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February 25, 1999

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

AOR1999-05

Dear Mr. Noble:

On behalf of our client, the Democratic Party of New Mexico (the "State Party") we are requesting an advisory opinion, pursuant to 11 C.F.R. § 112.1, regarding the application of FEC regulations with respect to the State Party's ballot composition ratio. Specifically, the State of New Mexico has created a new executive agency called the Public Regulation Commission. This new agency is the result of a reorganization of two former state agencies: the three-member appointed Public Utility Commission and the three-member elected State Corporation Commission. The reorganized Public Regulation Commission ("PRC") currently consists of five elected members, each from a defined geographic district. The unique issue presented by this request is whether the State Party may include 1 or 2 non-federal points on its federal/non-federal ballot composition ratio for PRC elections as "other partisan executive statewide offices" pursuant to 11 C.F.R. § 106.5(d)(1), even though members are elected from defined geographic areas that include only a portion of the state's electorate.

By way of background, in 1996 the voters of New Mexico, by referendum, voted to merge two executive agencies (one appointed and one elected) into one agency. Previously, the three-member appointed Public Utility Commission was responsible for overseeing gas, water and public utility issues. The three-member partisan elected State Corporation Commission was responsible for overseeing insurance, telecommunications, trucking and other transportation issues. The new PRC replaces these two executive agencies and will consist of five partisan-elected members who will represent a defined geographic area of the state to serve four year terms. In 1998, the five original members of the PRC were elected during the November general election.¹ The new PRC members took office on January 1, 1999. The new PRC will regulate the above mentioned issues as well as electricity, telephones, taxis and cable TV on a statewide basis. In order to ensure continuity on the PRC, elections will be staggered and two of the five PRC slots will be up for election during the 2000 general election.

¹ The issue presented by this Advisory Opinion Request was moot during the 1998 election since there were five other statewide executive offices up for election during the 1998 election cycle.

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In previous cycles, the State Party included statewide elections to the former State Corporation Commission in its ballot composition ratio. The State Party intends to support the Democratic nominee for this newly created agency and wishes to include 1 or 2 points for "other statewide executive offices" on its ballot composition formula for the 2000 election cycle in connection with the two PRC slots up for election in the November 2000 general election.²

It is clear from the FEC Explanation and Justification of the FEC's allocation regulations in 1990 that there would be unique circumstances for which a case-by-case application of the ballot composition ratio would be appropriate. See e.g. 55 FR 26058, 26064. The creation of PRC provides such a situation to the Commission. Clearly the PRC cannot be considered a local election, and it is clearly not a legislative office. Therefore, fairness dictates that the State Party should be permitted to allocate 1 or 2 non-federal points for "other partisan state-wide executive offices" in connection with its support for PRC candidates to a partisan-elected executive agency.

Currently, the State Party will not include any non-federal statewide offices in its ballot ratio pending the disposition of this advisory opinion request. However, if the Commission decides to permit the State Party to add these non-federal points to the State Party's ballot composition ratio, we request that the State Party be permitted to adjust its ratio retroactive to January 1, 1999.³

Thank you for your time and attention to this matter.

Sincerely yours,



Joseph E. Sandler
Neil P. Reiff
Special Counsel to the Democratic Party of
New Mexico

² It should be noted that there are no other executive statewide offices up for election during the 2000 election cycle.

³ Retroactive reallocation is appropriate since this request is being made less than sixty days into the new election cycle. Any FEC disposition of this case will presumably occur more than sixty days after the beginning of the cycle.