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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 13-36
AGENDA ITEM
For meeting of August 22, 2013

August 15, 2013

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Deputy General Counsel

Adav Noti *AN*
Acting Associate General Counsel

Amy Rothstein *AR by AN*
Assistant General Counsel

Neven F. Stipanovic *NFS*
Attorney

Subject: Draft AO 2013-10 (DSCC, DCCC, NRCC, NRSC)

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 August 21, 2013.

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>.

Attachment

1 ADVISORY OPINION 2013-10

2

3 Megan Sowards, Esq.

4 General Counsel

5 National Republican Senatorial Committee

DRAFT

6 425 Second St., N.E.

7 Washington, D.C. 20002

8

9 Jessica Furst Johnson, Esq.

10 Deputy Executive Director and General Counsel

11 National Republican Congressional Committee

12 320 First Street, S.E.

13 Washington, D.C. 20003

14

15 Marc E. Elias, Esq.

16 Brian G. Svoboda, Esq.

17 General Counsel

18 Democratic Senatorial Campaign Committee and

19 Democratic Congressional Campaign Committee

20 Perkins Coie LLP

21 700 Thirteenth Street, N.W., Suite 600

22 Washington, D.C. 20005

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25 Dear Ms. Sowards, Ms. Johnson, and Messrs. Elias and Svoboda:

26 We are responding to your advisory opinion request on behalf of the Democratic

27 Senatorial Campaign Committee (“DSCC”), the Democratic Congressional Campaign

28 Committee (“DCCC”), the National Republican Congressional Committee (“NRCC”),

29 and the National Republican Senatorial Committee (“NRSC”) (collectively, the

30 “Committees”). The Committees ask about the application of the Federal Election

31 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to the

32 Committees’ proposed payment of building-related expenses from separate federal

33 accounts that the Committees have established to pay for recounts and some other

34 expenses.

1 The Commission concludes that the Committees may not use funds in their
2 separate federal accounts to pay building-related expenses because funds raised and spent
3 by the Committees for this purpose are contributions and expenditures under the Act and
4 Commission regulations.

5 ***Background***

6 The facts presented in this advisory opinion are based on your letter received on
7 July 19, 2013 (“Advisory Opinion Request”).

8 The DSCC and DCCC are national committees of the Democratic Party. The
9 NRCC and NRSC are national committees of the Republican Party. Each of the
10 Committees maintains a headquarters office building to carry out its day-to-day
11 operations at the national level. The Committees state that they do not maintain these
12 office buildings for the purpose of influencing the election of any particular candidate for
13 office in any particular federal election; rather, they use the buildings “to sustain the
14 general functioning” of their respective political parties, “which entails the support of
15 most or all of the [parties’] candidates over a number of years.” Advisory Opinion
16 Request at 1.

17 The Committees have incurred, and expect to continue to incur, various costs
18 related to the purchase, construction, and maintenance of their headquarters office
19 buildings. These building expenses include mortgage payments for existing office
20 buildings; repairs, renovations, capital improvements, and improvements to the physical
21 and safety systems of existing office buildings; and costs for the purchase or construction
22 of new office buildings.

1 The Committees each maintain a “segregated federal account to pay for recount
2 costs, legal defense, and other expenses.” *See* Advisory Opinion Request at 1-2 (citing
3 Advisory Opinions 2006-24 (Republican and Democratic Senatorial Committees),
4 2009-04 (Franken/DSCC), 2010-14 (DSCC), 2010-18 (DFL), and 2011-03 (DSCC, RNC,
5 NRCC, DCCC)). The Committees state that their separate federal accounts consist
6 “solely of Federal funds that comply with the source restrictions, amount limitations, and
7 reporting requirements” of the Act. *Id.* at 2. The Committees seek to pay for some or all
8 of their building expenses from their separate federal accounts.

9 ***Question Presented***

10 *May the Committees use funds in their separate federal accounts to pay for their*
11 *building expenses?*

12 ***Legal Analysis and Conclusion***

13

14 No, the Committees may not use funds in their separate federal accounts to pay
15 for their building expenses because funds raised and spent by the Committees for this
16 purpose are contributions and expenditures.

17 Under the Act and Commission regulations, national party committees, such as
18 the Committees here, may not solicit, receive, or spend funds that are not subject to the
19 limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(a)(1);
20 11 C.F.R. § 300.10(a). The current annual limits on contributions to national party
21 committees are \$15,000 from each multicandidate political committee and \$32,400 from

1 each individual and from certain other political committees.¹ The total aggregate amount
2 that an individual may contribute to all candidates and political committees over a two-
3 year period is also limited. 2 U.S.C. § 441a(a)(3); 11 C.F.R. § 110.5.

4 The terms “contribution” and “expenditure” include any gift, loan, or payment of
5 money or anything of value for the purpose of influencing any election for federal office.
6 2 U.S.C. §§ 431(8)(A)(i), (9)(A)(i); 11 C.F.R. §§ 100.52(a), 100.111(a). Commission
7 regulations provide that funds provided to national party committees for the purchase or
8 construction of office buildings or facilities are, by definition, contributions. 11 C.F.R.
9 § 100.56. Similarly, spending by or on behalf of a national party committee for the
10 purchase or construction of an office building or facility is, by definition, an expenditure.
11 *Id.* § 100.114. Prior to the Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116
12 Stat. 61 (2002) (“BCRA”), the Federal Election Campaign Act exempted from the
13 definitions of “contribution” and “expenditure” any donation to, or spending by, a
14 national party committee “to defray any cost for construction or purchase of any office
15 facility” that was not “for the purpose of influencing the election of any candidate in any
16 particular election for Federal office.” *See* Prohibited and Excessive Contributions:
17 Non-Federal Funds or Soft Money, 67 Fed. Reg. 49,064, 49,100 (July 29, 2002). BCRA
18 repealed these exceptions, *see* BCRA § 103(b)(1), 116 Stat. 87 (repealing former
19 2 U.S.C. § 431(8)(B)(viii)), and the Commission promulgated new regulations to “make
20 clear that these exceptions no longer apply to national party committees.” *See*

¹ 2 U.S.C. § 441a(a)(1)(B), (2)(B); 11 C.F.R. §§ 110.1(c)(1), 110.2(c)(1); *see also* Press Release, FEC Announces 2013-2014 Campaign Cycle Contribution Limits (Jan. 30, 2013), *available at* http://www.fec.gov/press/press2013/20133001_2013-14ContributionLimits.shtml; Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013).

1 Reorganization of Regulations on “Contribution” and “Expenditure,” 67 Fed. Reg.
2 50,582, 50,584 (Aug. 5, 2002).

3 The Commission has determined that national party committees may maintain
4 separate accounts to finance recount and election-contest activities because the
5 Commission’s regulations explicitly exempt funds raised and spent for such activities
6 from the definitions of “contribution” and “expenditure.” *See* 11 C.F.R. §§ 100.91,
7 100.151; *see also* Advisory Opinion 2010-18 (DFL) at 2 n.1 (citing 11 C.F.R. § 100.91);
8 Advisory Opinion 2006-24 (NRSC/DSCC) at 5 (citing 11 C.F.R. §§ 100.91, 100.151);
9 Advisory Opinion 1990-23 (Frost) at 3-4 n.2 (citing 11 C.F.R. §§ 100.7(b)(20),
10 100.8(b)(20)). Accordingly, the Commission has imposed a clear limitation on this
11 “special treatment and exemption accorded funds received and spent for recount
12 purposes”: The funds ““may not be used in any manner that would constitute a
13 contribution or expenditure under the Act or regulations.”” *See* Advisory Opinion
14 2010-14 (DSCC) at 5 (quoting Advisory Opinion 1978-92 (Miller)). Thus, because funds
15 received by national party committees to pay their building expenses are contributions,
16 and funds spent for this purpose are expenditures, the Commission concludes that the
17 Committees may not use funds from their separate accounts to pay building expenses.²

18 This response constitutes an advisory opinion concerning the application of the
19 Act and Commission regulations to the specific transaction or activity set forth in your
20 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in

² For purposes of the biennial aggregate contribution limits of 2 U.S.C. § 441a(a)(3), donations to recount funds are not aggregated with contributions made by the same person to the national party committees. *See, e.g.*, Advisory Opinion 2010-14 (DSCC) at n.2; Advisory Opinion 2009-04 (Franken/DSCC) at 6. Funds contributed to pay building expenses, by contrast, are subject to the aggregate contribution limits because such funds are contributions under 11 C.F.R. § 100.56.

1 any of the facts or assumptions presented, and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requestors may not rely on that
3 conclusion as support for their proposed activity. Any person involved in any specific
4 transaction or activity which is indistinguishable in all its material aspects from the
5 transaction or activity with respect to which this advisory opinion is rendered may rely on
6 this advisory opinion. *See* 2 U.S.C. § 437f(c)(1)(B). Please note that the analysis or
7 conclusions in this advisory opinion may be affected by subsequent developments in the
8 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
9 The cited advisory opinions are available on the Commission's Web site at www.fec.gov,
10 or directly from the Commission's Advisory Opinion searchable database at
11 <http://www.fec.gov/searchao>.

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On behalf of the Commission,

Ellen L. Weintraub
Chair