



A PROJECT OF THE CENTER FOR RESPONSIVE POLITICS

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October 6, 1992

Joan Aikens, Chair
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Late Comment
AOR 1992-33

Dear Madam Chairman

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We are writing regarding Advisory Opinion Request 1992-33, concerning acceptance by the national party committees of in-kind contributions from prohibited sources in connection with party administrative expenses and allocable fundraising events. We are very concerned with the direction of the Commission's discussion at last week's meeting. The regulation of soft money has been an especially difficult area for the Commission, and we are concerned that the Commission's response to the national party committees' request may further undermine the regulations as they now exist.

In-kind contributions which defray the costs of administrative or allocable fundraising events of the national parties directly benefit both federal and non-federal elections. The Commission must ensure that such contributions from sources prohibited by FECA are not allowed to support the parties' federal election activities. The only way to ensure that in-kind contributions from prohibited sources are not used to benefit federal elections is to eliminate them completely in this case.

If the Commission is not prepared to take that step, then at the very least it must require the party's federal account to reimburse its non-federal account immediately upon receipt for its share of the gift or benefit, using the applicable allocation formula. Anything less, such as the proposal to allow reimbursement by the federal account within 60 days (see Agenda Document 92-127-A) is contrary to both the statute and regulations, which forbid a federal committee from accepting contributions from prohibited sources.

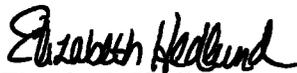
To the extent that a party's federal account does not pay its allocable share immediately, the in-kind donation becomes an advance to the federal account. An advance is a contribution under FECA (2 USC 431(8)(A)(i)) and therefore may not be accepted from sources which are prohibited under the law. The requesters acknowledge this in their letter when they refer to the in-kind contribution as a "subsidization" received by the federal account which should not be "prolonged" (See AO Request 1992-33, page 2, footnote 1.) In fact, a subsidization, or advance, from a prohibited source may not be accepted for any length of time.

If the Commission were to accede to the wishes of the Democratic National Committee and the Republican National Committee, it would open the door to situations in which committees which run short of "hard" money will be allowed to bankroll their federal activities by relying on advances from prohibited sources, made in the form of in-kind contributions to the party committees

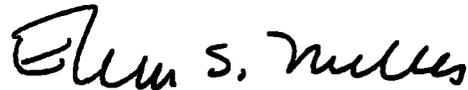
Any suggestion that the Commission could safeguard against this by requiring party committees to be able to demonstrate at all times that they have sufficient funds to cover their share of the prohibited contribution is sheer folly. For those who seek to minimize the accounting and reporting burden on the party committees, this proposal would require an incredibly complex, if not impossible, accounting system. It would be an unenforceable standard, under which the Commission could not ensure that non-federal funds will not be used in connection with federal elections. Further, it would not change the fact that the party's federal account would benefit from a contribution by a prohibited source for however long the federal account does not pay for the donated goods or service

As Commissioner Thomas correctly pointed out, allowing a time lag between acceptance of the in-kind contribution and payment by the federal account will allow situations where in-kind contributions from prohibited sources are actually affecting federal elections. The FEC is obligated under the law to prohibit such activity. Any proposal which does less should be rejected.

Sincerely,



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Project Director
FEC Watch



Ellen S. Miller
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cc Commission members
Lawrence M. Noble, General Counsel
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