

FEDERAL ELECTION COMMISSION  
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FIRST GENERAL COUNSEL'S REPORT

AUDIT REFERRAL: 15-08  
DATE REFERRED: December 4, 2015  
DATE ACTIVATED: January 22, 2016  
  
EXPIRATION OF SOL: April 1, 2016 (Earliest)  
September 30, 2017 (Latest)

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Committee for Charlotte/Charlotte DNC Host  
Committee and Harvey Gantt in his official capacity  
as treasurer

RELEVANT STATUTES  
AND REGULATIONS: 52 U.S.C. § 30102(c), (d)  
26 U.S.C. § 9008  
11 C.F.R. § 102.9  
11 C.F.R. § 104.13(a)(1)  
11 C.F.R. § 114.14(b)(1)  
11 C.F.R. § 9008.9(b)(4)  
11 C.F.R. § 9008.51  
11 C.F.R. § 9008.52(b)  
11 C.F.R. § 9008.54

INTERNAL REPORTS  
CHECKED: Audit Documents  
Disclosure Reports

FEDERAL AGENCIES  
CHECKED: None

I. INTRODUCTION

This matter was generated by a Commission audit, conducted pursuant to 11 C.F.R.  
§ 9008.54 regarding payments for presidential nominating conventions, of Committee for  
Charlotte/Charlotte DNC Host Committee and Harvey Gantt in his official capacity as treasurer  
(the "Committee"), the non-qualified party committee responsible for hosting the 2012

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1 Democratic National Convention.<sup>1</sup> The audit covered the period April 1, 2011, through  
2 December 31, 2012. On November 18, 2015, the Commission approved the Final Audit Report  
3 ("FAR" or "Attachment 1"). On December 4, 2015, the Audit Division referred Finding 1—  
4 Recordkeeping for In-Kind Contributions—of the FAR to the Office of General Counsel  
5 ("OGC") for possible enforcement action.<sup>2</sup>

6 Based on the information set forth in the Referral, OGC recommends that the  
7 Commission open a MUR and find reason to believe that the Committee violated the Federal  
8 Election Campaign Act of 1971, as amended (the "Act"), by failing to maintain appropriate  
9 documentation to support reported in-kind contributions totaling \$2,878,882. Additionally, we  
10 recommend that the Commission authorize pre-probable cause conciliation.

11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. Factual Background**

13 As described in the FAR, the Committee failed to maintain appropriate supporting  
14 documentation for the 23 in-kind contributions that it had reported to the Commission.<sup>3</sup> The  
15 reported in-kind contributions provided by corporations, commercial vendors, and individual

<sup>1</sup> The Committee acted as a Host Committee for the 2012 Democratic National Convention pursuant to 11 C.F.R. § 9008.50(b). Stmt. of Org. at 2 (Feb. 16, 2011).

<sup>2</sup> Memorandum to Lisa Stevenson, Deputy General Counsel - Law, re Committee for Charlotte/Charlotte DNC Host Committee – Referral Matters, from Patricia Orrock, Chief Compliance Officer, *et al.* (Dec. 4, 2015) ("Referral").

<sup>3</sup> See FAR at 5; 2012 Post-Convention Rpt. (Oct. 17, 2012).

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1 contributors totaled \$2,878,882 as shown below:

| Full Name                          | Date of Receipt | Amount                     |
|------------------------------------|-----------------|----------------------------|
| Rogers, James E.                   | 2011-04-01      | \$ 239,523.00 <sup>4</sup> |
| Bank of America                    | 2011-06-01      | 150,124.00                 |
| Duke Energy Corporation            | 2011-06-01      | 56,205.00                  |
| Duke Energy Corporation            | 2011-06-01      | 1,332,816.00               |
| Hunton & Williams, LLP             | 2011-06-01      | 5,000.00                   |
| UPS                                | 2011-06-01      | 125,000.00                 |
| Hendrick Automotive Group          | 2011-09-01      | 70,000.00                  |
| Bank of America                    | 2012-08-01      | 121,740.00                 |
| Encompass Digital Media            | 2012-08-15      | 50,000.00                  |
| Adobe Systems                      | 2012-08-28      | 50,000.00                  |
| AT&T Services, Inc.                | 2012-09-01      | 175,475.00                 |
| Chiquita Brands International Inc. | 2012-09-01      | 4,000.00                   |
| Costco                             | 2012-09-01      | 27,000.00                  |
| Eco-Products, Inc.                 | 2012-09-01      | 5,640.00                   |
| Good Live Beverages, Inc.          | 2012-09-01      | 2,000.00                   |
| Half Moon Bay Brewing Co.          | 2012-09-01      | 5,000.00                   |
| Reynolds Consumer Products, Inc.   | 2012-09-01      | 1,200.00                   |
| The Coca-Cola Company              | 2012-09-02      | 69,590.42                  |
| Greenberg Traurig LLP              | 2012-09-04      | 25,927.53                  |
| AT&T Services, Inc.                | 2012-09-06      | 123,087.77                 |
| Microsoft Corporation              | 2012-09-06      | 71,521.22                  |
| Duke Energy Corporation            | 2012-09-30      | 79,869.00                  |

<sup>4</sup> Absent tolling, the recordkeeping violation regarding this contribution will expire April, 1, 2016.

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|   |            |                        |
|---|------------|------------------------|
| Duke Energy Corporation                                     | 2012-09-30 | 88,163.00              |
| <b>In-Kind Contributions Lacking Required Documentation</b> |            | <b>\$ 2,878,881.94</b> |

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2 To document its in-kind contributions, the Committee maintained receipt and  
3 disbursement databases along with internal tracking forms that stated the amount of the  
4 contribution, the purpose for which the contribution would be reported, and, for one contribution,  
5 a contract reference.<sup>5</sup> The Committee, however, failed to maintain computational worksheets or  
6 obtain documentation from contributors that would allow the Committee to verify the amounts  
7 that it reported.<sup>6</sup> Also, the Committee failed to identify or value in-kind contributions having  
8 some promotional consideration.<sup>7</sup>

9 At various points during the audit, Audit staff asked the Committee for additional  
10 documentation regarding the in-kind contributions.<sup>8</sup> The Committee produced tracking forms  
11 and a "draft schedule" showing \$2,121,206 of the in-kind contributions, but those materials  
12 lacked supporting documentation and included information similar to what was already found in  
13 the Committee's database.<sup>9</sup> Further, some of the contribution amounts listed on the draft  
14 schedule were inconsistent with the amounts disclosed in the Committee's reports. The  
15 Committee ultimately acknowledged that it lacked sufficient documentation to verify the in-kind  
16 contributions that it reported to the Commission.<sup>10</sup> In response to the Draft Final Audit Report,

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 5-6.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6.

1 the Committee stated that it was trying to obtain and provide additional documentation for the in-  
2 kind transactions.<sup>11</sup> The Committee has provided no additional documentation to date. The  
3 Committee declined a hearing before the Commission on this matter.<sup>12</sup>

4 On September 17, 2015, the Commission considered the Audit Division's  
5 recommendation that the Commission find that the Committee failed to maintain appropriate  
6 documentation to support reported in-kind contributions totaling \$2,878,882.<sup>13</sup> The Commission  
7 approved Audit's recommendation.<sup>14</sup> On November 18, 2015, the Commission approved the  
8 FAR, which includes a finding that the Committee's failed to maintain appropriate records for  
9 the in-kind contributions that it received.<sup>15</sup> OGC provided the Committee an opportunity to  
10 respond to the referral, but it did not.

#### 11 **B. Legal Analysis**

12 The Act defines a contribution to include a "gift, subscription, loan . . . or anything of  
13 value made by any person for the purpose of influencing any election for federal office."<sup>16</sup>  
14 "Anything of value" includes all in-kind contributions.<sup>17</sup> The Act generally prohibits  
15 corporations from making contributions to political committees, and similarly prohibits political  
16 committees from knowingly accepting or receiving prohibited contributions, but also provides a

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.*

<sup>15</sup> *See Referral* at 1.

<sup>16</sup> 52 U.S.C. § 30101(8)(A)(1).

<sup>17</sup> 11 C.F.R. § 100.7(a)(1)(iii).

1 number of exceptions to this prohibition.<sup>18</sup> One such exception permits corporations, in certain  
2 circumstances, to provide goods or services to a host committee<sup>19</sup> that may be used in connection  
3 with a presidential nominating convention.

4 The Act and Commission regulations permit host committees to accept goods or services  
5 from commercial vendors,<sup>20</sup> individuals, and other organizations for various convention-related  
6 facilities and service expenses.<sup>21</sup> Commercial vendors may sell, lease, rent or provide their  
7 goods or services to the host committee with respect to a presidential nominating convention at  
8 reduced or discounted rates, or at no charge, provided that certain requirements are met.<sup>22</sup> The  
9 amount of an in-kind contribution shall be equal to the usual and normal value on the date  
10 received.<sup>23</sup>

11 The Act and Commission regulations also require that all committees maintain certain  
12 records regarding in-kind contributions. The treasurer of a political committee must keep an  
13 account of, among other things: (1) all contributions received by or on behalf of the committee;  
14 (2) the name and address of any person who makes a contribution in excess of \$50, together with  
15 the date and amount of the contribution; and (3) the occupation and name of employer of any  
16 individual whose contributions aggregate more than \$200 during a calendar year, together with

<sup>18</sup> 52 U.S.C. §§ 30118(a), (b)(2).

<sup>19</sup> A host committee may be created to represent a city hosting a nominating convention in matters involving a presidential nominating convention. *Id.* § 9008.51. The principal objective of a host committee is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees. *Id.* § 9008.50(c). The Committee is a host committee. Stmt. of Org. at 2 (Feb. 16, 2011).

<sup>20</sup> Commission regulations define "commercial vendors" as "any persons proving goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services." 11 C.F.R. §§ 116.1(c), 9008.9.

<sup>21</sup> *Id.* §§ 9008.9, 9008.52.

<sup>22</sup> *Id.* § 9008.9.

<sup>23</sup> *Id.* § 104.13(a)(1).

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1 the date and amount of any such contributions.<sup>24</sup> Also, for each in-kind contribution that a  
2 convention committee receives, it must, among other things, maintain documentation showing:  
3 (1) the goods or services provided; (2) the date(s) on which the goods or services were provided;  
4 (3) the terms and conditions of the arrangement; and (4) what promotional consideration was  
5 provided.<sup>25</sup> In addition, each political committee must maintain records with respect to the  
6 matters required to be reported — including the receipt of in-kind contributions — which  
7 provide in sufficient detail the necessary information and data from which the filed reports may  
8 be verified, explained, clarified, and checked for accuracy and completeness.<sup>26</sup> Committees must  
9 preserve these records for three years after a report is filed.<sup>27</sup>

10 There is no dispute that between April 1, 2011, and December 31, 2012, the Committee  
11 received and reported the receipt of in-kind contributions totaling \$2,878,882, and that the  
12 Committee failed to maintain appropriate supporting documentation as the Act and Commission  
13 regulations require. Accordingly, we recommend that the Commission open a MUR and find  
14 reason to believe that the Committee for Charlotte/Charlotte DNC Host Committee and Harvey  
15 Gantt in his official capacity as treasurer violated 52 U.S.C. § 30102(c)-(d) and 11 C.F.R.  
16 §§ 102.9(c), 104.14(b)(1), 9008.9(b)(4).

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<sup>24</sup> *Id.* § 104.14(b)(1).

<sup>25</sup> *Id.* §§ 9008.9(b)(4), 9008.52.

<sup>26</sup> 52 U.S.C. § 30102(c)-(d); 11 C.F.R. § 104.14(b)(1).

<sup>27</sup> 11 C.F.R. § 102.9(c).

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**IV. RECOMMENDATIONS**

1. Open a MUR in AR 15-08.
2. Find reason to believe that the Committee for Charlotte/Charlotte DNC Host Committee and Harvey Gantt in his official capacity as treasurer violated 52 U.S.C. § 30102(c)-(d) and 11 C.F.R. §§ 102.9(c), 104.14(b)(1), 9008.9(b)(4).
3. Approve the attached Factual and Legal Analysis.
4. Enter into conciliation with the Committee for Charlotte/Charlotte DNC Host Committee and Harvey Gantt in his official capacity as treasurer, prior to a finding of probable cause to believe.
5. Approve the attached conciliation agreement.
6. Approve the appropriate letter.

3.22.16

Date

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