



Democratic National Committee

FEDERAL ELECTION COMMISSION

91 NOV 18 AM 10:35

November 14, 1991

Mr. Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

91 NOV 18 PM 3:34

FEDERAL ELECTION COMMISSION

Dear Mr. Noble:

The Democratic National Committee requests an Advisory Opinion on the retroactive reallocation of certain fundraising expenses.

At present, all staff salaries, including those of the fundraising staff, are allocated as administrative expenses, while direct fundraising expenses have been mistakenly interpreted internally to include only food, catering, rentals, etc. Upon recognition of this misinterpretation, the DNC is now reallocating the salaries of staff involved in fundraising and direct costs associated therewith (e.g., travel costs) from administrative costs to fundraising costs.

The DNC requests an Advisory Opinion as to whether we may make retroactive reallocation of such costs.

Question Posed:

- 1) Can the DNC reallocate the above described salaries and other direct costs to the fundraising account retroactively to the beginning of 1991?

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According to the Federal Election Regulations, administrative expenses include "rent, utilities, office supplies, and salaries", while the direct costs of a fundraising program or event include, inter alia, "disbursements for solicitation of funds and for planning and administration of actual fundraising events and programs." 11 C.F.R. §106.5(a)(2)(i),(ii). The DNC made a good faith error in mistakenly allocating staff salaries and expenses for fundraising, such as travel and lodging costs related to fundraising, to its administrative rather than its fundraising account. The DNC has corrected the error in its bookkeeping and is now allocating such costs to its fundraising account, as allowed in AO 1991-15 and 1991-25. The DNC requests permission to reallocate such expenses retroactively to the beginning of 1991 when the new allocation regulations took effect.

Under the regulations, there is a 40-day window in which a political committee can reallocate expenses from a federal to a non-federal account. The window begins 10 days before the event, and ends 30 days after the event. 11 CFR 106.6 (g)(2)(11)(B). This would appear to prevent the DNC from reallocating any expenses which were paid out of its accounts more than 30 days ago. However, two recent FEC Advisory Opinions indicate that the DNC may reallocate expenses paid for more than 30 days ago, provided permission is first obtained from the FEC.

In AO 1991-15, the FEC ruled that a party could reallocate funds from their non-federal to their federal account due to a "good faith mistake" in prior calculations of the proper federal/non-federal ratio for allocation of expenses. In addition, the FEC ruled that even though the 30-day post-expenditure deadline for transfers had expired, the "good faith miscalculation" allowed the FEC to waive the 30-day rule and permit retroactive reallocation for a period of 30 days after the opinion was released. The Commission cited an earlier opinion, AO 1983-22, where the 30-day rule was also waived in a reallocation matter on the basis of fairness.

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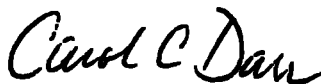
A later opinion, AO 1991-25, also allowed reallocation from a non-federal to a federal account, based on a change in the allocation ratio because of an unexpected special election. The opinion stated prospective reallocation can be done at any time, but retroactive reallocation is allowed only if the committee makes "the necessary transfers from your Federal to your non-federal accounts within 30 days of the date of this opinion." The FEC stated if there is a misallocation in the past, the misallocation can only be corrected within "a 30-day post-triggering event 'window', such as the issuance of an advisory opinion."

In sum, then, the FEC has required both a "good faith" error in allocating funds and a "triggering event" before allowing retroactive reallocation. The DNC has made a "good faith" error in allocating costs. The DNC will have met the "triggering event" requirement upon receipt of an Advisory Opinion allowing us to make the necessary reallocation.

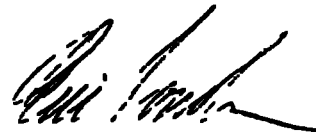
Therefore, we request an Advisory Opinion giving the DNC permission to reallocate the above mentioned costs back to the start of 1991 during the 30-day window following the issuance of the Opinion.

Please contact either of us if you require any additional information.

Sincerely,



Carol Darr
Chief Counsel



Eric London
Assistant Counsel

CD:pas



FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

November 27, 1991

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

Dear Ms. Darr and Mr. London:

This refers to your letter dated November 14, 1991, concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to a proposed retroactive reallocation of certain fundraising expenses by the Democratic National Committee ("DNC").

You state that all staff salaries, including those of the fundraising staff, have been allocated as administrative expenses while direct fundraising expenses "have been mistakenly interpreted internally" to include only food, catering, rentals, and the like. You state that staff salaries and expenses for fundraising, "such as travel and lodging costs related to fundraising," have not been allocated to the fundraising account. The DNC is changing its bookkeeping practices and now intends to allocate such expenses to its fundraising account. The DNC requests permission to reallocate the expenses to fundraising retroactively to the beginning of 1991.

The Act authorizes the Commission to issue an advisory opinion in response to a "complete written request" from any person with respect to a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). Commission regulations explain that such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c).

In view of the cited requirements, you will need to provide information as to a number of relevant factors referred to in the questions set out below.

(1) Describe the specific types of fundraising events or programs entailed in your request. Your answer should include, but not be limited to, whether the request refers to dinners, mailing programs, telephone solicitations, or sale of items, whether the request refers to joint fundraising

activities, and the other entities involved in the joint fundraising.

(2) State with particularity the kinds of costs the DNC considers to be "direct costs" associated with fundraising. State which costs and activities you plan to include in fundraising that were not previously included in fundraising. State how past records will enable the DNC to determine which costs, or portions of such costs, would be reallocated from administrative costs to fundraising costs. Please provide sample documentation of how such reallocation will take place.

(3) With respect to travel costs associated with fundraising, state the basis for reallocation in the event of trips made for mixed purposes, i.e., for fundraising and other purposes. State with particularity what is being included in travel costs, e.g., lodging, meals.

(4) State whether the personnel who work on fundraising do so on a full-time basis. State their duties beyond planning, administering, and otherwise arranging fundraising activities and the percentage of their working hours devoted to those duties.

(5) If personnel have duties in addition to fundraising activities, state the basis on which their fundraising and their other duties have been documented and recorded so that a valid allocation may be made. State whether and how the method of documentation will differ under the new allocation. For example, state whether time logs or their equivalent are used for each employee assigned to each fundraising project or event. Please provide samples of this documentation.

(6) State whether the content of fundraising mailings, since the beginning of the year, has included generic party building (e.g., GOTV, voter registration, voter identification) and party advocacy messages in addition to fundraising appeals. State how much of such content was devoted to generic party building and party advocacy.

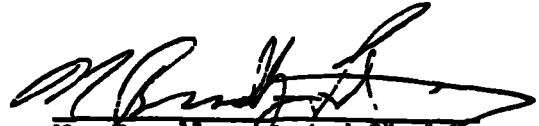
Upon receiving your responses to the above questions and requests for documents, this Office and the Commission will give further consideration to your inquiry as an advisory

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opinion request. If you have any questions concerning the advisory opinion process or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble
General Counsel



N. Bradley Litchfield
Associate General Counsel

06-C 4036



RECEIVED
FEDERAL ELECTION COMMISSION
F.E.C.
SECRETARIAT
92 JAN -9 AM 10:38
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Democratic National Committee

January 6, 1992

Lawrence M. Noble
General Counsel
Federal Election Commission
Washington, D.C. 20463

92 JAN 10 PM 3:13

FEDERAL ELECTION COMMISSION
SECRETARIAT

Dear Mr. Noble:

AOR 1992-2

This refers to your letter, dated November 27, 1991, requesting additional information concerning our advisory opinion request of November 14, 1991.

In your letter, you asked several questions concerning our request for retroactive reallocation of certain fundraising expenses. The following is our response to those questions.

1) Our request refers strictly to the staff members of the "Fundraising" and "Direct Mail" divisions of the DNC. The "Fundraising" division plans and executes "events" and "councils". "Events" include dinners and galas -- events where tickets are sold to individuals as the means of fundraising.

"Councils" are donor groups which the "Fundraising" division has established. These groups include: the Democratic Business Council, The Democratic Finance Council, and the Democratic Labor Council. The "Fundraising" division staff maintains the group's membership, and prospects for new members. The staff also holds meetings of the groups, and solicits the membership for contributions. "Fundraising" division staff works on both "events" and "councils".

Our "Direct Mail" division staff writes, produces, and sends direct mail solicitations to a group of individuals on the DNC donor database.

The only joint fundraising program carried out at the DNC is by the "Direct Mail" division in their State Party direct mail program. 100% of that money is Federal money, with 95% of it transferred to Federal accounts of State Parties.

2) The only "direct costs" associated with fundraising which we request permission to reallocate retroactively are the salaries

and benefits of staff members in the "Fundraising" and "Direct Mail" divisions. These are the only costs which we plan to include as fundraising which were not previously allocated as such.

We provided time sheets for the staff members whose salaries we want to reallocate, one sheet for each month in 1991. These time sheets were completed by each staff member in question, and each indicate that these staff members spend 100% of their time on fundraising. A sample time sheet is enclosed.

3) We do not propose retroactive reallocation of any travel costs associated with fundraising.

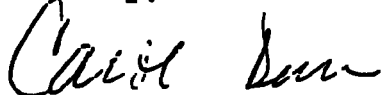
4) We do not propose to retroactively reallocate salaries of employees who work part-time on fundraising. The personnel involved devote 100% of their time to fundraising activities.

5) Not applicable.

6) We do not plan retroactively to reallocate the costs of fundraising mailings at the present time. Therefore, this question is not relevant here.

We hope these answers are sufficient for your consideration of our request for an advisory opinion. Please contact us if you have any additional questions concerning our request.

Sincerely,



Carol Darr
Chief Counsel



Eric London
Assistant Counsel