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Washington, DC 20463

AGENDA DOCUMENT NO. 14-11
AGENDA ITEM
For meeting of February 27, 2014
[SUBMITTED LATE]

February 21, 2014

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by GMS*
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Subject: AO 2014-01 (Solano County Democratic Central Committee)
Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on February 26, 2014.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

2
3 Mr. Paul Stichick
4 Treasurer
5 Solano County United Democratic Central Committee
6 P.O. Box 2140
7 Fairfield, CA 94533

DRAFT A

8
9 Dear Mr. Stichick:

10
11 We are responding to your advisory opinion request on behalf of the Solano County
12 United Democratic Central Committee (the “Requestor”) concerning the application of the
13 Federal Election Campaign Act of 1971, as amended (the “Act”), and Commission regulations to
14 the Requestor’s proposed use of funds in a dormant bank account established by the Requestor’s
15 predecessor political committee, the Solano County Democratic Central Committee (“SCDCC”).
16 The Commission concludes that the Requestor may not transfer funds from the SCDCC’s
17 dormant account to the Requestor’s federal account or spend such funds on federal election
18 activity because the Requestor cannot determine that the funds comply with the Act and
19 Commission regulations.

20 ***Background***

21 The facts presented in this advisory opinion are based on your letter received on
22 January 13, 2014, and reports filed with the Commission.

23 In August 2004, the SCDCC established a federal and a non-federal bank account. The
24 SCDCC’s treasurer registered the SCDCC with the Commission as a political party committee¹
25 in September 2004 and filed two regular reports with the Commission in October 2004. The
26 treasurer subsequently failed to file any reports for the SCDCC in 2004 or 2005. The
27 Commission issued nine separate notifications to the SCDCC regarding its failure to file during
28 this time, but the treasurer did not respond to these notifications. The Commission therefore

¹ FEC committee number C00406108.

1 administratively terminated the committee on September 20, 2005.² The treasurer appears to
2 have taken no remedial action regarding the SCDCC's termination; instead, the request indicates
3 that he concealed the termination (and the noncompliance that preceded it) by reporting monthly
4 to the SCDCC's members and officers that the SCDCC was fully in compliance with law.³

5 In 2008, the SCDCC's chairman discovered that the Commission had administratively
6 terminated the SCDCC in 2005. The chairman then "isolated" the committee's federal account,
7 suspended its further use, and registered a new committee with the Commission. The new
8 committee — the Solano County United Democratic Central Committee — is the Requestor
9 here.⁴ The Requestor retained a financial management agency to manage its funds and reporting
10 obligations.

11 The Requestor states that the SCDCC's federal account remained isolated and unused,
12 becoming "nearly forgotten," between October 2008 and June 2012. In 2012, the Requestor
13 elected a new treasurer, who re-discovered the SCDCC's federal account and learned that it held
14 a balance of \$10,808.81. The Requestor has been unable to locate the SCDCC's records
15 pertaining to the account or to the origins of the funds it contains. The Requestor has also been
16 unable to obtain the relevant bank records regarding the account.

17

² The SCDCC's reports and notices can be obtained by entering committee number C00406108 into the Commission's committee viewer at <http://www.fec.gov/fecviewer/CandidateCommitteeDetail.do>.

³ The treasurer later admitted to facing "overwhelming personal issues during the period [from] 2004-2008 that caused distraction from his duties."

⁴ FEC committee number C00455865.

1 ***Question Presented***

2 *May the Requestor spend the funds that are in the SCDCC's dormant federal account?*

3 ***Legal Analysis and Conclusion***

4 The Requestor may not deposit the funds from the SCDCC's dormant federal account
5 into the Requestor's federal account or use those funds to finance federal election activity, as
6 explained below.

7 The Act and Commission regulations provide that "an amount that is expended or
8 disbursed for Federal election activity" by a state or local party committee "shall be made from
9 funds subject to the limitations, prohibitions, and reporting requirements" of the Act. *See* 2
10 U.S.C. § 441i(b)(1); *see generally* 11 C.F.R. §§ 300.30-.36. The Act and Commission
11 regulations permit a state or local party committee to maintain nonfederal accounts and to
12 allocate certain expenditures among its federal and nonfederal accounts, but all funds in the
13 committee's federal account must comply with the Act's source-and-amount restrictions,
14 regardless of whether the committee spends those funds on federal or non-federal activity. 11
15 C.F.R. § 300.30(b)(3).

16 Here, the SCDCC did not comply with basic disclosure requirements of the Act and
17 Commission regulations, failing to file any regular reports, despite receiving nine monthly
18 notifications from the Commission regarding the SCDCC's filing obligations. While the
19 Requestor states that its "historical operations strongly suggest" that the funds in the account
20 were "obtained through legitimate fund raising activities such as dinners, auctions, sales, and
21 small community donations" and that all contributions "were made in accordance with FEC
22 financial standards," the Requestor acknowledges that it has not been able to obtain any of the

1 relevant financial records that demonstrate that the funds complied with the Act's limitations,
2 prohibitions, and reporting requirements.⁵

3 Given the absence of any documentation concerning the funds in question, the inability of
4 the Requestor to demonstrate that the funds comply with the source prohibitions and amount
5 limitations contained in the Act and Commission regulations, and the SCDCC's failure to
6 comply with the reporting requirements of the Act and Commission regulations, the Commission
7 concludes that the Requestor may not transfer those funds to the Requestor's federal account or
8 disburse them for any federal election activity that must be financed with federal funds under 2
9 U.S.C. § 441i(b) and Commission regulations. The Commission expresses no view as to
10 whether the Requestor may transfer the SCDCC's funds to the Requestor's nonfederal account
11 and/or spend these funds on nonfederal activity, which are questions of state and local law.

12 This response constitutes an advisory opinion concerning the application of the Act and
13 Commission regulations to the specific transaction or activity set forth in your request. *See*
14 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or
15 assumptions presented, and such facts or assumptions are material to a conclusion presented in
16 this advisory opinion, then the Requestor may not rely on that conclusion as support for its
17 proposed activity. Any person involved in any specific transaction or activity which is
18 indistinguishable in all its material aspects from the transaction or activity with respect to which
19 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C.
20 § 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be

⁵ This situation is distinguishable from that in Advisory Opinion 1981-01 (Bay Area Committee), where the Commission allowed the treasurer of a long-dormant committees that had discovered funds remaining in their accounts to "make his or her best efforts to disclose the source" of the funds to be transferred to a party committee's federal account. In that instance, unlike here, the dormant committees "were registered and filed periodic campaign disclosure reports under the Federal laws then applicable," *id.* at 1, 3. Moreover, Advisory Opinion 1981-01 predated the enactment of the Bipartisan Campaign Reform Act and 2 U.S.C. § 441i. *See* Section 309 of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155 (2002).

1 affected by subsequent developments in the law, including, but not limited to, statutes,
2 regulations, advisory opinions, and case law. The advisory opinions cited herein are available on
3 the Commission's website.

4 On behalf of the Commission,
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8

9 Lee E. Goodman
10 Chairman
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