



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 21, 1982

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1982-5

Mr. Anthony Harrington
Ms. Carol Darr
Democratic National Committee
1625 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Harrington and Ms. Darr:

This responds to your letter dated February 8, 1982, and supplementary materials submitted on March 15, 1982, requesting an advisory opinion on behalf of the Democratic National Committee ("DNC"), and the 1982 Democratic Conference Arrangements Committee, Inc. ("the Conference Committee"), concerning application of the Federal Election Campaign Act of 1971, as amended, ("the Act"), and Commission regulations to certain aspects of a national party conference to be held in June, 1982.

You state that the DNC, in conjunction with the Conference Committee, will hold a three day "National Party Conference" in June, 1982, in Philadelphia, Pennsylvania. The National Chairman's letter to State Party Chairs contained in your supplementary materials states that the Conference will provide a forum for discussion on public policy issues... and a mechanism or party-building and training of candidates and political workers...." You state that the first day of the conference will be devoted to "workshops and skills training programs in campaign and Democratic party organizing with emphasis on 1982 Democratic campaigns." These campaign workshops will focus on fundraising, polling, research, targeting, and media for party workers, and Federal, state and local candidates. The second day of the conference will include workshops for the purpose of discussing issues of public policy. Among the topics upon which workshops will be conducted are "Promoting Economic Growth and Opportunity," "Foreign Policy, Defense and Arms Control," and "Making Government Work Better." Each workshop will include a presentation by a panel of elected Democrats and experts followed by a dialogue between panelists and workshop participants.

The participants in the Conference will include members of the DNC, individuals selected by the Central Committees of the State Democratic Parties and other Democratic organizations, as well as one hundred participants selected "at large." The party, resolution calling for the conference provides for the selection of "replacement" participants in the event any originally selected participants are unable to attend the conference. You indicate that replacement participants may attend any of the campaign training and issue workshops held during the conference. You indicate further that persons other than participants and replacement participants may observe the issue workshops held on the second conference day.

You ask first, whether the Conference Committee may accept and use corporate and labor organization treasury funds and funds donated by persons in excess of the contribution limits of 2 U.S.C. 441a to defray that portion of the expenses of the described 1982 party conference which may be allocated to non-federal conference activity. Second, you ask for Commission guidance with respect to the manner of determining the portion of conference expenses that may be allocated to non-federal election activity. In this regard, you describe several methods of allocation of expenses that you wish the Commission to approve for use by the DNC and the Conference Committee in allocating the expenses of the conference between Federal and non-federal election activity.*

Your questions with respect to financing the planned DNC conference raise the threshold issue of whether conference expenses are required to be allocated at all since it does not appear that the conference is being held for the purpose of influencing, or in connection with, the specific election of any clearly identified candidate for Federal office. The Commission considered this issue but could not agree by the requisite four affirmative votes that conference expenses were required or were not required to be allocated to Federal and non-federal elections. See 2 U.S.C. 437c(c).

Since your request indicates the DNC's intention to allocate conference expenses pursuant to 11 CFR 102.5 and 106.1 and since you have sought the Commission's guidance as to the reasonableness of several allocation formulas, the Commission will address each proposed method.

Ballot Position Method. Allocation of expenses to reflect Federal and non-Federal activity would be based on a ratio of Federal ballot positions to non-federal ballot positions in the November 1982 election on a nationwide basis. The Commission recognizes that the number of non-federal ballot positions is substantially greater than the number of Federal ballot positions, and that many state and local offices are not comparable to Federal offices. The Commission concludes that the use of

* Commission records indicate that the DNC held a mid-term national party conference in December, 1978 in Memphis, Tennessee. An audit of the 1978 Conference Arrangements Committee resulted in a Commission finding that the Committee was not a "political committee" as defined by the Act and thus, was not subject to the registration and reporting requirements of the Act. The 1978 conference included a series of issue workshops but did not offer campaign training workshops for candidates and campaign workers.

this allocation method with respect to allocating conference expenses would be reasonable under the Act and regulations. See Rcts: AOR 1976-72, copy enclosed.

Funds Expended Method. Under this method, the DNC's allocation of conference expenses would be based on a ratio of funds expended in direct support of Federal candidates to funds expended in direct support of non-federal candidates over a certain period of time. "Direct support" of Federal candidates would include only those contributions by the DNC (including the Democratic congressional and senatorial campaign committees) to candidates for Federal office which were subject to the contribution limits of 2 U.S.C. 441a, and coordinated party expenditures made pursuant to 2 U.S.C. 441a(d) on behalf of Federal candidates. "Direct support" of non-federal candidates would include contributions to and expenditures directly on behalf of such candidates by the DNC including any of its auxiliary units. General administrative costs not directly attributed to a particular candidate would not be included in this formula. The Commission concludes that use of this allocation method would be reasonable under the Act and regulations in determining the allocation of expenses of the planned DNC conference. The time period on which a ratio would be based using this allocation method would be the election cycle directly preceding or subsequent to this conference. Thus, the Conference Committee would have the option of basing a ratio on the 1980 election cycle or on the 1982 election cycle. "Election cycle" is defined by the regulations at 11 CFR 100.3(b).

Funds Received Method. Use of this method would not be permissible to allocate the expenses of the planned conference, because allocation of expenses is determined by the nature of the activity engaged in, rather than the amount of contributions received by a party committee during a given period of time. This method is designed for use by organizations that engage in direct support of candidates and must allocate their indirect support expenses.

Ratio of time in the conference agenda devoted to activities pertaining to federal elections in relation to total time for conference activities. Under this formula, the Federal portion of the conference would be calculated by dividing the time devoted to Federal candidates or elections by the total conference time and multiplying the conference costs by the resulting percentage. The Commission concludes that the use of this allocation method to allocate the conference expenses between Federal and non-federal activity would be reasonable under the Act and regulations.

Ratio of participating Federal candidates and their workers to participating non-federal candidates and their workers. The Commission concludes that use of this formula would be reasonable under the Act and regulations provided that participants who are identified as belonging to both Federal and non-federal categories or to neither category, are factored into the ratio in the same proportion as the number of Federal candidates and workers bears to the number of state and local candidates and workers.

The foregoing methods are not exhaustive of those that may be reasonable, but they are the methods you have asked the commission to consider at this time. Regardless of the allocation method that the Conference Committee chooses to use in allocating conference expenses, actual allocation may not be possible until some time after the close of the conference. Thus, a preliminary estimate may be used with adjustments made when actual proportions are determined. The Conference Committee should maintain detailed records supporting the allocations that are performed and the percentage derived should be applied to all conference expenses.

The Commission expresses no opinion as to the possible application of any State law to the factual situation described here.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth by your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Frank P. Reiche
Chairman for the
Federal Election Commission

Enclosure (Re: AOR 1976-72)