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FEDERAL ELECTION COMMISSION
Washington, DC 20463

OCT 4 3 25 PM '01

October 4, 2001

AGENDA ITEM

For Meeting of: 10-11-01

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

N. Bradley Litchfield *NBL*
Associate General Counsel

Jonathan M. Levin *JL*
Senior Attorney

Subject: Draft AO 2001-14

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 11, 2001.

Attachment

1 **ADVISORY OPINION 2001-14**

2
3 **Laurence S. Zakson**
4 **Reich, Adell, Crost & Cvitan**
5 **501 Shatto Place**
6 **Suite 100**
7 **Los Angeles, CA 90020-1792**

DRAFT

8
9 **Dear Mr. Zakson:**

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

15 **The Committee is a local party committee authorized by the California Election**
16 **Code as the official local party organ of the California Democratic Party for Los Angeles**
17 **County. It filed its statement of organization with the Commission on September 7,**
18 **1994, and the statement with amendments indicates that it is a subordinate committee of**
19 **the State party. See 11 CFR 100.14(b).**

20 **You state that the Committee has hired a full-time director of communications**
21 **and development (“the director”) to augment its current staffing, which consists of one**
22 **part-time administrator/office manager. The director, under the supervision of the**
23 **Committee’s officers, will be responsible for developing and managing the committee’s**
24 **relations with the media and for creating and implementing fundraising programs,**
25 **including an institutional donor program targeting donors such as corporations and labor**
26 **organizations, which are ineligible to contribute to Federal campaigns but are eligible to**
27 **make contributions under California State law. Although the Committee anticipates that**
28 **the actual duties of the director will vary over time, it estimates that he will expend at**
29 **least 75 percent of his time raising funds and the remaining time in connection with**
30 **media relations.**

31 **The Committee proposes to pay the salary and fringe benefits of the director**
32 **according to the four-part formula described below, which it has derived based on the**
33 **allocation requirements of 11 CFR 106.5 and allocation methods approved in Advisory**

1 Opinions 1992-2 and 1994-37.¹ The Committee will pay the director's salary on a semi-
2 monthly basis from the committee's Federal account, reimbursing that account from the
3 non-Federal account within the first three business days of the next month. *See* 11 CFR
4 106.5(g)(2). The Committee proposes to estimate the appropriate allocation of the
5 director's compensation based on the following formula:

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

10
11 (2) percentage of hours worked during the month on non-fundraising
12 matters X (base salary plus payroll taxes) X ballot composition Federal
13 percentage = Federal portion of compensation for non-fundraising matters

14
15 (3) percentage of hours worked during the month on each fundraising
16 matter X (base salary plus payroll taxes) X estimated non-Federal
17 percentage of funds received for each fundraising matter = non-Federal
18 portion of compensation for fundraising matters

19
20 (4) percentage of hours worked during the month on each fundraising
21 matter X (base salary plus payroll taxes) X estimated Federal percentage
22 of funds received for each fundraising matter = Federal portion of
23 compensation for fundraising matters

24
25 Total compensation = 1 plus 2 plus 3 plus 4

26
27 The Committee proposes to have the director complete a timesheet each month
28 (copy attached) and submit it by the last day of the month. This timesheet will reflect the
29 precise projects on which he worked that month. Additional transfers will be made 60
30 days after the conclusion of each fundraising program or event to ensure that allocations
31 match the actual results of the fundraising program. *See* 11 CFR 106.5(f)(2).

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.

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

7 *Applicable regulations*

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

13 Party committees that establish separate Federal and non-Federal accounts shall
14 allocate specific categories of expenses between those two accounts according to section
15 106.5. These categories include: (i) administrative expenses, "including rent, utilities,
16 office supplies, and salaries, except for such expenses directly attributable to a clearly
17 identified" candidate; and (ii) direct costs of fundraising programs or events by one
18 committee to collect funds for both Federal and non-Federal electoral purposes,
19 including "disbursements for solicitation of funds and for planning and administration of
20 actual fundraising events." 11 CFR 106.5(a)(2)(i) and (ii).²

21 Committees with separate Federal and non-Federal accounts are required to pay
22 the expenses of mixed Federal and non-Federal activities either: (i) entirely from the
23 Federal account with a transfer of funds to the Federal account from a non-Federal
24 account to cover the non-Federal share; or (ii) from a separate allocation account into
25 which funds from the Federal and non-Federal accounts are deposited solely to pay the
26 allocable expenses of mixed activity. 11 CFR 106.5(g)(1)(i) and (ii). Funds from the

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).

1 Federal and non-Federal account will be transferred in amounts proportionate to the
2 Federal and non-Federal share of each allocable expense. With the exception of transfers
3 made pursuant to the adjustment of the fundraising ratio required under 11 CFR
4 106.5(f)(2) and described below, such transfers must be made no more than 10 days
5 before, and no more than 60 days after, the payments for which they are designated are
6 made. 11 CFR 106.5(g)(2)(ii).

7 All administrative expenses must be allocated between Federal and non-Federal
8 accounts, if incurred by a committee that makes disbursements in connection with both
9 Federal and non-Federal elections and that chooses to pay any portion of such
10 disbursements from its non-Federal accounts. *Methods of Allocation Between Federal
11 and Non-Federal Accounts; Payments; Reporting*, 55 Fed. Reg. 26058, 26063 (June 26,
12 1990). State and local party committees are required to allocate their administrative
13 expenses using the "ballot composition method." 11 CFR 106.5(d). Under this method,
14 committees determine their ballot composition ratios at the start of the election cycle
15 "based on the ratio of federal offices expected on the ballot to total federal and non-
16 federal offices expected on the ballot in the next general election to be held in the
17 committee's state or geographic area." 11 CFR 106.5(d)(1)(i). The regulations list the
18 relevant Federal and State offices and explain how they should be counted for purposes
19 of the ratio. The regulations also provide that local party committee ratios may include
20 "a maximum of two additional non-federal offices if any partisan local candidates are
21 expected on the ballot in any regularly scheduled election during the two-year
22 congressional election cycle," as well as an additional, generic non-Federal point. 11
23 CFR 106.5(d)(1)(ii).

24 Fundraising costs, however, must be allocated on a different basis, i.e., on the
25 basis of the particular event or program. A party committee allocates the direct costs of
26 each fundraising event or program if both Federal and non-Federal funds are collected by
27 that one committee through such program or event. (This is not to be confused with joint
28 fundraising events conducted by more than one committee.) 11 CFR 106.5(f); 55 Fed.
29 Reg. at 26065. The committee must allocate its fundraising costs based on the ratio of
30 funds received into its Federal account to its total receipts from each fundraising program
31 or event. 11 CFR 106.5(f)(1).

1 Each program or event has its own ratio. Prior to each program or event, the
2 committee estimates this ratio based on its reasonable prediction of its Federal and non-
3 Federal revenue for the program or event, and any fundraising disbursements made prior
4 to the actual program or event will reflect this ratio. 11 CFR 106.5(f)(1). The committee
5 adjusts its ratio no later than 60 days following each such program or event to reflect the
6 actual ratio of funds received. If the non-Federal account has paid more than its share,
7 the committee must transfer funds from its Federal to its non-Federal account, as
8 necessary, to reflect the adjusted ratio. If the Federal account has paid more than its
9 share, the committee may transfer funds from its non-Federal to its Federal account to
10 reflect the adjusted ratio, and such a permitted transfer must occur within 60 days of the
11 program or event. 11 CFR 106.5(f)(2).³ The regulations explain that, in the case of a
12 telemarketing or direct mail campaign, the "date" for the program is the last day of the
13 telemarketing campaign, or the date on which the final direct mail solicitations are made.
14 11 CFR 106.5(f)(2).

15 *Analysis*

16 The category of "salaries" is a specifically listed example of an administrative
17 expense. 11 CFR 106.5(a)(2)(i). As such, the salary of a party employee would normally
18 be allocated pursuant to the ballot composition formula. Nevertheless, in defining the
19 direct costs of fundraising in the context of the allocation regulations, the Commission
20 includes planning and administration of actual fundraising events. *See* 11 CFR
21 106.5(a)(2)(ii). The compensation by the Committee for the time that the director spends
22 on discrete mixed (i.e., Federal/non-Federal) fundraising events or programs could be
23 included in the expenses for the planning and administration of events and thus would be
24 a direct cost of fundraising. This compensation would include both the salary and health
25 insurance premiums attributable to that time. The cellular phone expenses incurred by
26 the director that relate to a discrete mixed fundraising event or program may also be
27 included as an allocable direct fundraising cost. Under the circumstances presented, the
28 Committee may take the percentage of the monthly hours that will be apportioned for

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).

1 salary and health premiums to a discrete mixed fundraising event or program and apply it
2 to the monthly cell phone charges to determine the phone expenses for that program or
3 event. The Committee should then apply the Federal/non-Federal ratio of the program or
4 event to the phone expenses for the program or event (including the adjusted ratio when
5 that is appropriate).⁴ (Any phone charges that are not attributable to the activities of the
6 Committee should be omitted from any cost or allocation determination.)

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

19 The proposed formula for determining the estimated allocation of the director's
20 salary, health insurance premiums, and phone expenses appears to be appropriate, subject
21 to the conditions just described above. The Commission assumes that the formula would
22 be applied as described in the following example. (For ease of illustration, this example
23 may be simpler than the wide variety of expenses for activities, programs, or events of
24 the Committee and the related time and costs for them.) The example will use amounts

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).

1 for only salary plus payroll taxes (without health insurance and cellular phone amounts).
2 Assume that the total is \$6,000 per month, that he worked 150 hours in the month, and
3 that he spent 60 hours on a fundraising event ("the event"), 60 hours on a fundraising
4 program ("the program"), and 30 hours on media relations. The Commission will also
5 assume a prediction that 20 percent of the event's receipts will be for the Federal account
6 and 80 percent for the non-Federal account; a prediction that the Federal and non-Federal
7 account would each receive 50 percent of the proceeds for the program; and that the
8 ballot composition formula resulted in a one-third Federal and two-thirds non-Federal
9 split.⁶

10 (1) *For media expenses payable from the non-Federal account* - the formula would
11 be .2 or 20% (representing the ratio of 30 hours/150 hours) X \$6,000 X
12 two-thirds which equals \$800.

13
14 (2) *For media expenses payable from the Federal account* - the formula would be .2
15 (or 20 %) X \$6,000 X one-third which equals \$400.

16
17 (3) *For the event expenses payable from the non-Federal account* - the formula
18 would be .4 (or 40%) X \$6,000 X .8 (or 80%) which equals \$1,920.
19 *For the program expenses payable from the non-Federal account* - the formula
20 would be .4(or 40%) X \$6,000 X .5(or 50%) which equals \$1,200.
21 Thus, total non-Federal account fundraising expenses total equal \$3,120.

22
23 (4) *For the event expenses payable from the Federal account* - the formula would be
24 .4(40%) X \$6,000 X .2 (or 20%) which equals \$480.
25 *For the program expenses payable from the Federal account* - the formula would
26 be .4(or 40%) X \$6,000 X .5 (or 50 %) which equals \$1200.
27 Thus, total Federal account fundraising expenses total would be \$1,680.

28
29 Total compensation = \$800 + \$400 + \$3,120 + \$1,680 = \$6,000

30 The above example illustrates how the method proposed would lawfully reflect
31 the application of the administrative and fundraising allocation determinations set out in
32 11 CFR 106.5, including the estimated ratios prior to fundraising events and programs.
33 Consistent with 11 CFR 106.5(f)(2), the Committee's proposal also provides for an
34 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 ten percent Federal and 90 percent non-Federal (one Federal point and nine 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).

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

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

8 Sincerely,

9

10 Danny L. McDonald
11 Chairman

12

13 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