FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 6967
Kentucky State Democratic Central Executive Committee	)	

STATEMENT OF REASONS OF COMMISSIONER LEE E. GOODMAN

On September 17, 2015, in response to a referral from the Audit Division to the Office of General Counsel, the Commission voted to find reason to believe that the Kentucky Democratic Party ("Party") violated 11 C.F.R. § 106.7(d)(1) by failing to maintain time logs for its employees and to impose a civil penalty for the violation.[1] This matter, and a related matter considered by the Commission on the same day,[2] presented the first time the Commission had to decide whether to impose a civil penalty upon a state party for failing to maintain employee time logs. I voted against the imposition of a civil penalty[3] for the following reasons.

First, the Commission's publicly available Audit Report documented the absence of employee time logs and the Commission found reason to believe the failure to keep logs violated the regulation.[4] The audit finding and the formal Commission finding of a legal violation is sufficient to vindicate the public interest.

Second, the Kentucky Democratic Party reformed its procedures and implemented a new contemporaneous time log system for its employees during the audit process.[5] This means that the Commission's audit process brought the party into compliance.

Third, time logs are not statutory requirements. The Commission promulgated a regulation requiring time logs for the sole purpose of assisting the Commission with determining

---

1 Commission Certification at ¶¶ 3, 4, MUR 6967 (Kentucky Democratic Party) (Sept. 20, 2015).

2 MUR 6966 (Democratic Party of Wisconsin).

3 *Id.* at ¶ 4.

4 Final Audit Report of the Commission on the Kentucky State Democratic Central Executive Committee at 6-8 ("Audit Report") *available at* http://www.fec.gov/audits/2012/Kentucky_State_Democratic_Central_Executive_Committee/FinalAuditReportoftheCommission1315050.pdf; Commission Certification at ¶ 3, MUR 6967 (Kentucky Democratic Party) (Sept. 20, 2015).

5 Audit Report at 6, 8.

whether a state or local party used state funds to subsidize the federal election activity of its employees. Here, despite the absence of contemporaneous time logs, there is no objective indication that the Kentucky Democratic Party used state funds to subsidize federal election activities. The Commission's audit confirmed that the Party spent a total of $1,238,780 on payroll during the 2012 federal election cycle.[6] Of that total, $908,667 was paid exclusively with federal funds, $317,830 was paid with allocated federal ($88,992) and state ($228,838) funds, and $12,283 was paid exclusively with state funds. Thus, the Party paid its payroll with $997,659, or 80 percent, in federal funds, and $241,121, or 20 percent, in state funds.[7] Everyone acknowledges that the Party was within its rights to devote time and resources to state elections and everyone would concede the Party engaged in significant state election activity. The objective financial data indicate the Party did not subsidize federal election activity with state funds. Thus, in this instance, the regulatory log-keeping requirement was a tool that served no purpose. Consequently, punishing the party for not keeping logs for the sake of logs is an exercise in regulatory myopia and does not justify a financial penalty.

Fourth, while the regulation requires time logs, the Commission has never defined what constitutes a "log." Here, the Party submitted affidavits from seven employees, sworn subject to the penalty of perjury by each affiant, attesting to how much time they spent on federal activity and the source of funds used for their payroll.[8] Whether or not the Commission is prepared to accept sworn affidavits as time "logs"—and I believe a strong case can be made to accept them—the Commission should at minimum have credited these sworn affidavits as sufficient to avoid a financial punishment.

Furthermore, the audit experience and its attendant costs are more than effective punishment to instill in any state party an incentive to comply—at great compliance cost—with the most myopic of federal regulations in the future. The audit process is expensive and drains resources from a state party's political mission. The party must disburse considerable funds to pay lawyers and accountants while committee staff devote hundreds of hours to compiling records and responding to auditor demands. The experience distracts the party and ties up its resources and operations for two years or more. Therefore, it is not necessary for the Commission to impose a financial penalty on top of tens of thousands of dollars in audit expenses to accomplish the Commission's enforcement objectives, that is, to incentivize a party to keep employee logs in the future.

In this case, the Commission's enforcement objectives would have been best achieved by concluding the case with an audit report publicly finding the absence of required logs and memorializing that the Kentucky Democratic Party has already implemented new log compliance procedures, as well as a public finding by the Commission that there was reason to believe the Party violated the law and a conciliation agreement that memorialized these circumstances. The Commission is not required to seek monetary penalties and indeed often

6 Audit Report at 6 (including additional data derived from the Commission's audit file).

7 *Id.*

8 *Id.* at 7.

quickly dismisses insignificant violations of greater consequence than employee logs.[9] In all such cases, the public interest in compliance is vindicated.

Finally, this regulatory treatment is justified given the severe burdens the federal and state regulatory schemes impose upon state and local political parties. All Commissioners have expressed concern about regulatory burdens imposed upon state and local political parties. A resolution without a civil financial penalty would have been one way to make good on those concerns.

Lee E. Goodman
Commissioner

March 3, 2016
Date

[9] The Commission has significant discretion to determine the best way to resolve matters, including whether to assess penalties for non-compliance or dismiss a matter at the initial state of enforcement. *See* 52 U.S.C. § 30109(a)(5)(A)-(B) (conciliation agreements entered into by the Commission "*may* include a requirement that the person involved in such conciliation agreement shall pay a civil penalty . . .") (italics added); *Heckler v. Chaney*, 470 U.S. 821 (1985) (holding that agencies may dismiss matters pursuant to their prosecutorial discretion); *Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process*, 72 Fed. Reg. 12,545 (Mar. 16, 2007) (stating policy of dismissing insignificant violations that do not merit further proceedings rather than proceeding to reason-to-believe findings and investigation or conciliation).