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2011 APR 22 A 10: 47

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 22, 2011

MEMORANDUM

SENSITIVE

TO: The Commission

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FROM:

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SUBJECT: Request for Commission Directive 69 Guidance involving the Democratic State Central Committee of California (LRA # 819)

I. INTRODUCTION

Pursuant to Commission Directive 69, the Office of Compliance ("OC") and the Office of General Counsel ("OGC") seek the Commission's guidance on an issue that originally arose in a query from the Reports Analysis Division concerning a committee that is now being audited, the Democratic State Central Committee of California ("CALDEMS"). The question is: when a state party committee transfers funds to local party committees for allocable activities – in this case, voter registration outside the "federal election activity" period – how should it make the transfer? Specifically, should it transfer one check containing federal and non-federal funds, following the procedures for allocated payments in 11 C.F.R. § 106.7, or should it transfer separate checks drawn on the federal and non-federal accounts? Or is either method of payment acceptable? Before we address the details and specifics of the issue, we have set forth the procedural history and background facts that should assist the Commission in understanding why it is considering this issue and how it should resolve the issue.

A. Procedural Background

This issue was originally raised in an informal query from the Reports Analysis Division ("RAD"). OGC completed a legal response to the query. After OC reviewed OGC's response, and considered additional information obtained from audit fieldwork, OC and OGC concurred that one of the questions originally addressed by OGC should be submitted to the Commission for consideration under Directive 69.[1]

The Commission, through Directive 69, encourages OGC and OC to bring to its attention matters involving "novel or unsettled questions of law, or questions prompted by developments in the law since the Commission last considered the same issue." Commission Directive 69, para. 3.d. (July 1, 2010). OGC and OC believe that the issue presented below poses unsettled questions of law that should be brought to the Commission for its determination.

B. Factual Background

CALDEMS reports disbursements to registered local party committees and unregistered local party organizations for the purpose of voter registration, and it financed these payments using two mixtures of funds. The first consisted of a mixture of federal and non-federal funds, and the second was a mixture of federal and Levin Funds. The mixture of federal and non-federal funds was paid when payment was made outside the FEA period, and the mixture of federal and Levin funds was paid when payment was made inside the FEA period. Our request for Directive 69 Guidance only involves the first set of funds (mixture of federal and non-federal funds).

RAD had previously advised committees providing allocable federal/non-federal funds to provide recipient committees with two separate checks. This advice was based

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[1] The other questions involved the legality of similar transfers of mixed federal and Levin funds to local party committees during the "federal election activity" period and whether CALDEMS was or was not affiliated with certain local Democratic party committees in California. On the first issue, OGC advised RAD that while there was no prohibition on the state party committees' transferring a mix of federal and Levin funds, the local committees were prohibited by 2 U.S.C. 441i(b)(2)(b)(iv)(I) from using funds transferred by a state party for either the federal or Levin shares of disbursements allocated between federal and Levin funds. On the affiliation issue, we advised that, particularly in light of the transfers of funds between CALDEMS and registered local party committees, it had not yet overcome the regulatory presumption that it was affiliated with those committees.

on a memorandum OGC prepared in 2000. *See* Attachment. However, CALDEMS' practice has been to make allocated disbursements using one check of federal and non-federal funds, reported on Schedule H4.[2] CALDEMS discloses the purpose of these disbursements as payment for registering voters.

II. STATEMENT OF THE ISSUE: SHOULD EITHER THE ONE-CHECK OR TWO-CHECK METHOD BE THE STANDARD PRACTICE OR IS EITHER METHOD ACCEPTABLE

The issue before the Commission is whether committees should use the two-check method previously advocated by OGC, the one check method used by CALDEMS, or whether either method is acceptable to the Commission. The Commission's decision regarding this issue will not only affect CALDEMS, but also the local committees that received the funds and the future practice of other committees.

Voter registration activities conducted by a state or local political party committee within a period starting 120 days before the date of a scheduled federal election and ending on the date of the election are considered so-called "Type I" federal election activity. *See* 2 U.S.C. § 431(20)(A)(i). Party committees may choose to pay for Type I FEA using either 100% federal funds, or a mixture of federal and Levin funds. 11 C.F.R. § 300.32(b). Voter registration activities conducted by a state or local political party committee outside this period may be paid for with either 100% federal funds, or with a mixture of federal and non-federal funds. 11 C.F.R. § 106.7(e)(5). We are concerned with this latter category of payments.

When paying commercial vendors for allocable expenses, committees normally choose one of the payment procedures described in detail at 11 C.F.R. § 106.7. Specifically, they pay the expense using a single check drawn on their federal account or a separate allocation account, and transfer the appropriate amount of non-federal funds to the account from which the disbursement is made within a time window that begins ten days before and ends sixty days after the disbursement to the vendor. *See generally* 11 C.F.R. § 106.7(f).

In 2000, RAD asked OGC whether disbursements to local party organizations for voter registration similar to those at issue here could be allocated and paid using the

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2 We further understand that the recipients, where they are registered committees, report receipt of these disbursements as transfers into the federal account on Line 12 (transfers from affiliated/other party committee).

allocated payment procedures in the regulations. *See* Attachment. OGC concluded that separate payments were more appropriate than one-check allocable disbursements when one committee paid another for voter registration. OGC said then that "we believe the language of the rules and the E&J lead to the conclusion that committees may only use the payment procedures in [then] section 106.5(g) when paying their own allocable expenses, *i.e.* to make payments directly to vendors in consideration for goods provided or services rendered in connection with allocable activity conducted by the payor committee." *See* Attachment at 4. Transfers to other party committees, OGC said, were generally not the committees' "own" allocable expenses in the sense that they were not payments to vendors or rendered in connection with allocable activity conducted by the payor committee.[3] OGC reached this conclusion even while acknowledging that a state committee would be required to transfer the minimum federal share in situations where the state committee effectively controlled the recipient committees' allocable activity. *See* Attachment at n.2, citing *Federal Election Commission v. California Democratic Party,* 13 F.Supp.2d 1031(E.D. Cal 1998). In those situations, OGC advised, the committee should use two checks.

We assume that CALDEMS' payments at issue here were for allocable expenses and that CALDEMS was required to transfer the minimum federal share of these allocable voter registration expenses to the recipient committees because it effectively controlled the recipient committees' allocable voter registration activity.[4] If a state committee in this situation, like CALDEMS, follows the allocated payment procedures of 11 C.F.R. § 106.7(f), it sends one check, representing a mixture of federal and non-federal funds, to the recipient local party organization. OGC advised RAD last year that "We now come to the same conclusion that one allocable disbursement check made to another committee for voter registration services remains inappropriate. However, we base our conclusion on slightly different grounds than the 2000 Memo, which focused on

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[3] However, the OGC opinion also left open the possibility of a different interpretation:

> The operative language in section 106.5(g)(1), which reads 'shall pay the expenses of joint federal and non-federal activities,' is not explicitly limited to direct payments to vendors, and could be interpreted broadly enough to include payments made to other committees and organizations to finance activities conducted by those entities. Under this interpretation, the payments described in your memorandum could be viewed as payments of allocable expenses, even though they were made to other committees rather than directly to vendors.

Attachment at 4.

[4] For payments that are ordinary transfers, for which no minimum federal share is required, there is nothing to allocate: committees should transfer federal funds in a check from their federal account and non-federal funds in a check from their non-federal account.

whether the disbursements were the state committee's 'own.'" Ordinarily, one would think that a committee making a disbursement that requires a minimum federal share is making an allocable disbursement, and that it could take advantage of the procedures in the regulations for the making of allocable payments.

A potential problem would arise, however, if a recipient registered committee deposits the one check into its federal account because "[o]nly funds subject to the prohibitions and limitations of the Act shall be deposited" in a separate federal account. 11 C.F.R. § 102.5(a)(1)(i). This occurred with at least some of the CALDEMS recipient committees.

The funds obtained by the CALDEMS recipient committees are composed of contributions from individual donors. Commission regulations are clear that only contributions designated for the federal account, those that result from a solicitation informing the contributor that the funds will be used in connection with a federal election, or from contributors who have been informed that their contributions are subject to the prohibitions and limitations of the Act, may be deposited into a federal account. 11 C.F.R. § 102.5(a)(2). Furthermore, transfers to a federal account may only be from funds permissible under the Act. 11 C.F.R. § 102.6(a)(1)(iv). Consequently, funds that do not meet the above criteria do not belong in federal accounts.

We recognize, however, that there are situations where non-federal funds are temporarily placed in federal accounts and then subsequently removed from the federal accounts. *See e.g.* 11 C.F.R. § 103.3(b). For example, in an analogous situation in pre-BCRA MUR 4961, the DNC deposited at least 10 checks for amounts greater than the $20,000 annual limit into the "DNC Federal Account." The excessive portions were transferred out within 60 days but the DNC did not report the full initial receipt or the subsequent transfer on its federal reports. *See* MUR 4961, Conciliation Agreement, at 5-6. The DNC paid a civil penalty and subsequently requested an Advisory Opinion. In that opinion, the Commission advised as follows:

> Commission regulations do not specifically address the reporting of the receipt of contribution checks where the proceeds are intended to be split between Federal and non-Federal accounts.[5] Because the DNC will initially receive a check in excess of the § 441a(a)(1) limit, it is essential that the contribution and the division of the funds be disclosed in a manner that is clear on the public record. This need for clarity is amplified by the

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[5] We acknowledge that AO 2001-17 involves contributions that are deposited into a federal account while this case involves transfers, via a check, into a federal account. The concept, however, is the same: only permissible funds may be placed into a federal account. 11 C.F.R. § 102.5(a)(2).

> fact that national party committees file voluminous reports for all their activities, and the DNC might accept numerous contributions that are split between Federal and non-Federal accounts. Thus, the splitting of funds that are placed in separate accounts requires the use of memo entries with explicit cross-references between the disclosures for the Federal and non-Federal accounts. AO 2001-17, at 4.

Another situation where the regulations temporarily permit the deposit of mixed federal/non-federal funds into federal accounts and require detailed reporting involves refunds and rebates. *See* 11 C.F.R. § 104.3(a)(2)(vii). The 2009 Political Party Campaign Guide states,

> If a committee receives a refund or a rebate of an allocable expense, the refund or rebate must be deposited in the federal or allocation account. The refund or rebate must then be allocated between the federal and non-federal accounts according to the same allocation ratio used to allocate the original disbursement. The federal account must transfer the non-federal portion to the non-federal account. *Federal Election Commission Campaign Guide, Political Party Committees,* at 103 (Aug. 2009). *See also,* AO 1995-22.

These recognized exceptions to the rule prohibiting the deposit of non-federal funds into a federal account could apply to recipient committees that received the CALDEMS allocable checks. Their deposit of mixed federal/non-federal funds into their federal accounts would need to be cured by transfers out and proper reporting. Based on discussions with RAD, it does not appear that the registered recipient committees in this case properly reported and subsequently transferred-out the non-federal portion, from their federal accounts, of checks received from CALDEMS.

This problem may be avoided if CALDEMS would follow the two-check procedure endorsed in our 2000 memorandum or if it would give specific instructions to recipient committees on how to deposit checks that include non-federal and federal funds. Nevertheless, the two-check procedure poses a problem of its own. Under that procedure, the state committee would transfer the federal share to the local recipient out of its federal account and report that transfer on Schedule B, and would transfer the non-federal share to the local recipient out of its non-federal account and not report that transfer to the Commission at all. If the state committee exerts sufficient control over the voter registration activity that it is obliged to transfer a minimum federal share, a two-check procedure would result in a lack of reporting of the non-federal part of the transfer, and thus would inhibit the Commission's initial ability to ensure that the minimum federal share was in fact transferred. Indeed, the Commission's Explanation and Justification for its initial allocation rules, published in 1990, noted that the use of two checks (one from the federal account and one from the non-federal account) was not appropriate, "as that procedure does not provide sufficient disclosure of how funds allocated for shared federal and non-federal activity are actually spent." *See Explanation and Justification for former 11 C.F.R. § 106.5(g),* 55 Fed. Reg. 26058, 26066 (June 26, 1990).

Thus, the question posed here presents something of a dilemma: Should committees in this situation disburse one check to local party recipients, resulting in complete disclosure of an allocated disbursement, but also potentially in the deposit of non-federal funds in the local recipients' federal accounts? To be clear, the problem in that scenario is not merely a technical violation of 11 C.F.R. § 102.5; rather, it is that if the recipients know no better, they may never properly report the transfer in, and they may never properly transfer out to their non-federal account (if they have one) the non-federal share. Or, in the alternative, should committees disburse two checks, which may in some circumstances result in less disclosure than normal of a disbursement for which the federal and non-federal shares would otherwise be reported to the Commission -- and may, indeed, violate 11 C.F.R. § 106.7?

III. RECOMMENDATION: OGC AND OC RECOMMEND THAT THE BEST PRACTICE WOULD BE EITHER THE TWO-CHECK METHOD OR ONE ALLOCABLE CHECK WITH SPECIFIC INSTRUCTIONS TO RECIPIENTS

In our view the greater problem seems to be the risk of the deposit of non-federal funds in recipient committee federal accounts which are then not subsequently properly reported and taken out of the federal accounts. Consequently, it seems that the best practice for state committees making payments for allocable voter registration outside the FEA period is to either follow the two check procedure or use one allocable check but provide specific deposit instructions to the recipient committees. This would provide notice to the recipient committees that allocable payments received from state party committees must be properly reported and segregated.

This, however, is a best practice, not a legal requirement. There seems to be no basis to include an audit finding that CALDEMS violated the regulations relating to procedures for payment of allocable expenses, because they appear in fact to have been trying to comply with those regulations. And the problem with the use of the one-check procedure is precisely that it could result not in violations of law by the transferor committees, but by the recipient committees.

Consequently, if the Commission agrees with this approach or if the Office of Compliance proceeds within 60 days pursuant to Directive 69, the Audit Division will not base any finding on CALDEMS' one-check method of payment for allocable voter registration expenses to recipient committees in the CALDEMS audit, and would not pursue this issue in future audits. In addition, RAD will develop an advisory letter to send to transferring committees when they see this pattern of activity. The letter would advise the transferring committees that the best practice is to provide specific deposit instructions to recipient committees with any one- check payments for allocable activities.

Attachment

Memorandum from N. Bradley Litchfield to John D. Gibson, Subject: Request for Guidance Regarding Permissibility of Allocated Payments Between Registered Committees (Dec. 13, 2000)

FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 13, 2000

MEMORANDUM

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General Counsel

FROM: N. Bradley Litchfield
Associate General Counsel

Rosemary C. Smith
Assistant General Counsel

Paul Sanford
Staff Attorney

SUBJECT: Request For Guidance Regarding Permissibility of Allocated Payments Between Registered Committees

Introduction

This responds to your memorandum of April 14, 2000 requesting guidance on the application of the Act and regulations to political committee payments of federal and non-federal funds to other registered committees and unregistered organizations.

Your memorandum indicates that the Reports Analysis Division has observed that registered political committees are making disbursements consisting of a mixture of federal and non-federal funds to other committees and other unregistered organizations. You explain that these disbursements are ostensibly payments for activity that is allocable under the Commission's allocation regulations. You also state that in some instances, the recipient committees are depositing and retaining the entire amount of these payments in their federal

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accounts. You state your opinion that these payments do not meet the definition of shared activity in the allocation regulations, and are more appropriately treated as transfers or contributions.

Your memorandum describes four specific factual circumstances in which this activity has occurred. The first circumstance involves payments from a state party committee to several recipients that appear to be county-level party organizations. The second circumstance involves payments from one national party committee to another national party committee, and to a joint fundraising committee formed by the two committees. Your third example relates to payments from a joint fundraising committee to a national party committee. Finally, you describe a situation that involves payments from a state party committee to a national party committee.

You seek the advice of this office on whether payments between these entities consisting of a mixture of federal and nonfederal funds are permissible under the allocation rules in 11 CFR 106.5 and 106.6, and whether the receipt of these payments by the federal account of a registered committee violates 2 U.S.C. §§ 441a or 441b of the Federal Election Campaign Act, 2 U.S.C. § 431 et seq. ["FECA" or "the Act"], or 11 CFR 102.5 of the regulations. With regard to unregistered recipients of these payments, you ask about the dollar level at which such an entity would be required to register and report as a political committee, and what portion of a payment consisting of a mixture of federal and nonfederal funds would count toward that dollar threshold.

Our responses to these questions are set out below.

Payor Committee Compliance with 11 CFR 106.5

Your memorandum asks whether disbursements consisting of a mixture of federal and non-federal funds to registered committees and other unregistered organizations comply with section 106.5 of the regulations.[1] You believe these payments do not meet the definition of shared activity, i.e., that they should not be treated as payments for allocable activity under section 106.5. Instead, you believe they are more appropriately treated as contributions or transfers to the recipient entities.

It should be acknowledged at the outset that if these disbursements are an effort by the payor committees to provide the recipient committees with a combination of federal and nonfederal funds that may be used to pay for allocable activity, there are ways under the Act and regulations for the committees to permissibly achieve this result. The payor committee could provide a combination of funds by writing separate checks against its federal and nonfederal accounts, and submitting these two checks to the recipient committee. This

[1] As indicated above, your memorandum also seeks advice on the permissibility of these payments under section 106.6. Since none of the situations described in your memorandum involve committees to which section 106.6 applies, our response will focus on section 106.5 However, we note that the two sections were promulgated together, and are substantially similar for the purposes of your inquiry. Thus, the application of section 106.6 would most likely be the same.

approach would generally be permissible under the Act and regulations, subject to certain conditions.[2]

In asking whether committees may allocate payments to other committees, your memorandum appears to be asking whether committees may use the procedures for payment of allocable expenses in section 106.5(g) to provide funds to other committees. The payor committees in the situations described in your memorandum appear to be using these procedures to provide funds to the recipient entities.

Section 106.5(g) allows committees to select one of two procedures for paying their allocable expenses. Committees may either (i) pay the entire amount of the expense from a federal account and transfer funds from a non-federal account to the federal account to cover the non-federal share of the allocable expense; or (ii) establish a separate allocation account, deposit funds from federal and non-federal accounts into the allocation account, and disburse funds from the allocation account to pay the allocable expense. 11 CFR 106.5(g)(1).

The rules state that committees are to use these procedures to "pay the expenses of joint federal and non-federal activities," and that nonfederal funds may be transferred to a federal account or allocation account "solely" for the purpose of paying the nonfederal share of an allocable expense. 11 CFR 106.5(g)(1). The Explanation and Justification ("E & J") for section 106.5 explains that, when these payment procedures were implemented, they were a significant change in Commission policy, and that the Commission made this change for a limited purpose. "It should be noted that this is the first time that the Commission has allowed non-federal funds to be transferred to a committee's federal account, and that it does so now only for the limited purpose of paying allocable expenses." Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting, 55 FR 26058, 26066 (June 26, 1990).

In most instances, payments for allocable expenses take the form of disbursements from political committees to commercial vendors in consideration for goods provided or services rendered in relation to an allocable activity. In contrast, the situations described in your memorandum involve payments made to other committees to finance allocable activities conducted by those committees. In these situations, the recipient committees would actually make the disbursements to vendors for the costs of the allocable activities being conducted.

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[2] The limitations on this "parallel" payment approach would be as follows: (1) The payment from the federal account would generally be subject to the contribution limits, although payments between and among the entities referred to in your memorandum (committees of the same political party, and joint fundraising committees formed by committees of the same political party) are exempt from the contribution limits. See 2 U.S.C. § 441a(a)(4), 11 CFR 102.17(b)(3)(iii) and (c)(7)(ii); (2) No part of the nonfederal payment could be deposited in the recipient committee's federal account; and (3) If the payor committee is effectively controlling the recipient committee's allocable activity, the payor committee may be required to provide enough federal funds to cover what would have been the federal portion of the allocable expense, had the payor committee conducted the activity directly. See Federal Election Commission v. California Democratic Party, No. S-97-0891, (E.D. Cal. October 13, 1999) (concluding that a party committee that is exercising effective control over an allocable activity ostensibly being conducted by a separate, unregistered organization cannot defray the costs of the activity by transferring 100% nonfederal funds to the unregistered organization).

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We believe the language of the rules and the E & J lead to the conclusion that committees may only use the payment procedures in section 106.5(g) when paying their own allocable expenses, i.e., to make payments directly to vendors in consideration for goods provided or services rendered in connection with allocable activity conducted by the payor committee. In our opinion, committees may not use these procedures to provide a mixture of federal and nonfederal funds to other committees or unregistered organizations, even if the funds are to be used by the recipient entity to finance allocable activities. Thus, we agree with your assertion that the payments described in your memorandum are more appropriately treated as contributions or transfer to the recipient entities.

However, we must acknowledge that the regulations are open to different interpretations. The operative language in section 106.5(g)(1), which reads "shall pay the expenses of joint federal and non-federal activities," is not explicitly limited to direct payments to vendors, and could be interpreted broadly enough to include payments made to other committees and organizations to finance activities conducted by those entities. Under this interpretation, the payments described in your memorandum could be viewed as payments of allocable expenses, even though they were made to other committees rather than directly to vendors.

Therefore, if you require a definitive resolution of your first question, we recommend that you refer this question to the Commission for its consideration.

<u>Recipient Committee Compliance with 2 U.S.C. §§ 441a, 441b, or 11 CFR 102.5</u>

You explain that, in some instances, the committees that received the payments described in your memorandum deposited and retained the entire amount of the payment in their federal accounts. You believe these payments consisted of a mixture of federal and non-federal funds, and ask whether the receipt and deposit of these payments in a federal account violates 2 U.S.C. §§ 441a, 441b, or 11 CFR 102.5.

Section 441a(f) states that "[n]o candidate or political committee shall knowingly accept any contribution . . . in violation of the provisions of this section." Section 441a(a) prohibits political committees, including multicandidate political committees, from making contributions to "any other political committee in any calendar year which, in the aggregate, exceed $5,000." Paragraphs (a)(1)(C) and (a)(2)(C). However, transfers of funds between national, State, district, or local committees of the same political party are exempt from the $5000 limit. Section 441a(a)(4). Thus, party committees may transfer unlimited amounts between themselves, although section 102.6(a)(1)(iv) states that these transfers "shall be made only from funds which are permissible under the Act."

Section 441b prohibits "any corporation whatever, or any labor organization, [from making] a contribution or expenditure in connection with" any federal election. 2 U.S.C. § 441b(a). This section also states that is unlawful for "any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section." Id.

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Section 102.5(a)(1) of the Commission's regulations requires political committees, including party committees, that finance political activity in connection with both federal and non-federal elections to either (i) establish a separate federal account in a depository in accordance with 11 CFR part 103, or (ii) establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections. Committees that choose to establish a separate federal account under paragraph (a)(1)(i) are required to treat that account as a separate federal political committee subject to registration and reporting requirements of 11 CFR part 102 and 104. Only funds subject to the prohibitions and limitations of the Act may be deposited in the separate federal account. No transfers may be made to the federal account from any nonfederal account, except as provided in the allocation rules in 11 CFR 106.5(g) and 106.6(e). Section 102.5(a)(1)(i).

The impact of these provisions is as follows:

(1) A registered political committee that knowingly accepts a contribution from another political committee in excess of $5000 violates section 441a, unless the contribution is a transfer from an affiliated committee or another committee of the same party. Transfers from these entities are exempt from the $5000 limit so long as they contain only funds that are permissible under the Act.

(2) A registered political committee that knowingly accepts a donation from a corporation or labor organization violates section 441b.

(3) A registered political committee violates section 102.5(a) by depositing funds transferred from or contributed by another political committee into its federal account, if the amount received includes funds that do not comply with the prohibitions and limitations of the Act. Thus, the Commission will trace the source of the funds contributed by another committee in order to determine whether impermissible funds are being infused into the federal election process. Advisory Opinion 1988-33.

As a threshold matter, we note that the actual composition of a payment made from one committee to another would depend on the composition of the cash on hand in the payor committee's federal account at the time the committee makes the payment. If the cash on hand consists of enough federal funds, i.e., funds received as direct, permissible contributions, rather than as transfers from its nonfederal account, to cover the full amount of the payment, then the payment would not contain any nonfederal funds.[3] Consequently, the recipient committee would not violate 2 U.S.C. § 441b or 11 CFR 102.5 by receiving the payment and depositing it in its federal account.

[3] See e.g., 11 CFR 104.12, 110.3(c)(4) and (5).

However, if the cash on hand in the payor committee's federal account does not contain enough federal funds to cover the full amount of the payment, then the payment would contain a mixture of federal and nonfederal funds. In this situation, the recipient committee would likely violate section 102.5(a) for depositing impermissible funds into a federal account.[4] If the recipient committee was aware that the payment included funds from corporations or labor organizations, the recipient committee would also violate section 441b for knowingly depositing funds from a prohibited source into a federal account.

As explained above, political committees are generally prohibited from accepting contributions from other political committees in excess of $5000 per calendar year. However, since the situations described in your memorandum all involved either committees or organizations of the same political party or joint fundraising committees formed by committees of the same political party, this contribution limit would not apply. See 2 U.S.C. § 441a(a)(4), 11 CFR 102.17(b)(3)(iii) (c)(7)(ii). Thus, the recipient committees did not violate section 441a.

Political Committee Thresholds for Unregistered Committees

You indicate that some of the payments referred to in your memorandum were made to entities that are not currently registered as political committees under the Act. You inquire about the dollar level at which these unregistered organizations would be required to register and report as a political committee. You also ask what portion of a payment consisting of a mixture of federal and nonfederal funds would count toward that dollar threshold.

The situations described in your memorandum do raise questions regarding the registration and reporting status of unregistered organizations that receive payments from registered committees. Generally, under the terms of the Act, unregistered organizations become political committees when they receive payments made for the purpose of influencing a federal election that aggregate in excess of a $1000 during a calendar year. 2 U.S.C. § 431(4)(A). Similarly, unregistered local committees of a political party become political committees under the Act when they receive payments for the purpose of influencing a federal election that aggregate in excess of $5000 during a calendar year. 2 U.S.C. § 431(4)(C). The full amount of any payment made for the purpose of influencing a federal election counts towards the threshold for political committee status in section 431(4).

Unfortunately, several court decisions have created uncertainty as to the application of the political committee thresholds in section 431(4). See Buckley v. Valeo, 424 U.S. 1 (1976), FEC v. MCFL, 479 U.S. 239, 262 (1986), Akins v. FEC, 101 F.3d 731, 742 (D.C. Cir. 1996) vacated on other grounds, 524 U.S. 11 (1998). In addition, on May 25, 2000, the Commission directed the Office of General Counsel to draft a rulemaking document seeking comments on whether the Commission should expand the definition of "political committee" found at 11 CFR 100.5 to cover additional entities.

[4] We assume for the purposes of this discussion that the nonfederal funds included in the transfer were originally from prohibited sources or in excess of the contribution limits, and thus could not have been deposited directly into the payor committee's federal account. However, this is not always the case.

Under these circumstances, we are unable to provide more specific guidance on the situations in which the unregistered organizations referred to in your memorandum would be required to register and report as political committees.

Conclusion

The Office of General Counsel hopes that the foregoing discussion is adequately responsive to the questions raised in your April 14, 2000 memorandum. Feel free to contact us if you have additional questions.