

Common Cause

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October 7, 1992

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

*Late Comments
AOR 1992-33*

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Dear Mr. Noble:

We strongly urge the Commission to reject the national political parties' Advisory Opinion Request 1992-33, which would permit the federal accounts of the national political parties to benefit from otherwise illegal in-kind contributions for fundraising for 60 days. Allowing the parties to essentially subsidize their fundraising programs and events with illegal contributions ("soft money") from a corporate vendor would be totally contrary to the Federal Election Campaign Act's ("FECA") ban on corporate and labor union contributions, as well as contrary to Commission regulations.

The federal election statute bars corporate and labor union contributions in federal elections. Regulations were adopted by the Commission in response to a court order requiring the FEC to adopt allocation rules to ensure that only funds permissible under the FECA are used to influence federal elections.

The allocation rules currently reflect the proposition that subsidization of a federal account with non-federal contributions is not permissible. Therefore, a party committee must estimate the federal and non-federal share for a fundraising event and pay all fundraising costs on that basis. A 60-day period after the fundraising event is provided for readjustment only.

In its draft response to the parties (Agenda Doc. #92-127) the Commission's Office of General Counsel ("OGC") explained why it is unacceptable for the parties' federal account to benefit from the non-federal in-kind contributions for 60 days before paying the funds to the proper non-federal account:

The acceptance of flowers, food, or the use of a reception room [in-kind contributions] from a corporation occurs at the time of their use. Since both the non-federal and Federal accounts would benefit at the time of acceptance, and since only the non-federal account may lawfully accept an in-kind donation from a corporation, the Federal account would benefit from an expenditure (of the in-kind donation)

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by the non-federal account. This, in effect, results in the use of non-federal funds to pay the Federal share.

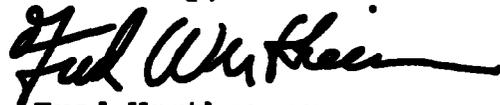
OGC proposed the only acceptable approach consistent with the law and regulations, as follows: "[t]he subsidy of the Federal account in this manner may be avoided by a payment from the Federal account to the non-federal account at the time of acceptance of the in-kind donation."

OGC's draft opinion was essentially rejected at the Commission's meeting on October 1, 1992, with a request by the Commissioners to consider the suggestions made by Commissioner Lee Ann Elliott (See Agenda Doc. #92-127-A). Commissioner Elliott's proposal raises the same problems as the Advisory Opinion Request itself and is, therefore, totally unacceptable. It should be rejected.

If the Commission adopts the Elliott proposal or any variation which permits subsidization of a federal account with non-federal contributions, it would further damage the already inadequate protections against the use of soft money in federal campaigns. Moreover, it could result in massive new infusions of soft money for periods of up to 60 days -- a significant period of time during a campaign. The national party committees' example of a \$5,000 contribution of flowers would pale in comparison to in-kind soft money donations of potentially huge amounts -- not only from corporations or labor unions but from individual donors as well.

In our view, the only real solution to the soft money problem is to eliminate allocation altogether. The more short-term response to the national party committees' advisory opinion request must be to require that the committees estimate the value of in-kind donations when they are received and pay the federal share of the expense from the federal account immediately.

Sincerely,



Fred Wertheimer
President