



FEDERAL ELECTION COMMISSION  
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July 20, 1995

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** John C. Surina  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin  
Senior Attorney

**Subject:** Draft AO 1995-22

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 27, 1995.

Attachment

**AGENDA ITEM**  
For Meeting of: JUL 27 1995

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3 **ADVISORY OPINION 1995-22**

4 **Robert F. Bauer**  
5 **B. Holly Schadler**  
6 **Perkins Coie**  
7 **607 Fourteenth Street, N.W.**  
8 **Washington, D.C. 20005-2011**

**DRAFT**

9 **Dear Mr. Bauer and Ms. Schadler:**

10 **This responds to your letter dated June 2, 1995,**  
11 **requesting an advisory opinion, on behalf of the Democratic**  
12 **Congressional Campaign Committee ("DCCC"), concerning the**  
13 **application of the Federal Election Campaign Act of 1971, as**  
14 **amended ("the Act"), and Commission regulations to the**  
15 **reporting of reimbursements for allocable expenditures.**

16 **You inquire as to the proper method of disclosing**  
17 **transactions involving partial reimbursements of allocable**  
18 **disbursements on the DCCC's monthly reports filed with the**  
19 **Commission. The DCCC has been reporting the transactions**  
20 **described below in a certain manner, and the Commission's**  
21 **Reports Analysis Division (RAD) has informed you that those**  
22 **transactions should be reported in a different manner.**

23 **The DCCC receives partial reimbursements for certain**  
24 **payroll and vendor disbursements it pays on a regular basis.**  
25 **These expenses are paid from its allocation account set up**  
26 **for payment of allocable expenses of joint Federal and**  
27 **nonfederal activities. For example, the DCCC pays one**  
28 **hundred percent of the salary of an employee who also**  
29 **provides services to the Democratic Senatorial Campaign**  
30 **Committee ("DSCC"). The DSCC then reimburses the DCCC for a**  
**portion of the employee's salary. In this situation, the**

3 DCCC reports its original disbursement for salary, and the  
4 Federal and nonfederal shares of the disbursement on  
5 Disbursement Schedule H4 (Joint Federal/Non-federal Activity  
6 Schedule), and these figures are included in the totals on  
7 the Detailed Summary Page for the Federal and nonfederal  
8 share of shared activity on lines 21a(i) and 21a(ii). When  
9 the DCCC is reimbursed for the agreed upon portion of the  
10 disbursement, the reimbursement is disclosed as a negative  
11 disbursement on Schedule H4 and the amount is subtracted from  
12 the figures on line 21.

13 You state that RAD's approach is for the original  
14 payroll disbursement to be reported on lines 21a(i) and (ii)  
15 and for the reimbursement to be included as a receipt on line  
16 15, "Offsets to Operating Expenditures (Refunds, Rebates,  
17 etc.)." You contend that there are several adverse  
18 consequences to this latter method: (1) It would entail  
19 including both Federal and nonfederal reimbursements on line  
20 15 and result in an understatement of "Net [Federal]  
21 Operating Expenditures" reported on line 37. (2) When vendor  
22 refunds are made to the DCCC, the nonfederal portion "will be  
23 unavoidably mingled" with Federal funds. If the refund is  
24 treated as an offset to the Federal account, nonfederal funds  
25 would be offsetting Federal funds. (3) Incorrect reporting of  
26 Federal and nonfederal expenditures, and the exclusion of the  
27 refunds on line 21 (as a negative expenditure) would cause  
28 the actual year-to-date expenses, by allocation category and  
29 total, to be inflated, and there is no other reporting line  
30

3 to correct the overstatement.

4 You are also concerned that the proposed method of  
5 reporting conflicts with the DCCC's method of making  
6 reimbursements. You state that the amount the DCCC transfers  
7 each month from the nonfederal account to the Federal account  
8 "is the net of any reimbursements that have already been put  
9 back into the allocation accounts." You assert that "[b]y  
10 not putting the reimbursement back into the allocation  
11 account," the DCCC would overstate the amount needed to be  
12 transferred each month.

13 You request advice on the appropriate method of  
14 disclosing the above-described reimbursements from the DSCC  
15 and the vendors.

16 Commission regulations provide that party committees  
17 that make disbursements in connection with Federal and  
18 nonfederal elections shall make those disbursements totally  
19 from funds subject to the limitations and prohibitions of the  
20 Act or from separate Federal and nonfederal accounts  
21 established under 11 CFR 102.5(a)(1)(i). 11 CFR 106.5(a)(1).  
22 Political committees that have established such separate  
23 accounts shall allocate expenses between those accounts. Id.  
24 For national Senate and House campaign committees of a party,  
25 such expenses include administrative expenses not directly  
26 attributable to a clearly identified candidate, the direct  
27 costs of a fundraising program or event where both Federal  
28 and nonfederal funds are collected, and generic voting drives  
29 that do not mention a specific candidate. 11 CFR 106.5(c).  
30

3 Disbursements are made in accordance with percentages derived  
4 from allocation formulae prescribed by the Commission  
5 regulations. See 11 CFR 106.5(c) and (f).

6 Commission regulations have prescribed how allocated  
7 expenditures are made and how they are reported. Pursuant to  
8 one of the two options offered in the regulations, the DCCC  
9 has established an allocation account in which funds from its  
10 Federal and nonfederal accounts are deposited solely for the  
11 purpose of paying for allocable expenses of mixed activities.  
12 Once a committee establishes an allocation account, all  
13 allocable expenses should be paid from that account. 11 CFR  
14 106.5(g)(1)(ii)(A). When making a disbursement from the  
15 allocation account, the committee transfers funds from its  
16 Federal and nonfederal accounts to the allocation account in  
17 amounts proportionate to the allocable shares. 11 CFR  
18 106.5(g)(1)(ii)(B).

19 The committee reports the disbursements from its  
20 allocation account in payment for mixed activities. The  
21 committee identifies the recipient of each disbursement, the  
22 date, the amount, and the federal and nonfederal share  
23 comprising that amount. The committee also discloses the  
24 total amount spent for each category. 11 CFR 104.10(b)(4).  
25 Consistent with these requirements, Commission report forms  
26 also require that these amounts be included in the totals of  
27 Federal and nonfederal operating expenditure activity. See  
28 11 CFR 104.3(b)(1).

29 As a preliminary matter before addressing the  
30

3 reimbursement disclosure issues, the Commission notes that  
4 the DSCC reports indicate that it does not have separate  
5 Federal and nonfederal accounts.<sup>1/</sup> Salaries or compensation  
6 to shared DCCC-DSCC employees with respect to their work for  
7 the DSCC is thus not allocable between Federal and nonfederal  
8 accounts. Payments by the DCCC should be made solely from  
9 its Federal account. Otherwise, they would circumvent the  
10 regulatory requirement that the funding of a political  
11 committee engaged in Federal activity should be from sources  
12 permissible under the Act, unless the committee sets up a  
13 separate account for the receipt of non-permissible funds and  
14 uses them solely for nonfederal purposes. See 11 CFR  
15 102.5(a)(1) and (2). DCCC may continue use of the allocation  
16 procedure (described above) with respect to the shared  
17 employees, only if the DSCC establishes separate Federal and  
18 nonfederal accounts.

19 The DCCC's proposed method of reporting, whether as to  
20 reimbursements from the DSCC or refunds from vendors, does  
21 not reflect fully the chain of financial activity that  
22 occurs. The Commission will use some of your examples of  
23 payments and reimbursements, as reflected in sample report  
24 pages you have provided with your request letter, in  
25 illustrating the proper method.

26 On the Detailed Summary Page, your initial payments to  
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29 <sup>1/</sup> The DSCC has apparently established a building fund  
30 account, but that does not appear to be at issue in your  
request. See 11 CFR 104.8(f) and 104.9(d).

3 shared employees or to vendors will be included under  
4 "Operating Expenditures" in the totals for the "Federal  
5 Share" and "Non-Federal Share" of "Shared Federal/Non-Federal  
6 Activity" [lines 21a(i) and 21a(ii)]. On Schedule H4  
7 (page 24), you show the disbursement of \$6326.67 to joint  
8 employee, Richard E. Murphy, divided between a Federal share  
9 of \$5694.00 and a nonfederal share of \$632.67. This  
10 reporting is correct, and presumably included on the  
11 aforementioned lines.

12 The reimbursements, however, should be reported  
13 differently. You have reported on Schedule H4 (page 12) a  
14 "payroll reimbursement" from the DSCC, disclosing a negative  
15 expenditure of \$3418.08, divided into a Federal share of  
16 \$3076.27 and a nonfederal share of \$341.81. You also  
17 indicate that reimbursements for the period from the DSCC and  
18 the vendors totaled \$9768.43, divided into a Federal share of  
19 \$8641,60 and a nonfederal share of \$1126.83. The Commission  
20 notes that reimbursements come under the category of  
21 "Refunds, Rebates, etc." and are therefore "Offsets to  
22 Operating Expenditures." They should be reported as  
23 receipts, rather than as negative expenditures.

24 Using the DSCC reimbursement as an example of an  
25 itemizable receipt, the \$3418.08 total should be reported  
26 without the negative sign as a Schedule A receipt.  
27 Correspondingly, the \$9768.43 figure for all allocated  
28 reimbursements should be included on line 15 and line 36,  
29 "Offsets to Operating Expenditures."  
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3 You have asserted that the result of this would be an  
4 understatement of the Net Operating [Federal] Expenditures by  
5 the amount of the nonfederal reimbursement figure. However,  
6 there is a third transaction to report. That transaction is  
7 the transfer of the nonfederal share of the reimbursement  
8 out of the DCCC's allocation account to the nonfederal  
9 account. Although the report forms do not provide a precise  
10 spot for the reporting of this transaction, the Commission  
11 concludes that this transaction should be reported on  
12 Schedule H4. The movement of the DSCC nonfederal  
13 reimbursement funds should be reported as a transfer out to  
14 DCCC's nonfederal account, with a reference to the DSCC  
15 payroll reimbursement under the "Purpose" category. The  
16 total amount would be the \$341.81 nonfederal reimbursement  
17 figure; the Federal share column would also include that  
18 figure and the nonfederal column would be left blank.  
19 Correspondingly, the \$1126.83 figure for the nonfederal  
20 portion of all allocated reimbursements should be added to  
21 the Federal Share line, referred to above, on the Detailed  
22 Summary Page.<sup>2/</sup>

23 This latter figure is included in the amount of "Total  
24 Federal Operating Expenditures," as well as the "Offsets to  
25

26  
27 <sup>2/</sup> Your request refers to vendor "refund[s] to the DCCC for  
28 overpayment or credit." The foregoing approach applies where  
29 there is an actual refund as opposed to a credit applied to  
30 an ongoing account with the vendor. If the latter is the  
case, then the DCCC's proposed approach is an accurate  
representation of the transactions and may be used in its  
reports.



3 Operating Expenditures." Therefore, when computing the "Net  
4 Operating [Federal] Expenditures," including the figure in  
5 both of the former categories would cancel any overstatement  
6 in the latter category.

7 The Commission notes your concern that an alternative  
8 such as RAD's proposal would not correspond to the DCCC's  
9 monthly transfer from the nonfederal account to the  
10 allocation account of "the net of any reimbursements that  
11 have already been put back into the allocation accounts."  
12 The Commission assumes that, according to this brief  
13 description, the DCCC's present practice is as follows: The  
14 DCCC's nonfederal account needs to reimburse the allocation  
15 account in the amount of \$2,000, i.e., the nonfederal share  
16 of a shared expenditure for allocable spending unrelated to  
17 the reimbursements from DSCC or the vendors. The DCCC  
18 receives a \$1,000 refund from a vendor, and the nonfederal  
19 share is \$300. Instead of the allocation account  
20 transferring \$300 to the nonfederal account for the  
21 nonfederal share of the refund, the nonfederal account  
22 subtracts \$300 from the amount it needs to send on to the  
23 allocation account and sends \$1700 instead.

24 The Commission concludes that your combination of  
25 payments not related to the reimbursements from the DSCC or  
26 vendors with those reimbursements at issue in this opinion  
27 does not affect the Commission's conclusion as to the  
28 reporting of the latter situations. Although the DCCC  
29 abbreviates the process and thereby eliminates any actual  
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3 transfer of funds to the nonfederal account, the expenditures  
4 and reimbursements at issue in this opinion still entail  
5 three transactions, i.e., payments out from the DCCC, the  
6 reimbursement of DCCC, and the movement of funds from the  
7 DCCC allocation account to its nonfederal account.<sup>3/</sup>

8 This response constitutes an advisory opinion concerning  
9 application of the Act, or regulations prescribed by the  
10 Commission, to the specific transaction or activity set forth  
11 in your request. See 2 U.S.C. §437f.

12 Sincerely,

13  
14 Danny L. McDonald  
15 Chairman  
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28 <sup>3/</sup> Without further facts, the Commission does not reach a  
29 conclusion as to the permissibility of offsetting the  
30 nonfederal share of the DSCC or vendor reimbursements from  
the amount sent by the nonfederal account to the allocation  
account.