



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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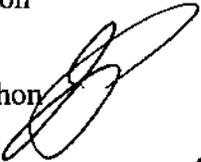
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February 27, 2003

MEMORANDUM

AGENDA ITEM
For Meeting of: 3-06-03

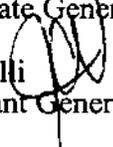
TO: The Commission

THROUGH: James A. Perkhon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

James A. Kahl 
Deputy General Counsel

Rosemary C. Smith 
Acting Associate General Counsel

John C. Vergelli 
Acting Assistant General Counsel

Albert J. Kiss 
Attorney

SUBJECT: Draft AO 2003-1 - Alternative Drafts

The attached documents respond to questions raised by NORPAC, a nonconnected political committee. NORPAC sponsors an annual mission to Washington during which NORPAC participants meet with Members of Congress to discuss issues in support of Israel. NORPAC incurs the following expenses in connection with the annual mission to Washington: bus travel; food; rental of meeting space; supplies for participants (pens, folders, pads, etc.); informational packets regarding issues to be discussed; and Congressional directories. Annual mission participants make a donation to NORPAC in the form of an attendance fee to participate in the mission. NORPAC inquires whether the attendance fees related to the annual mission can be deposited into NORPAC's non-Federal account and the expense disbursements made from NORPAC's non-Federal account, or whether the annual mission expenses must be allocated between NORPAC's Federal and non-Federal accounts.

This Office believes that the questions presented by NORPAC are very close legal judgments under the Act and Commission regulations. Neither the Act nor the regulations provide obvious answers to the questions presented, and there is a dearth of secondary legal authority on these issues. Therefore, we are presenting two alternative drafts. The first alternative, Draft A, concludes that NORPAC must either allocate annual mission disbursements between NORPAC's Federal and non-Federal accounts, or make these disbursements solely from its Federal account. The second alternative, Draft B, concludes that NORPAC may make disbursements for the annual mission solely from its non-Federal account, without allocation. We request that these drafts be placed on the agenda for March 6, 2003.

Attachments

Drafts A and B

1 ADVISORY OPINION 2003-1

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3

4 Mitchell J. Eichen

5 Treasurer

6 NORPAC

7 P.O. Box 5595

8 Englewood, N.J. 07631

9

10

11 Dear Mr. Eichen:

12 This responds to your letters on behalf of NORPAC dated November 18,
13 2002, and December 28, 2002, requesting an advisory opinion concerning the
14 application of the Federal Election Campaign Act of 1971, as amended (“the Act”)
15 and Commission regulations to NORPAC’s annual mission to Washington.

16 ***Background***

17 The Statement of Organization, as amended, filed by NORPAC indicates that
18 it is a nonconnected committee and qualifies as a multicandidate committee. Reports
19 filed with the Commission indicate that NORPAC makes contributions in connection
20 with Federal elections, and has also made donations to non-Federal candidates using
21 Federal funds.

22 You state that each year “participants” from NORPAC make an annual
23 mission to Washington, where they meet with Members of Congress to discuss issues
24 in support of Israel. You state that participants act solely as individuals. You state
25 that these issues can include bills that have been introduced or that NORPAC would
26 like to have introduced. You further state that no discussions of support for any
27 Member of Congress are held at these meetings. You state that:

- 1 1. During the mission, no campaign contributions are delivered to anyone at
2 anytime;
- 3 2. During the mission, no receptions or similar events are held for any
4 Member of Congress or candidates for Federal office;
- 5 3. NORPAC seeks no assistance from Members of Congress or candidates
6 for Federal office for fundraising activities;
- 7 4. Participants do not meet with political party officials as part of the
8 mission;
- 9 5. To the best of your knowledge, no Member of Congress or candidate for
10 Federal office has ever signed a fundraising letter for NORPAC, or
11 otherwise participated in fundraising for NORPAC;
- 12 6. No contributions of any sort (*e.g.*, to political party committees or to
13 PACs) are made as part of the annual mission; and
- 14 7. As a result of these meetings, subsequent decisions about candidate
15 support may be made.

16 You provide the following examples of expenses incurred in connection with
17 the annual mission to Washington: bus travel; food; rental of meeting space; supplies
18 for participants (pens, folders, pads, etc.); informational packets regarding issues to
19 be discussed; and Congressional directories. You state that payments are made to
20 NORPAC by annual mission participants in the form of an attendance fee to
21 participate in the mission, and that the attendance fee is based in large part on the

1 prior year's fee, and is intended to allow NORPAC to recover the direct costs of its
2 mission.

3 You state that, until now, all the attendance fees related to the annual mission
4 were deposited into NORPAC's Federal account, and all the disbursements made in
5 connection with the annual mission were made from NORPAC's Federal account. In
6 December 2001, NORPAC established a non-Federal bank account.

7 ***Question Presented***

8 You ask whether the attendance fees related to the annual mission may be
9 deposited into NORPAC's non-Federal account and whether the disbursements for
10 the annual mission may be made from NORPAC's non-Federal account, or whether
11 the annual mission expenses must be allocated between NORPAC's Federal and non-
12 Federal accounts.

13 ***Analysis and Conclusion***

14 In brief, the Commission concludes that NORPAC may either allocate
15 disbursements for the expenses about which you inquire between NORPAC's
16 Federal and non-Federal accounts, or it may make these disbursements solely from
17 NORPAC's Federal account.

18 NORPAC has chosen to organize and operate as a Federal political
19 committee.¹ Under 2 U.S.C. 434(a), such a political committee must file reports of
20 receipts and disbursements. Under 2 U.S.C. 434(b)(4), these reports must include

1 “the total amount of all disbursements, and all disbursements” in several categories,
2 such as expenditures, independent expenditures, contributions, loans, transfers and
3 “any other disbursements.” Given these statutory reporting requirements and given
4 that NORPAC exists in legal form as a Federal political committee,² disbursements
5 for the expenses about which you inquire must be viewed in light of NORPAC’s
6 status as a political committee. The major purpose of a political committee is
7 material to the reporting of receipts and disbursements even if those receipts and
8 disbursements are not directly in connection with a federal election.³

9 Since 1977, Commission regulations have required political committees
10 active in both Federal and non-Federal elections to allocate their administrative
11 expenses between the committee’s Federal and non-Federal accounts “in proportion
12 to the amount of funds expended on Federal and non-Federal elections, or on another
13 reasonable basis.” *See* Explanation and Justification to the Final Rules on Methods
14 of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting, 55
15 FR 26058, 26059 (June 26, 1990). For purposes of this opinion, these rules were not

¹ This choice inures to the benefit of NORPAC in some ways; e.g., NORPAC is not limited to soliciting from a restricted class as it would be if it were the separate segregated fund of a connected organization.

² For example, NORPAC is not a separate segregated fund of a connected organization that has purposes broader than that of a political committee.

³ *See, e.g., FEC v. GOPAC, Inc.*, 871 F.Supp. 1466, 1470-71 (D.D.C. 1994) (“*Buckley* (424 U.S. 1 (1976)) authoritatively establishes that *any* payment of \$1,000 or more by an organization whose major purpose has been determined to be the nomination or election of an identified candidate for federal office . . . is, ‘by definition, campaign related’ and hence, constitutes an ‘expenditure’ by a ‘political committee.’”).

1 changed by the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat.
2 81 (March 27, 2002). The cited Explanation and Justification notes that the purpose
3 of these rules is to implement the contribution and expenditure limitations and
4 prohibitions established by 2 U.S.C. 441a and 441b. 55 FR at 26058.

5 Commission regulations at 11 CFR 106.6 set forth the procedures to be
6 followed by nonconnected committees that make disbursements in connection with
7 both Federal and non-Federal elections. Under 11 CFR 106.6(a), nonconnected
8 committees may make such disbursements in one of two ways: they may make them
9 entirely from funds raised subject to the prohibitions and limitations of the Act; or, if
10 they have established separate Federal and non-Federal accounts pursuant to 11 CFR
11 102.5, they may allocate them between these accounts. If a nonconnected committee
12 elects to allocate, then it should allocate these disbursements pursuant to the funds
13 expended method described at 11 CFR 106.6(c). Section 106.6(b) provides that
14 “nonconnected committees that make disbursements in connection with federal and
15 non-federal elections shall allocate expenses for the following categories of activity”:

- 16 1. Administrative expenses including rent, utilities, office supplies, and salaries,
17 except for such expenses directly attributable to a clearly identified candidate.
18 11 CFR 106.6(b)(2)(i);
- 19 2. The direct costs of a fundraising program or event including disbursements
20 for solicitation of funds and for planning and administration of actual
21 fundraising events, where federal and non-federal funds are collected through
22 such program or event. 11 CFR 106.6(b)(2)(ii); and

1 3. Generic voter drives including voter identification, voter registration, and get-
2 out-the-vote drives, or any other activities that urge the general public to
3 register, vote or support candidates of a particular party or associated with a
4 particular issue, without mentioning a specific candidate. 11 CFR
5 106.6(b)(2)(iii).

6 The expenses about which you inquire are of the type listed in 11 CFR
7 106.6(b)(2)(i) (*e.g.*, office supplies, rental of meeting space, etc.). Thus, the
8 Commission finds that these are administrative expenses. Therefore, the
9 Commission further finds that the expenses about which you inquire must be
10 allocated between Federal and non-Federal funds under 11 CFR 106.6, unless they
11 are paid solely from NORPAC's Federal account.⁴

12 You ask whether payments to NORPAC by participants in the annual mission
13 to Washington are exempt from the general contribution limitations to a political
14 committee. The attendance fees for the mission to Washington may be deposited in
15 either NORPAC's Federal or non-Federal account. Contributions by participants to
16 NORPAC's Federal account are contributions to NORPAC, and thus are subject to
17 the Act's contribution limitations, prohibitions, and reporting requirements. 2 U.S.C.

⁴ You also ask whether certain disbursements in connection with NORPAC's annual mission to Washington constitute "non-Federal activities" and are therefore exempt from reporting under the Act. As discussed above, disbursements in connection with NORPAC's annual mission to Washington should be allocated between NORPAC's Federal and non-Federal accounts, unless these disbursements are solely made from the Federal account.

1 434 and 441a. However, donations by participants to NORPAC's non-Federal
2 account are not subject to the Act's contribution limitations. *See* 11 CFR 106.6.

3 The Commission expresses no opinion concerning any possible application
4 of Federal lobbying statutes (*e.g.*, the Lobbying Disclosure Act of 1995, codified at 2
5 U.S.C. 1601 *et. seq.*) since those issues are not within its jurisdiction. For the same
6 reason the Commission also expresses no opinion as to the implications of
7 NORPAC's annual mission activities under the Internal Revenue Code, and in
8 particular expresses no opinion as to NORPAC's status as a political organization
9 under 26 U.S.C. 527.

10 This response constitutes an advisory opinion concerning the application of
11 the Act and Commission regulations to the specific transaction or activity set forth in
12 your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a
13 change in any of the facts or assumptions presented, and such facts or assumptions
14 are material to a conclusion presented in this opinion, then the requestor may not rely
15 on that conclusion as support for its proposed activity.

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Sincerely,

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Ellen L. Weintraub
Chair

1 ADVISORY OPINION 2003-1

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3

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8 mission;
- 9 5. To the best of your knowledge, no Member of Congress or candidate for
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11 otherwise participated in fundraising for NORPAC;
- 12 6. No contributions of any sort (*e.g.*, to political party committees or to
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- 14 7. As a result of these meetings, subsequent decisions about candidate
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7 ***Question Presented***

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11 the annual mission expenses must be allocated between NORPAC's Federal and non-
12 Federal accounts.

13 ***Analysis and Conclusion***

14 Commission regulations at 11 CFR 106.6 set forth the procedures to be
15 followed by nonconnected committees that make disbursements "in connection with
16 both Federal and non-Federal elections." Under 11 CFR 106.6(a), nonconnected
17 committees may make such disbursements in one of two ways: they may make them
18 entirely from funds raised subject to the prohibitions and limitations of the Act; or, if
19 they have established separate Federal and non-Federal accounts pursuant to 11 CFR
20 102.5, they may allocate them between these accounts. 11 CFR 106.6(b)(2), in turn,
21 provides that "nonconnected committees that make disbursements in connection with
22 federal and non-federal elections" shall allocate certain expenses.

1 Expenses of the sort incurred as part of the annual mission to Washington
2 (e.g., travel, food, rental of meeting space, and office supplies) are invariably
3 administrative expenses subject to the allocation regime in 11 CFR 106.6, if made in
4 connection with Federal and non-Federal elections. The Commission understands
5 the purpose of the annual mission to be to discuss issues with Members of Congress
6 and other Federal officials (that is, the annual mission is issue-driven) and that
7 elections, campaigns and contributions are not discussed during the annual mission.
8 Moreover, funds are solicited from participants specifically for the purpose of
9 defraying these particular expenses. Further, while annual mission participants may
10 use information gained during the mission in making future contribution decisions,
11 this information is only one factor driving such contribution decisions. Thus, given
12 these facts, and because the expenses about which you inquire are exclusively
13 lobbying expenses, and are not made in connection with a Federal or a non-Federal
14 election, these expenses are not subject to allocation under 11 CFR 106.6. If
15 elections, campaigns and contributions were discussed during the annual mission or
16 otherwise were a part of the annual mission, then allocation would be required for the
17 expenses of the annual mission.

18 Under the facts presented NORPAC may deposit attendance fees related to
19 the annual mission in NORPAC's non-Federal account, and NORPAC may make
20 disbursements for the annual mission solely from its non-Federal account, without
21 allocation between NORPAC's Federal and non-Federal accounts.

1 The Commission expresses no opinion concerning any possible application
2 of Federal lobbying statutes (*e.g.*, the Lobbying Disclosure Act of 1995, codified at 2
3 U.S.C. 1601 *et. seq.*) since those issues are not within its jurisdiction. For the same
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12 are material to a conclusion presented in this opinion, then the requestor may not rely
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Sincerely,

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Ellen L. Weintraub
Chair