audit report, the DPA transferred \$8,250 from the federal account to the non-federal account. (For more details, see p. 8)

Finding 4. Recordkeeping for Disbursements

The DPA failed to maintain adequate records for disbursements. A sample review of operating expenditures indicated that approximately 22% were inadequately documented. Also, a review of media expenditures indicated that disbursements totaling \$247,831

were inadequately documented. In both cases the disbursements lack cancelled checks or electronic transfer documentation. The DPA complied with the Audit staff's recommendation by providing the missing records and a description of changes implemented to insure adequate disbursement records are maintained in the future. (For more detail, see p. 11)

Finding 5. Disclosure of Disbursements

The DPA reported three payments totaling \$668,000 to Democratic Victory 2000 when it should have reported three payments to a media vendor, Morris, Carrick, and Gumma. The DPA complied with the Audit staff's recommendation by filing amended reports to correct the disclosure errors. (For more detail, see p. 12)

Part IV

Findings and Recommendations

Finding 1. Filing Fees

Summary

The DPA accepted 194 filing fees from persons seeking non-federal offices and deposited the fees into its federal account. The checks for these non-federal filing fees were drawn on personal accounts; however, there is a possibility that the personal accounts may have been reimbursed with impermissible funds. The DPA provided documentation demonstrating that the filing fees do not contain monies prohibited under the Act for all but 34 of the filing fees in question totaling \$34,019. The DPA transferred that amount to its non-federal account.

Legal Standard

Receipt of Prohibited Contributions – General Prohibition. Candidates and committees may not accept contributions (in the form of money, in-kind contributions or loans):

1. In the name of another; or
2. From the treasury funds of the following prohibited sources:
 - Corporations (this means any incorporated organization, including a non-stock corporation, an incorporated membership organization, and an incorporated cooperative);
 - Labor Organizations;
 - National Banks;
 - Federal Government Contractors (including partnerships, individuals, and sole proprietors who have contracts with the federal government); and political parties; and groups organized under the laws of a foreign country or groups whose principal place of business is in a foreign country, as defined in 22 U.S.C. §611(b). 2 U.S.C. §§441b, 441c, 441e, and 441f

Ballot Access Payments. Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not contributions. 11 CFR §100.7(b)(18)

Candidate. Candidate means an individual who seeks nomination for election, or election, to federal office. 11 CFR §100.3(a)

Facts and Analysis

The Audit staff determined that the DPA accepted 194 filing fees totaling \$390,183 from persons seeking non-federal offices and deposited the fees into one of its federal accounts. The checks for these filing fees were drawn on personal accounts and ranged from \$500 to \$8,300. These funds did not pass through to the State, as is the custom in some other states, but were retained in one of the DPA's federal accounts and used for

operating expenses. The filing fees were reported by the DPA as contributions from “Individuals/Persons Other Than Political Committees” (line 11a). However, filing fees are not contributions and therefore, should not be reported as a contribution from an individual.

The 194 non-federal filing fees included 170 fees paid by persons who listed the fees on their “State of Arkansas Campaign Contribution and Expenditure Report” as a campaign expense. The Audit staff noted that some of the checks for filing fees contained various notations on the memo line indicating the word “loan” which implies that the individuals were to be reimbursed by their non-federal committees. Based on a review of the pertinent state reports, the Audit staff determined the following:

- Of the 170 persons identified, 60 made loans to their campaigns totaling \$410,545.
- Of the 60 persons making loans to their campaign, 50 made loans that were equal to or greater than the filing fee and 21 of these were fully reimbursed.³
- In addition, of the 170 persons seeking election to non-federal offices, 26 made contributions to their own committees totaling \$85,983.
- Of the 26 persons contributing to their own committees, 20 contributed an amount equal to or greater than the filing fee that was required to be paid by their committees.

The Arkansas election statutes do not specify the sources of the funds from which filing fees may be paid; therefore, a person in Arkansas seeking ballot access for a non-federal office may use contributions from any source permitted by Arkansas law. As a result of the differences between Arkansas and Federal law, these persons may accept contributions prohibited to the federal candidates. Since a non-federal committee may reimburse an individual who pays the filing fee with a personal check, there is the chance that the reimbursement includes impermissible funds.

The DPA did not deposit these questionable funds into a separate account; however, it did consistently maintain sufficient funds in the federal accounts to transfer the filing fees to the non-federal accounts, except for the month of March 2000. The Executive Director of the DPA explained that personal checks used to pay filing fees for non-federal offices were deposited into a DPA federal account and checks from non-federal committees for ballot access were deposited into a DPA non-federal account. This matter of depositing filing fees funded by possible prohibited sources into a DPA federal account was presented to the DPA officials along with appropriate workpapers. The DPA said it would address the issue once presented in the interim audit report.

In the interim audit report the Audit staff recommended that the DPA provide evidence that individuals seeking non-federal offices that paid filing fees from their personal accounts were not reimbursed by their committees with prohibited monies or, transfer the

³ For 1999-2000, Arkansas state law allowed corporations and labor unions to make contributions to non-federal candidates limited to \$1,000 per candidate per election.

194 non-federal filing fees totaling \$390,183 to its non-federal account and provide evidence of the transfer.

Committee Response to Recommendation and Audit Staff's Assessment

In response to the interim audit report, the DPA provided documentation demonstrating that individuals seeking non-federal offices who paid filing fees from their personal accounts were not reimbursed by their committees with prohibited monies for all but 34 of the filing fees in question totaling \$34,019. The DPA conceded that \$27,589 in filing fees were reimbursed with impermissible funds. The difference between the Audit staff's figure and the DPA's figure is due to a disagreement in the analysis of 12 of the filing fees as to the amount of permissible funds available. The DPA transferred \$34,019 to the non-federal account and provided evidence of such transfer. The DPA also submitted amended reports.

Finding 2. Disclosure of Transfers Received

Summary

The DPA had disclosure errors in the amount of \$603,476 for transfers from affiliated committees. The DPA complied with the Audit staff's recommendation by filing amended reports to correct the disclosure errors.

Legal Standard

Required Information for Transfers from Affiliated Committees. For each itemized transfer from an affiliated committee, the committee must provide the following information:

- The affiliate's full name and address;
- The date of receipt (the date the committee received the transfer);
- The amount of the transfer; and
- The year-to-date total of all transfers from the same committee. 11 CFR §§100.12 and 104.3(a)(4)(iii)(B) and 2 U.S.C. §434(b)(3)(D)

Facts and Analysis

A review of all transfers from affiliated committees indicated that 13 transfers, totaling \$603,476 (36%), were not disclosed properly on Schedules A. The DPA erroneously reported seven transfers made by the Democratic Congressional Campaign Committee as transfers made by the Democratic National Committee. Twelve transfers had the wrong aggregate year-to-date total. Six of the 13 were errors for both reporting the wrong name and reporting the wrong aggregate year-to-date total. At the exit conference the Audit staff presented these issues to the DPA officials along with appropriate workpapers. The DPA officials stated that corrective amendments would be filed.

Committee Response to Recommendation and Audit Staff's Assessment

In response to a recommendation in the interim audit report, the DPA submitted amended Schedules A (Itemized Receipts) for each reporting period.

Finding 3. Allocation of Federal and Non-federal Expenses for Media

Summary

A. Underpayment of Federal Share of Allocable Expenses. The Audit staff reviewed disbursements classified as shared expenses by the DPA totaling \$5,471,212. The DPA's documentation was inadequate to determine the proper allocation of some media disbursements which, as a result, were considered potentially 100% federal activity. This meant that the DPA may have underpaid its federal share by \$289,040. The DPA provided documentation to show that the disbursements were allocable expenses for all but one in the amount of \$2,211, and transferred that amount to its non-federal account.

B. Use of Non-Federal Funds to Pay Allocable Expenses. The review of disbursements from the non-federal account identified a payment in the amount of \$25,000 for potentially shared federal/non-federal activity. Using the Admin/Voter Drive allocation ratio (33% Federal/67% Non-Federal), the minimum federal share of this payment is \$8,250. In response to the interim audit report, the DPA transferred \$8,250 from the federal account to the non-federal account.

Legal Standard

Federal v. Non-Federal Account. The federal account may contain only those funds that are permissible under the federal election law; the non-federal account may contain funds that are not permitted under the federal law (but are legal under state law), such as contributions that exceed the limits of the federal law and contributions from prohibited sources, such as corporations and labor organizations. 11 CFR §102.5(a)(1)(i) and (a)(3)

Paying for Allocable Expenses. FEC 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 of shared federal/non-federal activities. 11 CFR §106.5(g)(1)(i) and (ii)(A)

Transfers. Generally, a political committee may not transfer funds from its non-federal account to its federal account, except when the committee follows specific rules for paying for shared federal/non-federal election activity. 11 CFR §§102.5(a)(1)(i) and 106.5(g)

Reporting Allocable Expenses. A political 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 H-4 (Joint Federal/Non-Federal Activity). 11 CFR §104.10(b)(4)

Allocation Required for Generic Voter Drives. State and local party committees must allocate all of their costs for generic voter drives. A generic voter drive is an activity that urges the general public:

- To register to vote;
- To vote; or
- To support candidates of a particular party or candidates who are associated with a particular issue, without mentioning a specific candidate. 11 CFR §106.5(a)(2)(iv)

Allocation Ratio for Administrative & Generic Voter Drive Costs. State and local party committees must allocate their administrative expenses and generic voter drive costs according to the ballot composition method. Under this method, a committee determines the ratio of federal offices to the total number of federal and non-federal offices expected on the ballot in the next general election in the state or geographic area. 11 CFR §106.5(d)(1) and (2)

Allocation Ratio for Shared Fundraising Expenses. If a committee raises both federal and non-federal funds through the same fundraising program or event, it must allocate the direct cost of the fundraising event based upon the ratio of funds received by the federal account to the total amount raised for the event. 11 CFR §106.5(f)(1)

Required Records for Reports and Statements. The treasurer of a political committee will maintain records, including bank records, vouchers, worksheets, receipts and bills, in sufficient detail to verify the accuracy and completeness of the information contained in the reports. 11 CFR §104.14(b)(1)

A. Underpayment of Federal Share of Allocable Expenses Facts and Analysis

The DPA maintained separate federal and non-federal accounts and made payments for shared activity directly from its federal accounts. The Audit staff reviewed disbursements classified as shared expenses totaling \$5,471,212 and determined that the DPA may have underpaid its federal share by \$289,040.

Lack of Supporting Documentation

When calculating the federal and non-federal shares of the allocable expenses, the Audit staff included media and direct mail disbursements totaling \$314,976⁴ as potentially 100% federal activity because at the time of the audit fieldwork additional supporting

⁴ In the response to the interim audit report, the DPA stated that only \$213,757 of the expenses should have been recommended to be transferred to the non-federal account since one-third of the amount had already been paid by the Federal account.

documentation was needed to determine if the activity represented allocable expenses. At a minimum, copies of videotapes or scripts for all commercials aired on behalf of the DPA were required and copies of the direct mail pieces were required to determine the allocation of these expenses. On several occasions, the Audit staff requested supporting documentation, including ad copies, from the DPA. In response, the DPA provided some additional documentation that was taken into consideration in arriving at the amounts at issue.

Allocation Ratio

The ballot composition ratio used by the DPA to allocate its administrative and generic voter drive expenses understated the federal percentage by 11% (22% vs. 33%). The DPA included three non-federal points that it was not entitled to when calculating the ratio. After receiving a notice from the Reports Analysis Division the DPA made corrections to its reports. In doing so it over stated the Federal share of allocable expenses by \$25,936.

As stated above, the DPA had disbursements totaling \$314,976 that were considered potentially 100% federal activity. The Audit staff applied the \$25,936 noted above and determined the \$289,040 was potentially payable by the federal account to the non-federal account.

B. Use of Non-Federal Funds to Pay for Allocable Expenses.

Facts and Analysis

The Audit staff's review of disbursements from the non-federal account identified a payment in the amount of \$25,000 to Acorn Associates that appeared to be for potentially shared federal/non-federal activity. The DPA provided a check copy and an invoice for voter registration and voter motivation with "100% non-federal" handwritten on it, but the DPA official could not confirm that the payment was for 100% non-federal activity. Using the Admin/Voter Drive allocation ratio for federal activity, 33%, the minimum potential federal share of this payment is \$8,250. The Audit staff included this amount in the \$289,040 to be repaid to the non-federal account noted above.

In the interim audit report the Audit staff recommended the DPA provide documentation to demonstrate the disbursements in question above were allocable expenses; provide documentation that the \$25,000 payment did not represent an expense for shared activity; reimburse the non-federal account \$289,040 if documentation was not available; and submit amended memo Schedules H4 and memo Schedules B to disclose the payment.

Committee Response to Recommendation and Audit Staff's Assessment

The DPA complied with the Audit staff's recommendation by providing invoices to demonstrate that the disbursements classified above as potentially 100% federal were allocable expenses for most of the disbursements noted in the finding and provided acceptable explanations for the disbursements where documentation could not be obtained. The DPA conceded that a disbursement in the amount of \$3,300 made to the

vendor Veasley Signs should not have been allocated and conceded the \$25,000 payment to Acorn Associates was allocable.

The DPA transferred \$2,211 (67% of the \$3,300) and \$8,250 (33% of the \$25,000) from the federal account to the non-federal account, and provided a check copy along with the deposit slip as evidence of the transfer. Amended reports were also submitted.

Finding 4. Recordkeeping for Disbursements

Summary

The DPA failed to maintain adequate records for disbursements. A sample review of operating expenditures indicated that approximately 22% were inadequately documented. Also, a review of media expenditures indicated that disbursements totaling \$247,831 were inadequately documented. In both cases the disbursements lack cancelled checks or electronic transfer documentation. The DPA complied with the Audit staff's recommendation by providing the missing records and a description of changes implemented to insure adequate disbursement records are maintained in the future.

Legal Standard

Required Records for Disbursements. For each disbursement, the treasurer of a political committee must keep records on the:

- Amount of the disbursement;
- Date when the disbursement was made;
- Name and address of the payee;
- *Purpose* (a brief description of why the disbursement was made); and
- If the disbursement was made on behalf of a candidate, the candidate's name and the office sought by the candidate. 2 U.S.C. §432(c)(5) and 11 CFR §102.9(b)

Required Supporting Evidence. If the disbursement is in excess of \$200, the records must include a receipt or invoice from the payee, or a cancelled check or share draft to the payee. If the disbursement was by credit card, the record must include the monthly statement or customer receipt and the cancelled check used to pay the credit card bill. 2 U.S.C. §432(c)(5), 11 CFR §102.9(b), and 11 CFR §104.3(b)(4)(i)(A)

Preserving Records and Copies of Reports. The treasurer of a political committee must preserve all records and copies of reports for 3 years after the report is filed. 2 U.S.C. §432(d)

Facts and Analysis

The DPA did not satisfy the recordkeeping requirements for a significant number of disbursements. The DPA provided the following records:

- A disbursement database;
- Bank statements;
- Approximately 49% of cancelled checks; and

- A limited number of vendor invoices.

A sample review of operating expenditures indicated that 22% of the disbursements were inadequately documented. Also, a review of media expenditures indicated that 33 cancelled checks and 5 wire notices, totaling \$247,831, were missing. The DPA maintained a disbursement database that was substantially complete, however, the information therein could not be verified without cancelled checks or vendor invoices. The issue was presented to the DPA officials. During a later phone conference, Counsel for the DPA stated they had been unsuccessful in obtaining cancelled checks from the bank.

Committee Response to Recommendation and Audit Staff's Assessment

In response to a recommendation in the interim audit report, the DPA obtained the missing cancelled checks and submitted a description of changes implemented to insure adequate disbursement records are maintained in the future.

Finding 5. Disclosure of Disbursements

Summary

The DPA reported three payments totaling \$668,000 to Democratic Victory 2000 when it should have reported three payments to a media vendor, Morris, Carrick, and Gumma. The DPA complied with the Audit staff's recommendation by filing amended reports to correct the disclosure errors.

Legal Standard

Reporting Operating Expenditures. When operating expenditures to the same person exceed \$200 in a calendar year, the committee must report the:

- Amount;
- Date when the expenditures were made;
- Name and address of the payee; and
- Purpose (a brief description of why the disbursement was made). 2 U.S.C. §434(b)(5)(A) and 11 CFR §104.3(b)(4)(i)(A)

Facts and Analysis

The DPA reported three payments to Democratic Victory 2000 for ads that should have been disclosed as payments to Morris, Carrick, and Gumma, a media vendor. The payments totaled \$668,000 and were paid by wire transfer as follows: \$175,200 on August 16, 2000; \$196,000 on August 23, 2000; and, \$296,800 on August 28, 2000. The Audit staff provided the DPA officials with a schedule of these items.

Committee Response to Recommendation and Audit Staff's Assessment

The DPA complied with the Audit staff's interim audit report recommendation by submitting amended Schedules H4.