



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 14, 1992

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.<sup>1/</sup> If more than one non-federal in-kind contribution is received for an event, the adjustment would 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 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). More specifically with respect to the first two categories, party committees that make disbursements in connection with Federal and non-federal elections shall allocate expenses for (i) administrative expenses not attributable to a clearly identified candidate, including rent, utilities, supplies, and salaries; and (ii) the direct costs of a fundraising program or event, including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where Federal and non-federal funds are collected by one committee through such a program or event. 11 CFR 106.5(a)(2)(i) and (ii).

All administrative expenses must be allocated between Federal and non-federal accounts, if incurred by a committee that makes disbursements in connection with both Federal and non-federal elections, and that chooses to pay any portion of such disbursement from its non-federal account. Explanation and Justification of 11 CFR Part 106, 55 Fed. Reg. 26058, 26063 (June 26, 1990). Each national party committee, other than a Senate or House campaign committee, shall allocate a fixed percentage of its administrative expenses during a reporting period, and such minimum Federal percentages differ depending upon the year the expenses were incurred. 11 CFR 106.5(b)(1) and (2). These minimum percentages, 65 percent in a presidential election year

and 60 percent in other years, reflect the national party committees' primary focus on presidential and other Federal elections, while still recognizing party-building activities at state and local levels. 55 Fed. Reg. at 26063.

Fundraising costs, however, must be allocated on a different basis, i.e., on the basis of the particular event or program. A party committee, whether national or not, allocates the direct costs of each fundraising program or event, where both Federal and non-federal funds are collected by that one committee through such program or event. (This is not to be confused with joint fundraising events conducted by more than one committee.) 11 CFR 106.5(f); 55 Fed. Reg. at 26065. A party committee should allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. Each event or program has its own ratio. The committee estimates this ratio prior to each program or event, based on the committee's reasonable prediction of its Federal and non-federal revenue for the program or event. 11 CFR 106.5(f)(1). The committee adjusts its ratio no later than 60 days following each such event to reflect the actual ratio of funds received. If either the Federal or non-federal account has paid more than its share, then the necessary transfers will be made from the other account, and the adjustments will be noted in the report for the period in which they are made. 11 CFR 106.5(f)(2).

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 marks 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.

The Commission's allocation regulations do not specify how to deal with in-kind donations received in connection with allocable activities or functions. (As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services. See 11 CFR 104.13.) As a general rule, a corporation or labor organization may not contribute "anything of value" for "the purpose of influencing" any election for Federal office. This means that no impermissible funds, including in-kind contributions, may be solicited or accepted for use in Federal election activities. Further, the Commission must ensure that prohibited sources are not utilized to fund the Federal share of allocable activity expenses, even for a brief time. At the same time, the Commission recognizes the difficulty a committee would face in trying to make a transfer from the Federal to a non-federal account in the exact amount of the Federal share of each in-kind donation on the same day the in-kind donation is received.

The Commission concludes that a national party committee may accept corporate in-kind donations in connection with fundraising activities, but only if one of two conditions is met: (1)

the amount of the Federal share of goods or services is paid to the non-federal account in advance or on receipt; or (2) sufficient funds to pay for the Federal share of goods or services have been transferred to a non-federal account in advance under the following circumstances.

To meet the latter condition, the committee must, in essence, pre-pay or escrow an amount of funds that corresponds to the value of the Federal share of the expenses associated with in-kind donations that will be received. The committee must make good faith estimates of the amount of such in-kind donations that are expected and transfer a sufficient amount of funds from the committee's Federal account to a non-federal account to cover the Federal share of the expenses associated with the in-kind donations actually received. The committee may make bulk transfers to accomplish this "escrow" function, rather than separate transfers for each anticipated in-kind donation. By allowing this approach, the Commission is relieving the committees of the practical problem of having to calculate and pay the precise amount of the Federal share of expenses associated with in-kind donations on the same day such donations are received. This escrow of funds is separate and distinct from the allocation account described above and set out at 11 CFR 106.5(g)(1)(ii).

The in-kind donations for allocable activities must be reported so that the full amount of the receipts and corresponding expenses appear in the schedules specifically designed for allocable activity receipts and expenses. The committee should disclose the aggregate amount of in-kind donations received for allocable activity on Schedule H3, as transfers in-kind from the non-federal account, broken down into appropriate categories for administrative expense receipts or receipts for particular fundraising events or programs. The corresponding expenses must be itemized as non-federal share disbursements on Schedule H4 in a way that also provides the same donor identification information required on a Schedule A for in-kind contributions for Federal elections.

The payments from the Federal account to the non-federal account for the purpose of "escrowing" the Federal share of expenses relating to in-kind donations for allocable activities must be disclosed on Schedule H4 as Federal share payments. Any adjustment payments from the non-federal account would be reported on schedule H3 with an explanatory statement.

If the committee chooses to exercise the first option, it may report as follows: 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.<sup>2/</sup> (If there are other such in-kind contributions on that date for the fundraiser, those amounts should also be included.) On Schedule H4 (Joint Federal/Non-federal Activity Schedule), the committee should make two separate entries, the first of which discloses the use or "expenditure" of the \$5,000 in-kind contribution, and the second of which reflects advance or contemporaneous payment of \$2,500 by the Federal account to the committee's non-federal account. Schedule H4 should also include a description of the reason for the transaction, i.e., transfer of Federal share of in-kind contribution to non-federal account, with a reference to the donation of flowers above. 11 CFR 104.10(b)(4).<sup>3/</sup>

If the flowers were provided for an administrative event or purpose, a payment of \$3,250 would be required (and reported) in a presidential election year and a payment of \$3,000 in any other year. Consistent with the reporting of in-kind contributions, the donor florist should be reported on the Schedule H4 as the payee of the \$5,000. The non-federal account should be reported as the payee of the \$2,500 (or \$3,250 or \$3,000) disbursement. Sample FEC Schedules H3 and H4 illustrate the appropriate reporting entries and are expressly incorporated as part of this opinion.

The committee may use alternative methods on Schedules H3 and H4 in order to minimize entries and avoid duplication. On Schedule H3, the committee may separate out the transfers resulting from in-kind transactions by fundraising event or program or by administrative purpose. Thus, instead of setting out the transfers for in-kind transactions by date (to be aggregated with other transfers on that date), the H3 will show separate listings by the event or program. Therefore, all transfers pertaining to the program or event, regardless of the date made (but made within the reporting period), will be aggregated for that entry. In order to clarify when these transfers occurred, the committee should also note, on the Schedule H3 listing, that the transfer reflected thereon relates to H4 entries of donors that are itemized on specific pages, e.g., H4, p. 4, entries A and C.

Instead of an entry on Schedule H4 for each advance or contemporaneous payment by the Federal account to the non-federal account, the committee may report the aggregate of such payments made on a particular date and the H4 donor entries to which that aggregate sum relates. Accordingly, the "first" entry for each in-kind donation, i.e., the entry listing the donor, must still be itemized.

If the committee is advancing escrowed funds, the H4 schedule should include the amount of escrowed funds transferred, as a transfer to the non-federal account of the anticipated Federal share (for a particular event or program, if known). Such transfers might not correspond to the H4 entries of donors for a particular event or program. As stated above, schedule H3 will disclose adjustment payments back to the Federal account, after the final amounts have been determined, and will explain the adjustment payments, i.e., noting the previous H4 entries to which these adjustments correspond.<sup>4/</sup>

On Schedule I, the committee should include the full \$5,000 as an in-kind contribution received by the non-federal account with a supporting memo Schedule A that itemizes the contributor's identification. 11 CFR 104.8(e). In this situation, the \$5,000 amount need not also be reported on Schedule I as a transfer to the Federal account with a memo Schedule B that itemizes the contribution. See 11 CFR 104.9(c). Because of the nature of an in-kind contribution made for the benefit of both the Federal and non-federal accounts of the committee, there would be a complete duplication of the memo Schedule A donor information if the memo Schedule B were also required. In these circumstances, the Commission will not require filing of either the memo Schedule B or the related "transfer disbursement" on Schedule I, line 2. However, in order to reflect the fact that the reported in-kind donations have been expended by the committee in the same period as received, the total amount of the in-kind contributions should be entered on line 5 of Schedule I as an other disbursement with a notation reference to the memo Schedule A filed for line 1.

As an alternative to itemizing the contributor identifications on Schedule I, line 1, and memo Schedule A, the committee may include the total amount of in-kind donations to the non-federal account on line 1 and then make a cross reference to the entries on Schedule H4 to which the total amount relates. This reference should specify particular pages of the schedule H4 where the in-kind donors are identified.

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 donations for generic voter drives (see 11 CFR 106.5(a)(2)(iv)) or direct candidate support or exempt activities paid for in conjunction with non-federal activity (see 11 CFR 106.1(a)(2), 106.5(a)(2)(iii)).

Sincerely,

(signed)

Joan D. Aikens  
Chairman for the Federal Election Commission

Attachments (Sample FEC Schedules H3 and H4)

#### ENDNOTES

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)(ii)(B).

2/ 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.

3/ Figures corresponding to the disclosure on H4 should be included on lines 21 of the Detailed Summary Page, on the appropriate lines.

4/ For a reporting period, the totals from Schedule H3 would be carried to line 18 of the Detailed Summary Page. The totals from Schedule H4 would be carried to line 21, on the appropriate lines.

NON-FEDERAL ACCOUNTS

[Attachment to: ADVISORY OPINION 1992-33]

NAME OF COMMITTEE <b>National Party Committee</b>		TOTAL AMOUNT TRANSFERRED
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NAME OF ACCOUNT <b>Non-federal Account</b>	DATE OF RECEIPT <b>10/1/92</b>	\$ <b>5,000</b>
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	BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN. VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY DIRECT CANDIDATE SUPPORT	
i) Total Administrative/Voter Drive .....				
ii) Direct Fundraising (List Events-Amount for Each)				
a) <b>CHARMAN'S GALA</b>		<b>5,000</b>		
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 CANDIDATE SUPPORT	
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 .....				

	TOTALS FOR BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DCS	
SUBTOTAL THIS PAGE .....				
TOTAL THIS PERIOD .....				

JOINT FEDERAL/NON-FEDERAL  
ACTIVITY SCHEDULE

[Attachment to: ADVISORY OPINION 1992-33]

NAME OF COMMITTEE

National Party Committee

A FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
Flowers by Fader, Inc. 300 Main Highway City, State Zip Code	Flowers for Chairman's Gala	10/1/92	5,000 In-kind	0	5,000
CATEGORY: <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input checked="" type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT EVENT YEAR-TO-DATE: \$ 21,000					
B FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
National Party Committee Non-federal Account	Transfer of Federal Share (See above)	10/1/92	2,500	2,500	0
CATEGORY: <input type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT <input type="checkbox"/> DIRECT CANDIDATE SUPPORT EVENT YEAR-TO-DATE: \$					
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 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT EVENT YEAR-TO-DATE: \$					
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 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT EVENT YEAR-TO-DATE: \$					
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 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT EVENT YEAR-TO-DATE: \$					
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 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT EVENT YEAR-TO-DATE: \$					
SUBTOTAL OF JOINT FEDERAL AND NON-FEDERAL ACTIVITY THIS PAGE .....					
TOTAL THIS PERIOD (last page for each line only)(Fed. share to 21 a 1 and non-Fed. share to 21 a 2) .....					
TOTAL THIS PERIOD FOR THE NON-FEDERAL SHARE (used for line 31 of the detailed summary page) .....					