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3 **ADVISORY OPINION 1992-2**

4 **Carol Darr, Chief Counsel**
5 **Eric London, Assistant Counsel**
6 **Democratic National Committee**
7 **430 South Capitol Street, S.E.**
8 **Washington, D.C. 20003**

DRAFT

9 **Dear Ms. Darr and Mr. London:**

10 **This responds to your letters dated January 6, 1992, and**
11 **November 14, 1991, concerning application of the Federal**
12 **Election Campaign Act of 1971, as amended ("the Act"), and**
13 **Commission regulations to a proposed retroactive reallocation**
14 **of expenses previously allocated as administrative expenses**
15 **by the Democratic National Committee ("the DNC").**

16 **You state that, for the purposes of the Commission's**
17 **allocation regulations under 11 CFR Part 106, the DNC has**
18 **treated all staff salaries, including those of the**
19 **fundraising staff, as administrative expenses. The DNC**
20 **believes that the salaries and benefits of staff members in**
21 **the "Fundraising" and "Direct Mail" divisions could have been**
22 **treated as direct costs of fundraising under the allocation**
23 **regulations. You propose that the DNC be permitted to**
24 **retroactively reallocate those salaries and employee fringe**
25 **benefits paid from the beginning of 1991 under the category**
26 **of fundraising, rather than under the category of**
27 **administrative expenses.^{1/} You ask for a time period of**
28 **thirty days following the issuance of this opinion in which**

29 **^{1/} You state that, until the request, you had interpreted**
30 **fundraising expenses to include only "food, catering,**
rentals, etc."

3 to make the necessary reallocations.

4 You explain that the Fundraising Division plans and
5 executes "events" and "councils." Events include dinners and
6 galas, i.e., events where tickets are sold as a means of
7 fundraising. Councils are donor groups such as the
8 Democratic Business Council, the Democratic Finance Council,
9 and the Democratic Labor Council. The Fundraising Division
10 staff maintains the memberships of the groups, and prospects
11 for new members. The staff also holds meetings of the groups
12 and solicits the membership for contributions.

13 The "Direct Mail" Division staff writes, produces, and
14 sends direct mail solicitations to a group of individuals in
15 the DNC donor database. The only joint fundraising program
16 carried out by the DNC is by the Direct Mail Division in its
17 state party direct mail program. All of the money raised by
18 that joint fundraising program is Federal, and 95 percent of
19 it is transferred to Federal accounts of state parties.

20 The only costs the DNC proposes to treat retroactively
21 as fundraising, which were originally treated as
22 administrative costs, are salaries and fringe benefits of DNC
23 employees in the two divisions. These staff members spent
24 100 percent of their time on fundraising. The DNC does not
25 propose to retroactively change the treatment of compensation
26 paid to employees who worked part-time on fundraising.

27 Commission regulations provide for allocation of
28 expenses by political party committees making disbursements
29 for administrative expenses, fundraising, exempt activities,
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3 or generic voter drives in connection with both Federal and
4 non-federal elections. 11 CFR 106.1(e). More specifically,
5 party committees that make disbursements in connection with
6 Federal and non-federal elections shall allocate expenses for
7 (i) administrative expenses not attributable to a clearly
8 identified candidate, including rent, utilities, supplies,
9 and salaries; (ii) the direct costs of a fundraising program
10 or event, including disbursements for solicitation of funds
11 and for planning and administration of actual fundraising
12 events, where Federal and non-federal funds are collected by
13 one committee through such a program or event; (iii) party
14 activities that are exempt from the Act's definition of
15 contribution and expenditure such as the production and
16 distribution of slate cards and sample ballots, campaign
17 materials distributed by volunteers, and voter registration
18 and GOTV drives for presidential nominees, where such
19 activities are conducted in conjunction with non-federal
20 activities; and (iv) generic voter drives or other activities
21 that urge the public to support candidates of a particular
22 party or associated with a particular issue without
23 mentioning a specific candidate. 11 CFR 106.5(a)(2)(i),
24 (ii), (iii), and (iv).

25 All administrative expenses must be allocated between
26 Federal and non-federal accounts, if incurred by a committee
27 that makes disbursements in connection with both Federal and
28 non-federal elections, and that chooses to pay any portion of
29 such disbursement from its non-federal account. Federal
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3 Election Commission Regulations on Methods of Allocation
4 Between Federal and Non-Federal Accounts; Payments;
5 Reporting; Explanation and Justification, 55 Fed. Reg. 26058,
6 26063 (June 26, 1990). Each national party committee, other
7 than a Senate or House campaign committee, shall allocate a
8 fixed percentage of its administrative expenses and costs of
9 generic voter drives during a reporting period, such Federal
10 percentages differing depending upon whether they were
11 incurred in a presidential election year. 11 CFR 106.5(b)(1)
12 and (2).

13 Fundraising costs, however, must be allocated on a
14 different basis, i.e., on the basis of the particular event
15 or program. A party committee, whether national or not,
16 allocates the direct costs of each fundraising program or
17 event, if both Federal and non-federal funds are collected by
18 that one committee through such program or event. (This is
19 not to be confused with joint fundraising events conducted by
20 more than one committee.) 11 CFR 106.5(f); 55 Fed. Reg. at
21 26065. A party committee should allocate its fundraising
22 costs based on the ratio of funds received into its Federal
23 account to its total receipts from each fundraising program
24 or event.^{2/} Each event or program has its own ratio.

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26 ^{2/} Normally, the committee estimates this ratio prior to
27 each program or event, based on the committee's reasonable
28 prediction of its Federal and non-federal revenue for the
29 program or event. The committee adjusts its ratio following
30 each such event to reflect the actual ratio of funds received
and if the non-federal account has paid more than its share,
then the necessary transfers will be made from the Federal
account and the adjustments will be noted in the report for

3 The Commission concludes that the DNC may retroactively
4 reallocate the salaries and benefits of staff members in the
5 Fundraising and Direct Mail Divisions, i.e., staff members
6 who spent 100 percent of their time on fundraising, under
7 the category of direct fundraising costs. The Commission
8 cautions that such recategorization must comply with the
9 allocation regulations. Only salary and benefit amounts
10 directly attributable to time spent on events or programs
11 where the DNC collects both Federal and non-federal funds may
12 be treated as fundraising costs. In addition, such salary
13 and benefit costs must be directly attributable to discrete
14 events or programs and reported as such, with a particular
15 ratio for each program or event. If the DNC implements the
16 reallocations permitted by this opinion, salary and benefit
17 payments directly attributable to an event or program that is
18 fundraising only for a DNC Federal account will not be
19 allocable in any category under 11 CFR 106.5, and instead
20 must be paid entirely from a Federal account.

21 The Commission bases its allowance of retroactive
22 treatment of combined Federal and non-federal fundraising
23 costs on previous advisory opinions issued with respect to
24 the allocation regulations which were prescribed on October
25 3, 1990, and which took effect at the beginning of 1991.
26 Such opinions permitted retroactive changes in formulae used
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29 (Footnote 2 continued from previous page)
30 the period in which the program or event occurred. 11 CFR
106.5(f). Your proposal for retroactive allocation would, of
course, not require the use of the original estimates.

3 for administrative costs or generic voter drives after the
4 occurrence of a mistake or an intervening event. See
5 Advisory Opinions 1991-25 and 1991-15. For example, the
6 Commission has permitted retroactive application by a state
7 committee of a ballot composition formula for administrative
8 costs where the initial formula was based on a "good faith
9 miscalculation" and had resulted in transfers of non-federal
10 funds to the Federal account in amounts that were lower than
11 the permissible share of joint expenditures. Advisory
12 Opinion 1991-15. The Commission's decisions to allow
13 specific retroactive changes recognize that the allocation
14 regulations represent significant revisions to past practice
15 and require a brief period of adjustment, i.e., the current
16 election cycle, by political committees acting in good faith.

17 In Advisory Opinions 1991-25 and 1991-15, the Commission
18 permitted retroactive changes only within a window of thirty
19 days from the issuance of the advisory opinion. This
20 appeared consistent with the allocation rules' time frame for
21 a committee's non-federal account to reimburse a Federal
22 account for its share of joint expenditures, as well as the
23 time frame for a connected organization to reimburse its
24 separate segregated fund for administrative costs that have
25 been paid by the SSF. See 11 CFR 106.5(g)(2)(ii)(B) and
26 114.5(b)(3). Accordingly, the DNC has a thirty day period
27 from the date of the issuance of this opinion to make the
28 necessary reallocations, and those reallocated amounts must
29 be included in the DNC's next report required to be filed
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3 after the adjustments are made.

4 That report should include a Memo Entry H3 Schedule
5 (Transfers from Non-federal Accounts) and a Memo Entry H4
6 Schedule (Joint Federal/Non-federal Activity Schedule of
7 Disbursements). The Memo Entry Schedule H3 should include
8 copies of the pages previously submitted with the reports
9 covering the periods in which the administrative costs were
10 paid and fundraising events and programs occurred. For each
11 entry for administrative costs and direct fundraising costs,
12 the report needs to specify the newly applicable costs and
13 what the amount of the transfer on that particular date to
14 the Federal account would be if those new figures were
15 applied. A cover memo to this Memo Entry H3 should explain
16 the recategorization and the resultant change of figures, and
17 state that the transfer figure on line 18 of the Detailed
18 Summary Page (Transfers from Nonfederal Account for Joint
19 Activity) of the newly filed report, presumably an increase
20 in the amount because of the reduced Federal share, reflects
21 the differences in the transfer amounts. In addition, line
22 18 on the Detailed Summary page should refer to the cover
23 memo and the Memo Entry H3.

24 For Memo Entry H4, entries for disbursement of salaries
25 and benefits to the Fundraising or Direct Mail staff with
26 respect to each event or program must be included and any
27 previous entries which would differ as a result must be
28 changed. For those pages where changes need to be made, the
29 DNC should submit the page with the changed entries and an
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3 asterisk next to the changed entries. A cover memo should
4 explain generally the reason for the changes.

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

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10 Sincerely,

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12 Joan D. Aikens
13 Chairman for the
14 Federal Election Commission

15 Enclosures (AOs 1991-25 and 1991-15)
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