



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 15, 2001

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-14

Laurence S. Zakson
Reich, Adell, Crost & Cvitan
501 Shatto Place
Suite 100
Los Angeles, CA 90020-1792

Dear Mr. Zakson:

This responds to your letter dated August 29, 2001, on behalf of the Los Angeles County Democratic Central Committee (“the Committee”), concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to the allocation of an employee’s salary and other expenses when the employee engages in fundraising activity.

The Committee is a local party committee authorized by the California Election Code as the official local party organ of the California Democratic Party for Los Angeles County. It filed its statement of organization with the Commission on September 7, 1994, and the statement with amendments indicates that it is a subordinate committee of the State party. *See* 11 CFR 100.14(b).

You state that the Committee has hired a full-time director of communications and development (“the director”) to augment its current staffing, which consists of one part-time administrator/office manager. The director, under the supervision of the Committee’s officers, will be responsible for developing and managing the Committee’s relations with the media and for creating and implementing fundraising programs, including an institutional donor program targeting donors such as corporations and labor organizations, which are ineligible to contribute to Federal campaigns but are eligible to make contributions under California State law. Although the Committee anticipates that the actual duties of the director will vary over time, it estimates that he will expend at

least 75 percent of his time raising funds and the remaining time in connection with media relations.

The Committee proposes to pay the salary and fringe benefits of the director according to the four-part formula described below, which it has derived based on the allocation requirements of 11 CFR 106.5 and allocation methods approved in Advisory Opinions 1992-2 and 1994-37.¹ The Committee will pay the director's salary on a semi-monthly basis from the Committee's Federal account, reimbursing that account from the non-Federal account within the first three business days of the next month. *See* 11 CFR 106.5(g)(2). The Committee proposes to estimate the appropriate allocation of the director's compensation based on the following formula:

(1) percentage of hours worked during the month on non-fundraising matters X (base salary plus payroll taxes) X ballot composition non-Federal percentage = non-Federal portion of compensation for non-fundraising matters

(2) percentage of hours worked during the month on non-fundraising matters X (base salary plus payroll taxes) X ballot composition Federal percentage = Federal portion of compensation for non-fundraising matters

(3) percentage of hours worked during the month on each fundraising matter X (base salary plus payroll taxes) X estimated non-Federal percentage of funds received for each fundraising matter = non-Federal portion of compensation for fundraising matters

(4) percentage of hours worked during the month on each fundraising matter X (base salary plus payroll taxes) X estimated Federal percentage of funds received for each fundraising matter = Federal portion of compensation for fundraising matters

Total compensation = 1 plus 2 plus 3 plus 4

The Committee proposes to have the director complete a timesheet each month (copy attached) and submit it by the last day of the month. This timesheet will reflect the precise projects on which he worked that month. Additional transfers will be made 60

¹ In Advisory Opinion 1992-2, the Commission permitted a national party committee to retroactively re-allocate salaries and benefit amounts of staff members in the fundraising and direct mail divisions, i.e., employees who worked entirely on fundraising, from administrative costs to the direct costs of fundraising events and programs. (This re-allocation was allowed during the period of the first election cycle after the implementation of the revised allocation regulations when the Commission recognized that a brief period of adjustment was necessary for committees acting in good faith.) The requester inquired as to such employees only. Advisory Opinion 1994-37 did not address allocation by a party committee. Instead, it reviewed the allocation of various shared expenses between the Federal and non-Federal campaigns of the same candidate, including direct costs of a fundraising event. The opinion cautioned that the funds received method for fundraising events should not be extended to the other shared costs of the committees.

days after the conclusion of each fundraising program or event to ensure that allocations match the actual results of the fundraising program. *See* 11 CFR 106.5(f)(2).

The Committee proposes to pay for the director's health insurance and cellular telephone monthly expenses from the Federal account and reimburse that account from the non-Federal account, based on the same estimated formula as is used to determine salary allocation. Additional transfers will take place 60 days after the conclusion of each fundraising program or event to ensure that allocations match the actual results of the fundraising program.

Applicable regulations

Commission regulations provide that party committees that make disbursements in connection with Federal and non-Federal elections "shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5," which provides for the establishment of Federal and non-Federal accounts. 11 CFR 106.5(a), 102.5(a).

Party committees that establish separate Federal and non-Federal accounts shall allocate specific categories of expenses between those two accounts according to section 106.5. These categories include: (i) administrative expenses, "including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate"; and (ii) direct costs of fundraising programs or events by one committee to collect funds for both Federal and non-Federal electoral purposes, including "disbursements for solicitation of funds and for planning and administration of actual fundraising events." 11 CFR 106.5(a)(2)(i) and (ii).²

Committees with separate Federal and non-Federal accounts are required to pay the expenses of mixed Federal and non-Federal activities either: (i) entirely from the Federal account with a transfer of funds to the Federal account from a non-Federal account to cover the non-Federal share; or (ii) from a separate allocation account into which funds from the Federal and non-Federal accounts are deposited solely to pay the allocable expenses of mixed activity. 11 CFR 106.5(g)(1)(i) and (ii). Funds from the Federal and non-Federal account will be transferred in amounts proportionate to the Federal and non-Federal share of each allocable expense. With the exception of transfers made pursuant to the adjustment of the fundraising ratio required under 11 CFR 106.5(f)(2) and described below, such transfers must be made no more than 10 days before, and no more than 60 days after, the payments for which they are designated are made. 11 CFR 106.5(g)(2)(ii).

² The other categories are (iii) State and local party activities exempt from the definition of contribution and expenditure under 11 CFR 100.7(b)(9), (15) and (17), and 100.8(b)(10), (16), and (18) where such activities are conducted in conjunction with non-Federal activities; and (iv) expenses for generic voter drives that include outreach to the general public urging actions such as voter registration, voting, or supporting candidates of a particular party (or associated with a particular issue) without mentioning a specific candidate. 11 CFR 106.5(a)(2)(iii) and (iv).

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 disbursements from its non-Federal accounts. *Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting*, 55 Fed. Reg. 26058, 26063 (June 26, 1990). State and local party committees are required to allocate their administrative expenses using the “ballot composition method.” 11 CFR 106.5(d). Under this method, committees determine their ballot composition ratios at the start of the election cycle “based on the ratio of federal offices expected on the ballot to total federal and non-federal offices expected on the ballot in the next general election to be held in the committee’s state or geographic area.” 11 CFR 106.5(d)(1)(i). The regulations list the relevant Federal and State offices and explain how they should be counted for purposes of the ratio. The regulations also provide that local party committee ratios may include “a maximum of two additional non-federal offices if any partisan local candidates are expected on the ballot in any regularly scheduled election during the two-year congressional election cycle,” as well as an additional, generic non-Federal point. 11 CFR 106.5(d)(1)(ii).

Fundraising costs, however, must be allocated on a different basis, i.e., on the basis of the particular event or program. A party committee allocates the direct costs of each fundraising event or program if 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. The committee must 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. 11 CFR 106.5(f)(1).

Each program or event has its own ratio. Prior to each program or event, the committee estimates this ratio based on its reasonable prediction of its Federal and non-Federal revenue for the program or event, and any fundraising disbursements made prior to the actual program or event will reflect this ratio. 11 CFR 106.5(f)(1). The committee adjusts its ratio no later than 60 days following each such program or event to reflect the actual ratio of funds received. If the non-Federal account has paid more than its share, the committee must transfer funds from its Federal to its non-Federal account, as necessary, to reflect the adjusted ratio. If the Federal account has paid more than its share, the committee may transfer funds from its non-Federal to its Federal account to reflect the adjusted ratio, and such a permitted transfer must occur within 60 days of the program or event. 11 CFR 106.5(f)(2).³ The regulations explain that, in the case of a telemarketing or direct mail campaign, the “date” for the program is the last day of the telemarketing campaign, or the date on which the final direct mail solicitations are made. 11 CFR 106.5(f)(2).

³ The first ratio must be noted in the committee’s report for the period in which the first disbursement is made for the program or event. The committee must make note of any adjustment in the ratio and the transfers in its report for any period in which the transfer was made, and report the date of the program or event that serves as the basis for the transfer. 11 CFR 106.5(f)(1) and (2).

Analysis

The category of “salaries” is a specifically listed example of an administrative expense. 11 CFR 106.5(a)(2)(i). As such, the salary of a party employee would normally be allocated pursuant to the ballot composition formula. Nevertheless, in defining the direct costs of fundraising in the context of the allocation regulations, the Commission includes planning and administration of actual fundraising events. *See* 11 CFR 106.5(a)(2)(ii). The compensation by the Committee for the time that the director spends on discrete mixed (i.e., Federal/non-Federal) fundraising events or programs could be included in the expenses for the planning and administration of events and thus would be a direct cost of fundraising. This compensation would include both the salary and health insurance premiums attributable to that time. The cellular phone expenses incurred by the director that relate to a discrete mixed fundraising event or program may also be included as an allocable direct fundraising cost. Under the circumstances presented, the Committee may take the percentage of the monthly hours that will be apportioned for salary and health premiums to a discrete mixed fundraising event or program and apply it to the monthly cell phone charges to determine the phone expenses for that program or event. The Committee should then apply the Federal/non-Federal ratio of the program or event to the phone expenses for the program or event (including the adjusted ratio when that is appropriate).⁴ (Any phone charges that are not attributable to the activities of the Committee should be omitted from any cost or allocation determination.)

Any expenses for the director’s time (salary and insurance premiums) and cellular phone usage that defray costs of events or programs to raise funds for the Federal accounts only would not be allocable under the circumstances you present, but would have to be paid only from a Federal account. *See* Advisory Opinion 1992-2. Any expenses for the director’s time and cellular phone usage that defray costs of programs or events to raise funds for non-Federal accounts only may be paid entirely from non-Federal accounts. Any expenses for the director’s time or cellular phone usage that pertain to the subject of fundraising, but do not relate to any discrete program or event, should be allocated as administrative expenses under the ballot composition formula.⁵ *See* Advisory Opinion 1992-2. The costs of the remaining activities of the director, which are media relations activities, should be allocated as administrative expenses under the ballot composition formula.

The proposed formula for determining the estimated allocation of the director’s salary, health insurance premiums, and phone expenses appears to be appropriate, subject

⁴ The permission granted in this opinion does not extend beyond the Committee’s costs specified in the opinion. An apportionable part of the employee’s salary and fringe benefits and cell phone costs are allocable as direct fundraising costs under these circumstances because they would be a direct reflection of time used for the planning and administration of a specific event or program (as well as for solicitations for the event or program). *See* 11 CFR 106.5(a)(2)(ii). It is unlikely that other administrative costs listed in 11 CFR 106.5(a)(2)(i) would be treatable as allocable direct fundraising costs, unless specific circumstances could establish a similar direct relationship to the costs of a fundraising event or program.

⁵ This would be the case unless the circumstances indicate that the expense would be more properly allocable as an exempt activities cost or a generic voter drive cost, or as an expenditure or disbursement on behalf of one or more Federal or non-Federal candidates. *See* 11 CFR 106.5(a)(2)(iii) and (iv), and 106.1(a).

to the conditions just described above. The Commission assumes that the formula would be applied as described in the following example. (For ease of illustration, this example may be simpler than the wide variety of expenses for activities, programs, or events of the Committee and the related time and costs for them.) The example will use amounts for only salary plus payroll taxes (without health insurance and cellular phone amounts). Assume that the total is \$6,000 per month, that he worked 150 hours in the month, and that he spent 60 hours on a fundraising event (“the event”), 60 hours on a fundraising program (“the program”), and 30 hours on media relations. The Commission will also assume a prediction that 20 percent of the event’s receipts will be for the Federal account and 80 percent for the non-Federal account; a prediction that the Federal and non-Federal account would each receive 50 percent of the proceeds for the program; and that the ballot composition formula resulted in a one-third Federal and two-thirds non-Federal split.⁶

- (1) *For media expenses payable from the non-Federal account* - the formula would be .2 or 20% (representing the ratio of 30 hours/150 hours) X \$6,000 X two-thirds which equals \$800.
- (2) *For media expenses payable from the Federal account* - the formula would be .2 (or 20%) X \$6,000 X one-third which equals \$400.
- (3) *For the event expenses payable from the non-Federal account* – the formula would be .4 (or 40%) X \$6,000 X .8 (or 80%) which equals \$1,920.
For the program expenses payable from the non-Federal account – the formula would be .4 (or 40%) X \$6,000 X .5 (or 50%) which equals \$1,200.
Thus, total non-Federal account fundraising expenses equal \$3,120.
- (4) *For the event expenses payable from the Federal account* – the formula would be .4 (or 40%) X \$6,000 X .2 (or 20%) which equals \$480.
For the program expenses payable from the Federal account – the formula would be .4 (or 40%) X \$6,000 X .5 (or 50 %) which equals \$1200.
Thus, total Federal account fundraising expenses would be \$1,680.

Total compensation = \$800 + \$400 + \$3,120 + \$1,680 = \$6,000

The above example illustrates how the method proposed would lawfully reflect the application of the administrative and fundraising allocation determinations set out in 11 CFR 106.5, including the estimated ratios prior to fundraising events and programs. Consistent with 11 CFR 106.5(f)(2), the Committee’s proposal also provides for an adjustment of the ratio and the appropriate transfer of funds within 60 days of the close of

⁶ Schedule H1 of the Committee’s 2001 mid-year report discloses a ballot composition split in the 2001-2002 cycle of 11 percent Federal and 89 percent non-Federal (one Federal point and eight non-Federal points). The H1 schedules on the reports filed for the 1999-2000 cycle indicate a ballot composition split of 37.5 percent Federal and 62.5 percent non-Federal (three Federal points and five non-Federal points).

the event.⁷ The Committee should also report in the manner prescribed in that regulation. See footnote 3. In addition, the Commission notes that the proposed time sequences for Committee transfers from the non-Federal to the Federal account would comply with 11 CFR 106.5(g)(2).⁸

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

Sincerely,

(signed)

Danny L. McDonald
Chairman

Enclosures (AOs 1994-37 and 1992-2)

⁷ The Commission notes that, consistent with the prescriptions in 11 CFR 106.5(f)(2), the Committee's fundraising programs, such as phone or mail programs, must have beginning and ending dates, rather than open-ended, ongoing durations.

⁸ You state that, prior to the Commission's issuance of an advisory opinion, the Committee will assign the director exclusively to fundraising duties and will attribute his salary, health insurance premiums, and cellular telephone bill to various fundraising projects using the funds received method described in 11 CFR 106.5(f). The Commission cautions that such expenses must reflect time spent on discrete programs or events and that time spent on matters not attributable to a specific program or event should be allocated as administrative costs. *See* Advisory Opinion 1992-2. (See also footnote 5.)

PAYROLL ALLOCATION WORKSHEET

As a salaried employee, you are not compensated on an hourly basis. This record is maintained by your employer for the purpose of allocating your salary and fringe benefit payments in compliance with federal law. Because this document will become the basis of federal and state political report filings required by law and filed under penalty of perjury, accuracy of these records is imperative. Use additional pages if necessary

Month _____ Year _____

Total hours worked _____ Page ___ of ___ pages

Activity (Fundraising/Admin.)	Unique Identifier (if fundraising)	Total hours worked on this activity

Whenever the activity involves fundraising, there must be a unique identifier code entered in the second column. DO NOT combine two or more fundraising activities in a single entry.

Employee Signature