



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

SEP 07 AM 9 33

August 7, 1992

MEMORANDUM TO: The Commission
THROUGH: John C. Surina
Staff Director
FROM: Lawrence M. Noble
N. Bradley Litchfield
SUBJECT: Draft AO 1992-27

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 13, 1992.

Attachment

**SUBMITTED LATE
AGENDA ITEM**
For Meeting of: AUG 13 1992

RECEIVED
F.E.C.
-7 AUG 21

DRAFT

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3 **ADVISORY OPINION 1992-27**

4 Jan Witold Baran
5 Wiley, Rein & Fielding
6 1776 K Street, N.W.
7 Washington, D.C. 20006

8 Dear Mr. Baran:

9 This responds to your letters dated July 7 and July 15,
10 1992, concerning application of the Federal Election Campaign
11 Act of 1971, as amended, and Commission regulations to a
12 proposed retroactive allocation of certain fundraising costs
13 by the National Republican Senatorial Committee ["NRSC"].

14 Commission rules at 11 CFR 106.5(a)(2)(ii) require
15 political committees that make disbursements in connection
16 with both Federal and non-federal elections to allocate
17 expenses for

18 the direct costs of fundraising programs or events,
19 including disbursements for solicitation of funds
20 and for planning and administration of actual
21 fundraising events, where Federal and non-federal
22 funds are collected by one committee through the
23 program or event.

24 Senate and House campaign committees allocate these
25 costs according to the funds received method, 11 CFR
26 106.5(c)(3), (f); and report these transactions pursuant to
27 11 CFR 104.10(b)(2). The allocation rules and reporting
28 requirements became effective on January 1, 1991.

29 You explain that, on the date these rules became effec-
30 tive, the NRSC did not have an accounting and reporting
system in place that could accommodate the new allocation and
reporting requirements. Such a system was implemented on

3 March 1, 1992; and the NRSC has been allocating its fund-
4 raising expenditures since that time. The NRSC would now
5 like to retroactively allocate the fundraising expenditures
6 covered by 11 CFR 106.5(a)(2)(i) for the period January 1,
7 1991, through February 29, 1992 (the "adjustment period").

8 You state that these costs include salaries and benefits
9 attributable solely to fundraising, and that the NRSC's
10 records distinguish between fundraising expenses and
11 administrative or other expenses. Your request covers two
12 types of fundraising, both of which raise funds for both
13 Federal and non-federal candidates: direct mail that
14 contains purely fundraising messages; and major donor
15 programs, such as the NRSC Trust and Round Table, which are
16 event-oriented, 100% fundraising programs. Your request does
17 not encompass joint fundraising events conducted pursuant to
18 11 CFR 102.17, but only pure NRSC fundraising events.

19 The NRSC is free to pay all of its fundraising expenses
20 from its Federal account. See 11 CFR 106.5(a)(1). However,
21 you state that the NRSC did this only because it did not have
22 the capacity to allocate these expenditures until March 1 of
23 this year -- it would have allocated this money earlier, had
24 the proper accounting and reporting programs been in place.

25 The Commission recognized in Advisory Opinion 1992-2
26 that "the allocation regulations represent significant
27 revisions to past practice and require a brief period of
28 adjustment, i.e., the current [1991-92] election cycle, by
29
30

3 political committees acting in good faith." In that opinion,
4 it allowed a national party committee to take expenses that
5 had previously been allocated as administrative expenses and
6 retroactively reallocate them as direct costs of fundraising.
7 Two other opinions permitted retroactive changes in formulae
8 used to allocate administrative costs or the costs of generic
9 voter drives, after the occurrence of a mistake or an inter-
10 vening event. Advisory Opinions 1991-15, 1991-25. In each
11 instance, the requesting committee was given thirty days from
12 the date of the advisory opinion to make the necessary
13 reallocations.

14 The Commission concludes that the NRSC may retroactively
15 allocate its fundraising expenditures under 11 CFR
16 106.5(a)(2)(i) for the period January 1, 1991, through
17 February 29, 1992. The NRSC has a thirty day period from the
18 date of issuance of this opinion to make the necessary
19 allocations, and the allocated amounts must be included in
20 the NRSC's next report required to be filed after the
21 allocations are made.

22 The NRSC should include in its report to the Commission
23 an explanatory letter noting the reason for the new
24 allocations and resulting transfers. It should also file new
25 Schedule H2's, H3's, and H4's, relative to each fundraising
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3 program or event that serves as the basis for these new
4 allocations.^{1/}

5 A sample explanatory letter and sample Schedules are
6 attached. Schedule H2 indicates that the newly-reported
7 Federal/non-federal ratios are "new," since this is the first
8 time these have been treated as joint activities.

9 On the Schedule H4's, instead of listing the "event year
10 to date" totals, the NRSC may, at its option, provide an
11 "adjustment period total." That is, it need not provide a
12 year-by-year total for those programs or events for which
13 expenditures were made in both 1991 and 1992. If it chooses
14 this option, the Committee should clearly so note on the
15 pertinent H4's.

16 New information will also be required on the Detailed
17 Summary Page. The NRSC should provide in its explanatory
18 letter the total figure the non-federal account has underpaid
19 the Federal account, and reflect the transfer on line 18 of
20 the Detailed Summary Page. This will require a comparable
21 adjustment on line 19, "Total Receipts."

22 In addition, the NRSC has previously reported these
23 expenditures on line 21(b), "Other Federal Operating
24 Expenditures." The fundraising expenses being allocated
25 should now be subtracted from this total and added, broken
26

27 ^{1/} These will be new, rather than revised, H schedules,
28 because the expenditures involved have not formerly been
29 allocated. Until now, they have been reported as operating
30 expenditures itemized on Schedule B.

3 down into the Federal and non-Federal shares, on lines
4 21(a)(1) and (11).

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.

9 Sincerely,

10
11 Joan D. Aikens
12 Chairman for the
13 Federal Election Commission

14 Attachments

15 Enclosures (AO's 1991-15, 1991-25, and 1992-2)
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EXPLANATORY LETTER

**TO: Federal Election Commission
Reports Analysis Division**

FROM: National Republican Senatorial Committee

RE: Adjustments in Accordance with AO 1992-27

The NRSC is submitting Schedules H2, H3, and H4 for joint fundraising expenses for the period January 1, 1991, through February 29, 1992, as authorized by Advisory Opinion 1992-27. These expenses were originally paid 100% from the Federal account.

The total amount transferred from the non-federal to the Federal account as a result of these new allocations is \$_____.

ALLOCATION RATIOS

NAME OF COMMITTEE

National Republican Senatorial Committee

ALLOCATION RATIOS FOR INDIVIDUAL FUNDRAISING EVENTS, EXEMPT ACTIVITIES, AND SHARED DIRECT CANDIDATE SUPPORT APPEARING ON THIS REPORT

Methods of allocation

I **FUNDRAISING** activities are allocated using the "funds received method" where the federal proportion of expenses must equal the federal proportion of monies raised

II **EXEMPT** activities are allocated using the "time and space method" where the federal proportion of disbursements is based on the proportion of time or space devoted to federal candidates

III **Shared DIRECT CANDIDATE** support activities are allocated according to benefit expected to be derived, where the federal proportion of disbursements is based on the benefit derived by federal candidates from the activity

<p>NAME OF ACTIVITY OR EVENT Eagle Fundraising Letter</p> <p>ACTIVITY IS <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input checked="" type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL % 70	NON FEDERAL % 30
<p>NAME OF ACTIVITY OR EVENT Chairman's Gala</p> <p>ACTIVITY IS <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input checked="" type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL % 80	NON FEDERAL % 20
<p>NAME OF ACTIVITY OR EVENT</p> <p>ACTIVITY IS <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL %	NON FEDERAL %
<p>NAME OF ACTIVITY OR EVENT</p> <p>ACTIVITY IS <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL %	NON FEDERAL %
<p>NAME OF ACTIVITY OR EVENT</p> <p>ACTIVITY IS <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL %	NON FEDERAL %
<p>NAME OF ACTIVITY OR EVENT</p> <p>ACTIVITY IS <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL %	NON FEDERAL %
<p>NAME OF ACTIVITY OR EVENT</p> <p>ACTIVITY IS <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT CHECK IF THE RATIO IS <input type="checkbox"/> NEW <input type="checkbox"/> REVISED <input type="checkbox"/> SAME AS PREVIOUSLY REPORTED</p>	FEDERAL %	NON FEDERAL %

TRANSFERS FROM
NON-FEDERAL ACCOUNTS

Amounts transferred pursuant to AO 1992-27

NAME OF COMMITTEE National Republican Senatorial Committee		TOTAL AMOUNT TRANSFERRED
NAME OF ACCOUNT non-Federal account	DATE OF RECEIPT 0/00/92	\$ 30 000

	BREAKDOWN OF TRANSFER RECEIVED		
	ADMIN /VOTER	DIRECT FUND	FY/FMPT
i) Total Administrative/Voter Drive	.	.	.
ii) Direct Fundraising (List Events-Amount for Each)			
a) <u>Eagle Fundraising Lett</u>	.	.	.
b) <u>Chairman's Gala</u>	.	.	.
c) <u>etc.</u>	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Direct Fundraising	.	.	.
iii) Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a) _____	.	.	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support	.	.	.

NAME OF ACCOUNT		DATE OF RECEIPT	\$
	BREAKDOWN OF TRANSFER RECEIVED		
	ADMIN/VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT
i) Total Administrative/Voter Drive	.	.	.
ii) Direct Fundraising (List Events-Amount for Each)			
a) _____	.	.	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Direct Fundraising	.	.	.
iii) Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a) _____	.	.	.
b) _____	.	.	.
c) _____	.	.	.
d) _____	.	.	.
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support	.	.	.

SUBTOTAL THIS PAGE . . .	ADMIN/VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DCS
TOTAL THIS PERIOD		30,000	

INSTRUCTIONS FOR PREPARING RECEIPT SCHEDULE H3

**(To Be Used to Show Transfers From Non-Federal Accounts to
Federal Accounts For The Purpose of Paying Allocable Expenses)**

(effective 1/1/91)

WHO MUST FILE

Any political committee that is active in both federal and non-federal elections, and that has established separate federal and non-federal accounts, may either make all payments for shared activity with federally permissible funds, or may allocate expenses for its shared activities between its federal and non-federal accounts, according to specified allocation methods. A committee that chooses to allocate shared expenses must pay the bills for those expenses from either its federal account or from a separate allocation account, which is also a federal account subject to the FECA's reporting requirements. The committee may transfer funds from its non-federal account to either of these federal accounts, solely for the purpose of paying the non-federal share of allocable expenses. All such transfers must occur not more than 10 days before or 30 days after the payments for which they are intended are made, and must be itemized on Receipt Schedule H3. This Schedule is used only in support of Line 18 of the Detailed Summary Page. All other federal account receipts should be itemized, as required, on Schedule A.

LINE BY LINE INSTRUCTIONS

The committee must enter its full name, the name of the non-federal account from which each transfer is made, and the date and total amount of the transfer in the appropriate blocks.

Each transfer from a non-federal account to a federal account may include funds intended to pay for more than one allocable activity. Therefore, the committee must indicate on lines i) through iii) the purposes for which each transfer is made, and the amount designated for each such purpose. Line i) will list the total amount to be used for administrative expenses and generic voter drive costs, line ii) will list the amount to be used for each fundraising event, and line iii) will list the amount to be used for each exempt activity or for direct candidate support. Each fundraising event, exempt activity, or activity providing direct candidate support must be identified by the unique title or code assigned to it on the Allocation Ratios Schedule H2.

Subtotals must be computed at the bottom of each page for the transfers itemized on that page. The "Total This Period" for the column "Total Amount Transferred" is carried forward to Line 18 of the Detailed Summary Page.

WHEN TO FILE

Receipt Schedule H3 must be filed for each reporting period in which any funds are transferred from a non-federal account to a federal account for the purpose of paying the non-federal share of a committee's allocable expenses.

(Attachment to AO 1992-27)

NAME OF COMMITTEE

National Republican Senatorial Committee

A FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
ABC Printers 123 Main Street Washington, D.C. 20000	printing/ Eagle Fund- raising Letter	1-10-92	1,000	700	300
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE \$ 3,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
B FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
XYZ Caterers 456 Broad St. Washington, D.C. 20000	food/ Chairman's Gala	1-10-92	1,000	800	200
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE \$ 3,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
C FULL NAME MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
D FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
E FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
F FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON FEDERAL SHARE
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
SUBTOTAL OF JOINT FEDERAL AND NON-FEDERAL ACTIVITY THIS PAGE			2,000	1,500	500
TOTAL THIS PERIOD (last page for each line only)(Fed. share to 21 a i and non-Fed. share to 21 a ii)					

TOTAL THIS PERIOD FOR THE NON-FEDERAL SHARE (used for line 31 of the detailed summary page)

If applicable, add the following note: For purposes of this submission only the "event year-to-date" entry is the adjustment period total.

2 1782

INSTRUCTIONS FOR PREPARING DISBURSEMENT SCHEDULE H4
(To Be Used For Joint Federal/Non-Federal Activity)
(effective 1/1/91)

WHO MUST FILE

Any political committee that is active in both federal and non-federal elections, and that has established separate federal and non-federal accounts, may either make all payments for shared activity with federally permissible funds, or may allocate expenses for its shared activities between its federal and non-federal accounts, according to specified allocation methods. A committee that chooses to allocate shared expenses must pay the bills for those expenses from either its federal account or from a separate allocation account, which is also a federal account subject to the FECA's reporting requirements. The committee may transfer funds within specified time limits from its non-federal account to cover the non-federal share of the allocated expense. The committee must itemize each allocated disbursement made from its federal account or separate allocation account on Disbursement Schedule H4. Only disbursements supporting Line 21(a), Joint Activity, of the Detailed Summary Page should be reported on Disbursement Schedule H4. Disbursements supporting Line 21(b), Other Federal Operating Expenditures, of the Detailed Summary Page should be itemized on Schedule B, as required. All other disbursements from the federal account should also be itemized, as required, on Schedule B.

LINE BY LINE INSTRUCTIONS

The committee's full name must be entered in the appropriate block of each page.

For each disbursement itemized during the reporting period, the committee must provide the payee's full name and mailing address, the date, and the purpose or event for which the disbursement was made.

Note: Purpose or Event

(a) The term "purpose" means a brief statement or description of why the disbursement was made. Examples of adequate descriptions include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, descriptions such as "advance," "election day expenses," "other expenses," "expense reimbursement," "miscellaneous," "outside services," "get-out-the-vote," and "voter registration," would not meet the requirement for reporting the purpose of a disbursement.

(b) If the disbursement was for an exempt activity, a shared fundraising event, or shared federal and non-federal candidate support, the activity or event must be identified by the unique title or code assigned to it on the Allocation Ratios Schedule H2, along with the purpose for which the disbursement was made.

The category of activity for which each disbursement is made must be identified by checking the appropriate box. A disbursement representing payment for more than one category of activity is reported as a memo entry followed by a break down of the disbursement by category of activity, with the appropriate boxes checked. The committee must also enter the aggregate amount of all disbursements made year-to-date for each category of activity or individual event. For exempt activity, fundraising, and direct candidate support, a separate aggregate amount must be reported for each individual event. For administrative expenses and generic voter drive activity, one aggregate amount for all disbursements in that category is sufficient.

The total amount of each disbursement must be entered in the appropriate box. For each disbursement for shared administrative expenses and generic voter drive costs, fundraising, or exempt activities, the committee must enter the total amounts allocated to the federal and non-federal accounts in the appropriate boxes. For administrative expenses and generic voter drive costs, the federal and non-federal shares are derived from the percentages stated on the Method of Allocation Schedule H1. For the costs of fundraising, exempt activity or direct candidate support, these amounts are derived from the percentages stated for each event on the Allocation Ratios Schedule H2.

If an allocated disbursement was made, in whole or in part, for direct candidate support (e.g. an in-kind contribution benefiting both specific federal and specific non-federal candidates), the federal share of the disbursement must be disclosed on Schedule B, supporting Line 23, 24, or 25 of the Detailed Summary Page, as appropriate. The "Federal Share" box on Schedule H4 should contain a reference to both Schedule B and the appropriate line number of the Detailed Summary Page on which this information is reported. The non-federal share of the disbursement must be entered in the "Non-Federal Share" box on Schedule H4.

Subtotals for each page and totals for the reporting period must be computed for the total amount of disbursements, and for the total federal and non-federal shares. The "Total This Period" for the federal share and the non-federal share are carried forward to Line 21(a)(i) and 21(a)(ii), respectively, of the Detailed Summary Page.

The "Total This Period" for the non-federal share is used to compute the total federal disbursements on Line 31 of the Detailed Summary Page.

WHEN TO FILE

Disbursement Schedule H4 must be filed for each reporting period in which disbursements are made from a committee's federal account or separate allocation account in payment for allocated expenses.