

AGENDA DOCUMENT #92-127-C

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

7 October 1992

**SUBMITTED LATE
AGENDA ITEM**
For Meeting of: OCT 8 1992

MEMORANDUM

TO: The Commission

FR: Lee Ann Elliott
Commissioner

A handwritten signature in dark ink, appearing to be "LEA" or similar, written over the printed name of Lee Ann Elliott.

RE: Alternative Draft Advisory Opinion 1992-33

In line with last week's discussion at the table, I have written an alternative draft advisory opinion to AOR 1992-33. This draft uses Agenda Document 92-127 as its base, but makes the following changes:

it allows a party committee's federal account 30 days to make a transfer payment for its share of in kind contributions for allocable events;

it requires the federal account to keep a sufficient cash balance of permissible funds on hand from the time the non federal account accepts the contribution to the time federal account makes its payment;

it reduces the triplicate itemization of these transactions to one list of itemized disbursements on the Schedule H4;

and it specifically notes that this opinion does not apply to allocable direct candidate support, exempt activities or generic activities.

I have placed the new language in bold text and attempted to show all places where the original text was deleted.

I request this draft be placed on the Open Session Agenda for October 8, 1992.

ALTERNATIVE DRAFT ADVISORY OPINION 1992-33

**Carol C. Darr
General Counsel
Democratic National Committee
430 South Capitol Street, S.E.
Washington, D.C. 20003**

**Benjamin L. Ginsberg
General Counsel
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003**

Dear Ms. Darr and Mr. Ginsberg:

This responds to your letter dated August 13, 1992, requesting an advisory opinion on behalf of the Democratic National Committee and the Republican National Committee ("the national party committees") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of in-kind contributions from sources otherwise prohibited by the Act in connection with events and administrative expenses involving shared Federal and non-federal payments.

You state that the national party committees currently accept "non-federal" in-kind contributions for allocable expenses in connection with administrative and fundraising expenses. You believe this is in accordance with Commission regulations at 11 CFR 106.5 requiring national party committees to pay for the allocable expenses with a combination of both Federal and non-federal funds according to an appropriate percentage. You provide the following example of the treatment of "non-federal" in-kind contributions:

If a corporate vendor donates flowers with a fair market value of \$5,000 for a national party committee

fundraising event, the committee would consider the full amount as an in-kind contribution to the non-federal account. Expenses for a fundraising event are allocated on a funds received basis under 11 CFR 106.5(f). Accordingly, if the event raises funds at a 50/50 Federal/non-federal ratio, \$2,500 of Federal funds would have been used to pay for the flowers had the national party committee paid for them directly. To ensure that the corporate donor does not "pay for" the Federal portion of the allocable expense, the committee transfers the amount from its Federal account to its non-federal account. For an administrative expense, a transfer of the Federal portion would be made no earlier than 10 days before or no later than 60 days after the receipt of the in-kind contribution. For a fundraising event, the committees would make such transfers within 60 days of the event.^{1/} If more than one non-federal in-kind contribution is received for an event, the adjustment could be made through one consolidated transfer, rather than by a transfer for each in-kind received for a specific event.

You propose to report the receipt and disbursement of an in-kind non-federal contribution on Schedule I, lines 1 and 5. You also propose that the transfer of the Federal portion be reported on Schedule B, Line 22 of the national party committee's Federal report as a transfer to an affiliated

^{1/} You assert that such time periods are consistent with the rules governing transfers for allocable expenses set out at 11 CFR 106.5(g)(2)(11)(B).

committee and that it be clearly identified as a transfer of the Federal portion of an in-kind contribution. The non-federal account would report the receipt of the transfer on line 1 of Schedule I.

You state that there is no need for the committee to file an H3 or H4 schedule. You believe that the reporting will be adequate by identifying on line 22, for each in-kind received, the specific in-kind contribution for which the transfer is made and the event for which the in-kind contribution was received. You assert that, by cross referencing the committee's Schedules H1 and H2, the Commission can ascertain whether the transfer is for the proper amount and within the correct time period.

You ask the Commission to confirm that your proposed "method of accounting" for the Federal portion of an in-kind contribution from an otherwise prohibited source is permissible.

Commission regulations provide for allocation of expenses by party committees making disbursements for administrative expenses, fundraising activities, exempt activities, or generic voter drives in connection with both Federal and non-federal elections. 11 CFR 106.1(e), 106.5. [material deleted] The purpose of these allocation rules is to assure that non-federal funds do not pay for the Federal share of a mixed expense. See 55 Fed. Reg. at 26066. Committees have the option of two payment procedures: (1) committees pay an entire bill from the Federal account and

transfer funds from the non-federal to the Federal account to cover the non-federal share; or (2) committees establish a separate allocation account, which the Commission considers to be a Federal account, and funds are transferred from the Federal account and the non-federal account solely to make allocable payments. 11 CFR 106.5(g)(1)(i) and (ii).

Although the promulgation of the allocation regulations mark the first time that the Commission has allowed non-federal funds to be transferred to a committee's Federal account, this was only for the limited purpose of paying allocable expenses. Under the new rules, committees are prohibited from making such payments through their non-federal accounts. 55 Fed. Reg. at 26066.

[material deleted]

The Commission's allocation regulations do not explicitly make provisions for the receipt of in-kind contributions from corporations and labor organizations. The Commission concludes a reasonable interpretation of the existing allocation rules would allow a federal account 30 days to transfer its compensating share of in kind contributions received by a non federal account for allocable activities. This interpretation is analogous to the requirements of 11 CFR 103.3(b) which allow treasurers 30 days to refund contributions from corporations or labor organizations. Because these in kind corporate contributions are technically not being "discovered" as corporate donations as in 103.3(b)(2), two conditions will apply. The

30 day period will run from the date of the non federal account's receipt of the contribution or its actual use in an allocable event. Second, the federal account must keep a sufficient cash balance of permissible funds on hand to cover its share of the allocable contributions from the time the non federal account accepts the contributions to the time the federal account makes its transfer payment. ^{2/} If more than one in-kind corporate donation is received for an administrative or fundraising program or event, the payment[] from the Federal account may be made through one consolidated transfer if the transfer is made within 30 days of the non federal account's receipt of the in kind items. [material deleted]

The receipt of an in-kind contribution for shared expenses should be reported in a manner consistent with the reporting of other in-kind contributions, which takes into account the need to balance the receipt with a disbursement in the same amount. Thus, to reflect the receipt of the in-kind corporate donation in this case, the committee must report a transfer from the non-federal account of an amount

^{2/} The Commission does not agree that your proposal to allow a federal accounts 60 days to make a transfer payment is analogous to 11 CFR §106.5(g)(2)(ii)(B). That section only allows federal accounts up to 60 days after an allocable event or expense to make a transfer payment if the non federal account has paid more than its share of the allocable expense. This allowance only applies to committees attempting to correct good faith calculations of existing fundraising ratios or expenses, and is inapplicable to a committee's knowing receipt of corporate in kind contributions for fundraising or administrative expenses.

equal to the value of the in-kind. In addition, the committee must make and report the payment to the non-federal account which payment represents the Federal share of the in-kind donation.

For the contribution of \$5,000 in flowers, on Schedule H3 (Transfers from Non-federal Accounts) covering the relevant reporting period, the committee should first disclose a transfer (in-kind) for that fundraising event of the full amount of \$5,000 on the date the committee receives the flowers, e.g., the date of the fundraiser, next to a space on line ii identifying the event.^{3/} (If there are other such in-kind contributions [material deleted] for the fundraiser, those amounts may also be included in the same line ii entry provided the items were received within one 30 day period [material deleted].)

On Schedule H4 (Joint Federal/Non-federal Activity Schedule), [material deleted] the committee will make two separate types of entries. The first entry will show payment by the federal account to the non federal account for the federal account's share of in kind contributions transferred to it for a particular event during the reporting period. Importantly, this transfer payment must be made within 30

^{3/} Schedule H3 should reflect not just the remaining non-federal amount (\$2,500) after the \$2,500 transfer from the Federal account, but the total of the corporate gift, i.e., \$5,000. Such figure should be included on line 18 of the Detailed Summary Page; no portion may be reported on line 11a because this transfer cannot be accepted by the Federal account as a contribution.

days of the non federal account's receipt or use of the in kind contributions transferred on the H3 Schedule. ^{4/} This entry shall also include a description of the purpose for the transaction ("Federal share of in-kind contributions") with a reference to the number of in kind contributions it effects. Below this first entry, the H4 entry will then disclose the fully itemized "expenditure" of each in kind contribution received. See 11 CFR 104.8.

Sample FEC Schedules H3 and H4 illustrating the appropriate reporting for two in kind contributions (\$3,000 and \$5,000) received by a non federal account for a fundraising event (being allocated on a 50/50 basis) are attached and expressly incorporated as part of this opinion.

[material deleted]

Regarding Schedule I, the committee should report the total amount of in kind donations to the non federal account for allocable events on line 1 and make a cross reference to to entries on Schedule H4 which itemize the contributors.

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 in your request. This opinion specifically does not apply to a non federal account's receipt and use of corporate in kind

^{4/} If the transfer payment is made within 30 days but is in a subsequent reporting period, the committee's reports should cross reference this payment with the previously disclosed "expenditure" of the in kind contribution.

contributions for direct candidate support, exempt activity or generic activity as defined by 11 CFR 106.1(a)(2), 106.5(a)(2)(iii) and (iv) since such activity was not set forth in your request. See 2 U.S.C. §437f.

Sincerely,

Joan D. Aikens
Chairman for the
Federal Election Commission

Attachments (Sample FEC Schedules H3 and H4)

TRANSFERS FROM
NON-FEDERAL ACCOUNTS

PAGE	OF
FOR LINE 18	

NAME OF COMMITTEE NATIONAL PARTY COMMITTEE	TOTAL AMOUNT TRANSFERRED
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NAME OF ACCOUNT NON-FEDERAL ACCOUNT	DATE OF RECEIPT 10/1-10/15/92	\$ 8,000
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	BREAKDOWN OF TRANSFER RECEIVED		
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND	EXEMPT ACTIVITY/DIRECT
i) Total Administrative/Voter Drive	-		
ii) Direct Fundraising (List Events-Amount for Each)			
a) CHAIRMAN'S GALA IN-KIND	.	.	
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		.	

NAME OF ACCOUNT	DATE OF RECEIPT	\$
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	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		.	

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

JOINT FEDERAL/NON-FEDERAL
ACTIVITY SCHEDULE

NAME OF COMMITTEE NATIONAL PARTY COMMITTEE					
A FULL NAME MAILING ADDRESS & ZIP CODE NATIONAL PARTY CMTE. NON-FEDERAL ACCT.	PURPOSE/EVENT FED. SHARE OF IN-KIND (2)	DATE 10/30	TOTAL AMOUNT 4,000	FEDERAL SHARE 4,000	NON FEDERAL SHARE 0
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					
B FULL NAME, MAILING ADDRESS & ZIP CODE MEYER'S PAINTS 301 MAIN HIGHWAY CITY, STATE, ZIP CODE	PURPOSE/EVENT CHAIRM. GALA	DATE 10/1	TOTAL AMOUNT 3,000 IN-KIND	FEDERAL SHARE 0	NON FEDERAL SHARE 3,000
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR TO-DATE \$ <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
C FULL NAME, MAILING ADDRESS & ZIP CODE FLOWERS BY FADER, INC. 300 MAIN HIGHWAY CITY, STATE, ZIP CODE	PURPOSE/EVENT CHAIRM. GALA	DATE 10/15	TOTAL AMOUNT 5,000 IN-KIND	FEDERAL SHARE 0	NON FEDERAL SHARE 5,000
CATEGORY <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input checked="" 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					
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)					