



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

**TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE**

FROM: ACTING COMMISSION SECRETARY AND CLERK

DATE: SEPTEMBER 22, 2010

SUBJECT: COMMENTS AO 2010-18 (DFL)

Handwritten initials in a circle, likely representing the Acting Commission Secretary and Clerk.

Transmitted herewith is a timely submitted comments from Mark E. Elias and Jonathan S. Berkon Counsel for Minnesota DFL regarding the above-captioned matter.

Proposed Advisory Opinion 2010-18 is on the agenda for Thursday, September 23, 2010.

Attachment



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September 22, 2010

BY HAND DELIVERY

Shawn Woodhead Werth
Commission Secretary
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Re: Advisory Opinion Request 2010-18

Dear Ms. Werth:

We are writing on behalf of the Minnesota Democratic-Farmer-Labor Party (the "DFL") in response to the two alternative drafts of Advisory Opinion 2010-18 circulated on September 17, 2010. The Commission should adopt Draft B, which is consistent with the Commission's regulations and recent advisory opinions. The Commission should reject Draft A, which misinterprets section 300.30(b)(3)(v) to prohibit transfers between a State party's Federal recount account and its other Federal accounts.

The regulations and Commission's advisory opinions mandate that recount activities be paid for with Federal funds from a Federal account. See Advisory Opinion 2006-24 (DSCC/NRSC) ("[A] recount fund established by the State Party to conduct recount activities in support of the party's Federal candidates must be a Federal account containing only Federal funds."). In full compliance with these rules, the DFL raised \$2,165,451.53 of Federal funds into a Federal recount account to pay for the recount and election contest involving Senator Franken and then-Senator Norm Coleman. These receipts and disbursements were reported on the DFL's FEC reports.

The DFL now proposes to transfer some or all of the \$11,583.61 remaining in its Federal recount account to its other Federal account(s). The funds that the DFL seeks to transfer are "Federal funds," because they "comply with the limitations, prohibitions, and reporting requirements of the Act." 11 C.F.R. § 300.2(g). See also Advisory Opinion 2010-14 (DSCC) (committees must "pay for all of their recount activities using entirely Federal funds."). The DFL's recount account

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is a "Federal account," because it "contains funds to be used in connection with a Federal election." 11 C.F.R. § 300.2(f). *See also* Advisory Opinion 2006-24 (concluding that funds spent on a recount are "in connection with" Federal elections.').

Because the DFL seeks to transfer Federal funds from one Federal account to another Federal account, the proposed transaction is not barred by section 300.30(b)(3)(v). That section prohibits the transfer of *non-Federal* funds into the Federal account of a State party to pay for Federal Election Activity. *See* Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 F.R. 49064, 49093-94 (July 29, 2002) (emphasis added) ("Paragraph (b)(3)(v) prohibits transfers into a party committee's Federal account from *other accounts* of the same party committee or from other party committees or party organizations to pay for Federal election activity, except as permitted by 11 CFR 300.30(b)(3)(iv), 300.33, and 300.34."). It does not prohibit a State party from transferring Federal funds among its Federal accounts. *c.f.* 11 C.F.R. § 102.5(a)(1)(i) (emphasis added) ("No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity *in connection with non-Federal elections ...*").

Under Draft A's reasoning, it would actually be illegal for a State party to accept a transfer of Federal funds into its Federal account from the Federal account of any other party committee. Section 300.30(b)(3)(v) states that "[n]o transfers may be made to a Federal account from *any other account(s)* maintained by a State, district, or local party committee or organization *from any other party organization or committee at any level* for the purpose of financing activity in connection with Federal elections, except as provided by paragraph (b)(3)(iv) of this section or 11 CFR 300.33 and 300.34." *Id.* (emphasis added). If, as Draft A claims, the term "any other account(s)" included Federal accounts, it would mean that a State party could not accept a transfer of Federal funds into its Federal account from the Federal account of another national or State party committee. Such an interpretation is irreconcilable with section 102.6(a)(1)(ii), which establishes (with some exceptions that are inapplicable here), that "party committees of the same political party may transfer Federal funds among themselves without limit on amount." 67 F.R. at 49100.

Section 300.30(b)(3)(v) poses no bar to the proposed transaction. Because Draft A does not offer any other legal objections to the transfer, the Commission should adopt Draft B. *See* Draft B, Advisory Opinion 2010-18 (there "are no legal or policy justifications for prohibiting the DFL from transferring funds remaining in its recount fund to its general Federal account to be used in connection with Federal elections."). The DFL has promised to take all necessary steps to ensure that the transfer will not allow any person to exceed its contribution limits for the calendar year. If the transfer causes any contributor to exceed its 2010 limits, the offending funds will remain in the recount account. As Draft B correctly notes, "there is no danger that the Act's contribution limits or source prohibitions will be circumvented by DFL's proposed course of action." *Id.* Furthermore, the DFL's proposal is "consistent with the Commission's regulations permitting unlimited transfers between affiliated entities." *Id.*, n. 8.

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For these reasons, the Commission should adopt Draft B.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marc E. Elias", written over the closing "Very truly yours,".

Marc E. Elias
Jonathan S. Berkon
Counsel for Minnesota DFL