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FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

<u>RAD Referral</u>
97L-26
97L-27
97L-28
97L-29

DATE ACTIVATED: February 12, 1998

SOURCE: INTERNALLY GENERATED

RESPONDENTS:

Texas Democratic Party
and Jorge A. Ramirez, as treasurer
Bexar County Democratic Party
and John J. Murnin, as treasurer
Dallas County Democratic Party
and David A. Parnell, as treasurer
Galveston County Democratic Party
and Mary Ellen Brennan, as treasurer
Harris County Democratic Party
and David Mincberg, as treasurer
Jefferson County Democratic Party
and Gilbert T. Adams Jr., as treasurer
Travis County Democratic Party
and Mina Clark, as treasurer
21st Century Political Action Committee
and Art Brender, as treasurer
Association of Trial Lawyers of America
Political Action Committee and
Dan Cohen, as treasurer
American Federation of State, County & Municipal
Employees-PEOPLE and William Lucy, as treasurer
American Federation of State, County & Municipal
Employees

RELEVANT STATUTES AND REGULATIONS:	2 U.S.C. § 441a(a)(2)(A) 2 U.S.C. § 441a(a)(2)(C) 2 U.S.C. § 441a(f) 2 U.S.C. § 441b(a) 11 C.F.R. § 102.5(a)(1)(i) 11 C.F.R. § 106.5(g)(1)(i) 11 C.F.R. § 110.2(b) 11 C.F.R. § 110.3(b)(3)
INTERNAL REPORTS CHECKED:	Referral Materials Disclosure Reports
FEDERAL AGENCIES CHECKED:	None
STAFF ASSIGNED:	Thomas J. Andersen

I. GENERATION OF MATTER

The Office of General Counsel received three referrals from the Reports Analysis Division ("RAD") on October 30, 1997, and one referral on November 13, 1997.[1] The basis of Referral 97L-26 is apparently excessive contributions of $35,000 made by the Association of Trial Lawyers of America Political Action Committee ("ATLA-PAC") to the Texas Democratic Party and Jorge A. Ramirez, as treasurer ("State Committee"), and seven subordinate county party committees during the 1995-96 election cycle.[2]

Referral 97L-27 addresses apparently improper reimbursements totaling $15,995 made by the American Federation of State, County & Municipal Employees-Public Employees Organized to Promote Legislative Equality ("AFSCME-PEOPLE") to its connected organization, the American Federation of State, County & Municipal Employees ("AFSCME"), for in-kind

1 These four matters are being handled together in light of the common issues and respondents.

2 All contribution amounts have been rounded to the nearest dollar.

contributions to federal candidates in 1996. AFSCME-PEOPLE has also been referred for making apparently excessive contributions to federal candidates and political committees totaling $30,000 during 1996.

The basis of Referral 97L-28 is the receipt of $109,666 in apparently excessive contributions from various political committees in 1996 by the State Committee; the Bexar County Democratic Party and John J. Murnin, as treasurer ("Bexar Committee"); the Dallas County Democratic Party and David A. Parnell, as treasurer ("Dallas Committee"); the Galveston County Democratic Party and Mary Ellen Brennan, as treasurer ("Galveston Committee"); the Harris County Democratic Party and David Mincberg, as treasurer ("Harris Committee"); the Jefferson County Democratic Party and Gilbert T. Adams Jr., as treasurer (Jefferson Committee"); the Travis County Democratic Party and Mina Clark, as treasurer ("Travis Committee"); and the 21st Century Political Action Committee (the name of record for the Tarrant County Democratic Committee-Federal Account) and Art Brender, as treasurer ("Tarrant Committee").

The basis of Referral 97L-29 is the apparent receipt by the Harris Committee in 1996 of a total of $49,451 in impermissible transfers-in from its non-federal account for 100% non-federal activity.

II. FACTUAL AND LEGAL ANALYSIS

A. Applicable Law

The Federal Election Campaign Act of 1971, as amended (the "Act"), provides that no person or multicandidate political committee shall make contributions to a state or local party committee's federal account in any calendar year which in the aggregate exceed $5,000, and

prohibits the state or local committee from knowingly accepting such contributions. 2 U.S.C. § 441a(a) and (f); 11 C.F.R. §§ 110.1(d)(1), 110.2(d)(1) and 110.9(a). The Act also prohibits multicandidate committees from making contributions in excess of $5,000 to any candidate and his or her authorized political committee with respect to any election for federal office. 2 U.S.C. § 441a(a)(2)(A). *See also* 11 C.F.R. § 110.2(b)(1).

Section 441a(a)(5) of the Act provides that all contributions made by political committees "established or financed or maintained or controlled by any . . . person, including any parent, subsidiary, branch, division . . . or local unit of such . . . person, or by any group of such persons, shall be considered to have been made by a single committee." The Commission's regulations characterize such committees as "affiliated committees." *See* 11 C.F.R. §§ 100.5(g), 102.2(b)(1) and 110.3. Recognizing the general applicability of the language of Section 441a(a)(5) to political party committees, Congress carved out a specific exception in section 441a(a)(5)(B), which gives separate contribution limitations to "a single political committee established or financed or maintained or controlled by a national committee of a political party and [to] a single political committee established or financed or maintained or controlled by the State committee of a political party . . . ." *See also* 11 C.F.R. § 110.3(b)(1)(i)-(ii).

The Act, however, provides no specific exemption from contribution limitations for political committees of political parties at the county or other subordinate level of a party organization within a state.[3] Accordingly, the Commission has set forth the following

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3 A subordinate committee is "any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the direction or control of the State committee." 11 C.F.R. § 100.14(b).

presumption: "All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee." 11 C.F.R. § 110.3(b)(3). This regulation, when read together with 11 C.F.R. §§ 110.1(d)(1), 110.2(d)(1) and 110.3(a)(1), also means that a state party committee and its local affiliates together may receive a maximum of $5,000 per year from any one person or multicandidate committee. *See Campaign Guide for Political Party Committees* at 9 (1996). The regulations go on to state, however, that the presumption of affiliation (and thus a single contribution limit) shall not apply if the "political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit," *and* the "political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit." 11 C.F.R. § 110.3(b)(3)(i)-(ii).

In Advisory Opinion ("AO") 1978-9, the Commission analyzed the relationship of county party committees in Iowa to the Iowa Republican State Central Committee through the use of the two factors listed in Section 110.3(b)(3), and concluded that they were not affiliated. The Commission observed that many of the county committees sent funds to the state committee, but that these funds were not deposited in the state committee's federal account. In addition, the county committees received funds from the state committee only in the form of monies raised through joint fundraising. The Commission noted that the transfer of funds raised through joint fundraising is specifically permitted by 2 U.S.C. § 441a(a)(5)(A), and concluded that the

committees had not received funds from each other for the purposes of the regulation. The Commission also stated that the contributions by the county committees to federal candidates were not made in cooperation, consultation or concert with, or at the request or suggestion of, the state committee. Accordingly, the Commission concluded that the presumption at Section 110.3(b)(3) did not apply. Based in addition upon the state committee's representations that the county committees were created pursuant to state statute and not established by the state committee, as well as the general lack of control by the state committee over the county committees, the Commission held that the county committees were separate committees with their own contribution limits.[4]

Pursuant to 2 U.S.C. § 441b(a), it is unlawful for any corporation or labor organization to make a contribution or expenditure in connection with any federal election, or for any political committee to knowingly accept such a contribution. *See also* 11 C.F.R. § 114.2(b). A contribution or expenditure is defined as "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization." 2 U.S.C. § 441b(b)(2). *See also* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. §§ 114.1(a)(1) and 100.7(a)(1). The Act excludes from this definition funds used for the establishment, administration, and solicitation of contributions to a

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4 In subsequent enforcement matters involving state and subordinate party committees that discussed whether the first condition at Section 110.3(b)(3) was satisfied, the Commission has interpreted a party committee's "recei[pt of] funds," *see* Section 110.3(b)(3)(i), as limited to funds deposited into that committee's federal account. *See, e.g.*, Matter Under Review ("MUR") 2938 (deposit of funds received from a county party committee into a state party committee's non-federal account does not prevent the presumption of affiliation from being overcome); MUR 3054 (presumption of affiliation does not apply because, *inter alia*, sole transfers between state party committee and county party committee were from state committee's non-federal account to county committee's non-federal account).

separate segregated fund ("SSF") to be utilized for political purposes by a corporation or labor organization. 2 U.S.C. § 441b(b)(2)(C). *See also* 11 C.F.R. § 114.1(a)(2)(iii). Except for certain activities such as internal communications and nonpartisan activities, *see* 2 U.S.C. § 441b(b)(2)(A) and (B), the Act requires that a corporation or labor organization direct and finance its political activities solely through the use of the voluntary contributions in its SSF, and not through the use of its general treasury funds. *See* AOs 1984-24, 1984-37.

Commission regulations give a connected organization, such as a corporation or labor union, the right to control its SSF, *see* 11 C.F.R. § 114.5(d), but the connected organization may not use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions. 11 C.F.R. § 114.5(b). In AO 1984-24, the Commission determined that the use of an incorporated connected organization's employees and facilities to make in-kind contributions to federal candidates would violate 2 U.S.C. § 441b(a), because each of the payment methods proposed by the SSF would have involved the initial disbursement of corporate treasury funds for the services. The Commission viewed such a disbursement of corporate treasury monies as a loan, advance, or something of value to both the candidates and the corporation's SSF.

Conversely, the Commission has allowed an SSF to purchase consulting services from employees of its incorporated connected organization, which the organization proposed to make available to federal candidates, so long as the purchase did not involve the initial disbursement of funds from the connected organization's treasury. AO 1984-37. In justifying the need to avoid an initial disbursement of corporate treasury funds, the Commission focused on the unique

relationship between the corporation and its SSF. *Cf.* AO 1991-37 (after determining that a political action committee was *not* connected to an incorporated accounting firm, the Commission permitted the firm to provide accounting services to federal candidates and then be reimbursed by the committee, so long as the firm was acting as a "commercial vendor" in compliance with 11 C.F.R. §§ 116.3(b) and 100.7(a)(4)).

In discussing the issue of a transfer of funds from a union's account containing treasury funds to the union's SSF, the court in *FEC v. American Federation of Labor and Congress of Industrial Organizations*, 628 F.2d 97 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 982 (1980), upheld the finding of a violation of 2 U.S.C. § 441b. The court agreed with the district court that the requirement for a political fund to be separate and segregated from treasury funds means that "no part of the monies of a union's segregated political fund should be commingled with regular dues money, *even temporarily* . . . ." *Id.* at 100 (emphasis added). Accordingly, in light of the courts' and the Commission's concerns over the strict segregation between a corporation's or union's treasury funds and its political funds, the Act generally prohibits any initial disbursement of corporate or union treasury monies to pay for services in connection with federal elections.[5]

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5 The Commission's regulations implement certain statutory and constitutionally mandated exceptions to the general prohibition on corporate and union contributions and expenditures in connection with federal elections. *See generally* 11 C.F.R. § 114. In specific instances, these regulations allow for the reimbursement of such contributions and expenditures to the corporation or union. *See, e.g.*, 11 C.F.R. § 114.9(a)(2), 114.9(b)(2), 114.9(c), 114.9(d), and 114.9(e)(2). The Commission has *not*, however, viewed these regulations as supporting or authorizing reimbursement by an SSF to its connected organization for services provided to federal candidates by the organization. *See* AOs 1984-24 and 1984-37. Recent amendments to the facilitation regulations at Section 114.2 "go beyond [AO 1984-37] with regard to the source of the advance payment and the types of services for which advance payment may be made." *See* Explanation and Justification for revised 11 C.F.R. § 114.2, 60 Fed. Reg. 64264 (1995) (effective March 13, 1996, 61 Fed. Reg. 10269). These rules – dealing with, *inter alia*, the directing of corporate or union employees to work on fundraisers on behalf of federal candidates – still provide that the payments for such services must be made *in advance* of when the services are provided: "'In advance' means prior to when . . . the employees perform the work." *Id.*; *see* 11 C.F.R. § 114.2(f)(2)(i)(A).

Contributions which exceed the contribution limitations of the Act on their face, and contributions which do not exceed the Act's limitations on their face but which do exceed those limitations when aggregated with other contributions from the same contributor, may either be deposited into a campaign depository or returned to the contributor. 11 C.F.R. § 103.3(b)(3). If any such contribution from a multicandidate committee is deposited, the treasurer of the recipient committee may request a redesignation of the contribution in accordance with 11 C.F.R. § 110.2(b). *Id.* Under section 110.2(b)(5)(i), such redesignation may be requested if the contribution, either on its face or when aggregated with other contributions from the same multicandidate committee for the same election, exceeds $5,000. If such redesignation is not obtained, the treasurer shall, within sixty (60) days of the treasurer's receipt of the contribution, refund the contribution to the contributor. 11 C.F.R. § 103.3(b)(3). *See also* 11 C.F.R. § 110.2(b)(5)(ii)(B).

A party committee that has established separate federal and non-federal accounts must make all disbursements, contributions, expenditures and transfers in connection with any federal election from its federal account. 11 C.F.R. § 102.5(a)(1)(i). Only funds subject to the limitations and prohibitions of the Act shall be deposited in the separate federal account. *Id.* No transfers may be made to the federal account from any other accounts maintained by the committee for the purpose of financing non-federal election activity, except as provided in 11 C.F.R. § 106.5(g). *Id.*

Pursuant to 11 C.F.R. § 106.5(g)(1)(i), a party committee that has established separate federal and non-federal accounts must pay the entire amount of an allocable expense from its

federal account and shall transfer funds from the non-federal account to the federal account solely to cover the non-federal share of that allocable expense. In addition, such funds cannot be transferred more than 10 days before or more than 60 days after the payment for which they are designated is made. 11 C.F.R. §106.5(g)(2)(ii)(B). If these requirements are not met, any portion of a transfer from a committee's non-federal account to its federal account shall be presumed to be a loan or contribution to the federal account, in violation of the Act. 11 C.F.R. § 106.5(g)(2)(iii). Since transfers from a non-federal account to a federal account may be made solely to cover the non-federal share of an *allocable* expense, transfers to a federal account for the purpose of financing purely non-federal activity are prohibited. *See* MURs 4701 and 4709 (transfer of non-federal funds to a party committee's federal account, which funds are used to pay for 100% non-federal activities, is a violation of 11 C.F.R. § 102.5(a)(1)(i)).

B. RAD Referral 97L-28: Texas State and County Party Committees

1. Factual Background

During 1996, the State Committee, Bexar Committee, Dallas Committee, Galveston Committee, Harris Committee, Jefferson Committee, Tarrant Committee and Travis Committee disclosed a combined total of $109,666 in apparent excessive contributions received from the following political committees in the listed amounts:

Contributor	Amount in excess of $5,000 limit
ATLA-PAC	$35,000
AFSCME-PEOPLE	$25,000
National Education Association Political Action Committee	$15,000
Democratic Republican Independent Voter Education Committee (DRIVE)	$10,000
UAW Voluntary Community Action Program	$10,000
AFL-CIO Committee on Political Education/ Political Contributions Committee	$5,000
Committee on Letter Carriers Political Education	$5,000
Sherman for Congress	$3,000
Machinists Non-Partisan Political League	$1,250
Transportation Political Education League	$230
Lone Star Fund	$186

TOTAL EXCESSIVES: $109,666

The excessive amounts received by each of the recipient party committees are summarized in the following table:

Recipient party committee	Amount received in excess of $5,000 limit
State Committee	$11,480
Bexar Committee	$5,000
Dallas Committee	$15,000
Galveston Committee	$15,000
Harris Committee	$30,000
Jefferson Committee	$18,000
Tarrant Committee	$5,186
Travis Committee	$10,000

TOTAL EXCESSIVES: $109,666

The chart in Attachment 1 provide greater detail regarding which of the political committees made the excessive contributions and the dates when each contribution was received by the party committees, according to Commission indices.

During May and June of 1997, RAD sent Requests for Additional Information ("RFAIs") to the above party committees, informing each of them that, combined with their affiliated committees, they had received excessive contributions from various political committees. The RFAIs recommended that the contribution amounts exceeding $5,000 be transferred out to the committees' non-federal accounts or refunded to the donor committees.

On June 4, 1997, the Commission received a response from the Harris Committee stating that it "and the [State Committee] are not affiliated for purposes of contributions." Attachment 2 at 1. The response claimed that the Harris Committee is autonomous and operates independently of the State Committee, and therefore no refunds were necessary. *Id.* On June 5, 1997, the State Committee responded by letter that, under Texas law and state party rules, "the state party organization has no authority or control over and no responsibility for the financial actions of the county party organizations . . . ." Attachment 2 at 2-4. The State Committee supports this assertion with the following evidence:

- County party executive committees (the controlling and managing bodies of the party at the county level) are established by state law, not by the state party.

- Under state law, county party executive committees are composed of a chairman, who is the presiding officer, and the precinct chairs from each county election precinct. These members are publicly elected, in the primary election, by the voters who choose to vote in a party's primary. Term of office and eligibility to hold these offices are prescribed by state law. Interim vacancies of an executive committee are filled by members of the executive committee.

- The state party executive committee's existence, membership composition and eligibility, term of office, and manner of election are also controlled by state law. Members and officers are elected during the state convention by the delegates to the convention, not selected or approved by the county party executive committees. Interim vacancies on the state committee are filled by the committee itself.

- State party rules may be permanently amended or repealed only by a majority vote of the state convention; temporary rules changes may be passed by the state party executive

committee, subject to the approval of the next convention. County parties are free to establish rules and procedures of their own. County parties do submit a file copy of their rules to the state party, but state party rules do not provide for any oversight or interpretation of county party rules, by-laws or procedures by the state party.

- The state party has no authority under either state law or its own rules to interfere in the financial affairs of the county parties. The county parties establish their own bank accounts, hire and fire their own employees, make their own contracts and incur their own liabilities. No state law or party rule makes the state party organization in any way responsible for county party executive committee actions.

- Under state law, county parties establish and control their own non-federal political committees, which are not affiliated with the state party's non-federal committees.

- County parties are responsible for funding their own operations. No provision of party rules or state law require the county parties to support the state party financially, nor does the state party, by law, rule or practice, provide any general or ongoing support for the county parties.

The State Committee argues that these factors demonstrate that it has no authority or control over the county parties or their federal committees, and that the political committees of the state and county parties are thus not affiliated in any way for purposes of the Act's contribution limits. Attachment 2 at 3-4.

On June 8, 1997, the Commission received a response from the Bexar Committee claiming that it operates as an independent committee. Attachment 2 at 5. On June 11, 1997, the Jefferson Committee responded by letter that it is "not an affiliate of the [State Committee] or any other committee for purposes of contribution limits." *Id.* at 6. On June 18, the Tarrant Committee's response questioned the presumption that it is an affiliated committee. *Id.* at 7-8. On June 23, 1997, the Commission received a response from the Dallas Committee claiming that it is not affiliated with any other federal committee and that, under Texas law, no other political organization has any control or authority over it. *Id.* at 9-10. Second Notices were sent to the party committees that had not yet responded.

In June 1997, Second Notices were sent to the State Committee, Harris Committee, Bexar Committee, Jefferson Committee and Dallas Committee, acknowledging their claims of non-affiliation, but noting that a state party committee and local party committees within that state are presumed to be affiliated. The Notices recommended that the committees submit an Advisory Opinion Request to the Commission, and that the apparent excessive contributions received be transferred out or refunded to the donor committees. The Notices sent to the Harris Committee and to the Bexar Committee added that the Commission was aware that funds were transferred to the State Committee from them in 1996.

In July and August 1997, the Commission received responses to its Second Notices from the Harris Committee, Bexar Committee, Travis Committee, Jefferson Committee, Tarrant Committee and Dallas Committee. Attachment 3 at 1-8. All of the committees reiterated their claims of independence, stating that, under Texas law and state party rules, "the state party has no authority or control over, and no responsibility for the finances or actions of, the county party organizations. Therefore, any presumption of affiliation would be overcome by a demonstration of the actual relationship of the state and county parties." *Id.* On August 1, 1997, the Commission received a response from the Galveston Committee. *Id.* at 9. While not addressing the issue of affiliation, the Galveston Committee stated that it did not believe it had accepted excessive contributions.

Further review by RAD disclosed various exchanges of funds between the Texas Democratic committees in the second half of 1996, reported either as transfers, contributions or in-kind contributions. Based on RAD's review, transfers amounting to $59,725 during this period were reported from the State Committee to six of the county party committees.

Additionally, the county party committees involved in this matter gave at least $87,502 to the State Committee during this period. In Attachment 4, this Office has compiled charts showing such transfers annually since 1993.

RAD Referral 97L-28 further notes that the Travis Committee and the Galveston Committee were designated by the State Committee to make 2 U.S.C. § 441a(d) expenditures on behalf of federal candidates in 1996. The Travis Committee made a total of $8,427 in such expenditures and the amount expended by the Galveston Committee was $2,671.

2. Analysis

The primary issue in this matter is whether the Texas Democratic state and named county committees are affiliated and, hence, subject to a common contribution limit of $5,000 per calendar year. If the committees are in fact affiliated, they appear to have violated the contribution limits of 2 U.S.C. § 441a by accepting a total of $109,666 in excessive contributions from various political committees in 1996. The question of affiliation turns on the relationship between the State Committee and the county committees and on the county committees' relationship to each other. In the General Counsel's opinion, the available information supports the presumption of affiliation among these state party and subordinate party committees contained in the Commission's regulations.

As stated above, the presumption of affiliation is applicable to all political committees established, financed, maintained, or controlled by a state party committee and by subordinate state party committees. *See* 11 C.F.R. § 110.3(b)(3). Stated succinctly, the import of this provision is that "contributions made by a State party committee and by subordinate party

committees are presumed to be made by a single committee."[6] Explanation and Justification for 11 C.F.R. § 110.3(b)(3), 54 Fed. Reg. 34102 (1990). The presumption does not apply if two conditions are met: (1) the political committee of the party unit in question has not received funds from another party unit's political committee; *and* (2) the political committee does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of another party unit or its political committees. *See* 11 C.F.R. § 110.3(b)(3)(i)-(ii).

As previously discussed, in AO 1978-9 the Commission applied these two factors in analyzing the relationship between the Iowa Republican State Central Committee and the Republican county central committees in the state. Although many of the county committees sent funds to the state committee, the Commission nevertheless determined that the first condition was satisfied, observing that these funds were not deposited in the state party's *federal* account. Because the county committees, in accordance with the second condition, did not appear to make their federal contributions in cooperation with or at the request of the state committee, the Commission found that the presumption of affiliation did not apply.

In the present matter, focusing only on monies reported as being deposited into the federal accounts of the State Committee and the Texas Democratic county committees, there appear to have been significant transfers of funds among these committees in 1996. As shown in Attachment 4, during 1996 the State Committee transferred a total of $83,236 to the county

6 As mentioned at p. 5, *supra*, this provision also means that contributions *received* by a State party committee and by subordinate party committees are presumed to be *received* by a single committee.

committees, and the county committees transferred a total of $108,543 to the State Committee.[7]

In earlier enforcement matters, the Commission has made findings of affiliation between state and subordinate party committees where lesser amounts were involved in the intra-party transfers, as well as where the transfers were characterized as quota or dues payments from one committee to another. In MUR 953, the Commission found that the presumption of affiliation applied because a state committee, the Republican Party of Wisconsin, had received transfers of funds totaling $21,226 from 51 county party committees in Wisconsin during one year as a result of sharing agreements between it and the county party committees. Further, the state committee had made transfers to 17 county committees totaling $21,226 in the same year.[8] In MUR 1613, the Commission made a finding of affiliation between the Michigan Republican State Committee and three Republican county party committees, based in part on transfers of funds by the county committees to the state committee's federal account that had been made pursuant to a voluntary quota system.[9] *See also* MUR 3054. In accordance with the Commission's previous findings

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7 In addition to the seven Democratic county committees in Texas named as respondents in RAD Referral 97L-28, four other such Texas county committees are registered as political committees with the Commission: the Potter-Randall County Democratic Club, Nueces County Democratic Party, El Paso Democratic Party, and Hays County Democratic Party Executive Committee. For 1996, Commission reports indicate that the Potter-Randall County Democratic Club transferred $644 to the State Committee and the Nueces County Democratic Party transferred an additional $1,450. See Attachment 4 at 5-6. Accordingly, the total federal monies received by the State Committee from Texas county committees in 1996 appears to be $110,637. This Office makes no recommendations as to these other Democratic county committees at this time.

8 In MUR 953, the Commission made reason to believe findings against the Republican Party of Wisconsin and certain Wisconsin Republican county committees on May 11, 1979, approximately 10 months after it issued AO 1978-9.

9 The amounts of the intra-party transfers in MUR 1613 were unclear, but the purpose of some of the disbursements made by one of the county committees to the state committee were reported as for "party quota" and "state dues." *See* MUR 1613 General Counsel's Report dated March 22, 1984, at 9.

that transfers of funds between the federal accounts of state and county party committees prevent such committees from avoiding the presumption at 11 C.F.R. § 110.3(b)(3), the transfers of federal monies between the Texas Democratic county party committees and the State Committee support a presumption of affiliation.[10]

The responses of the party committees to RAD's inquiries fail to lend support to their claims of independence. The State Committee asserts, as noted above, that state law is responsible for establishing the county party; that state law provides no authority for the State Committee to interfere in the financial affairs of the county parties; that state law does not require the county party committees to support the State Committee financially; and that state law does not provide for any general or ongoing support for the county parties. See Attachment 2 at 2-3.

While Texas law imposes no financial obligation upon the state or county party committees vis-à-vis each other, there appear to be no statutes prohibiting or limiting the State Committee from financing subordinate party committees or otherwise exerting substantial control over them. Texas election law does cover the establishment and composition of the county executive committees, *see, e.g.*, Tex. Elec. Code Ann. § 171.022 (West 1997), but it does not appear to address any aspect of the maintenance, control or financing of subordinate party committees by the respective state party committee, or vice versa.

An attachment to the State Committee's 1987 Statement of Organization includes the following statements: "The County Democratic Party committees of the Texas Democratic Party

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10 The responses of the party committees do not specifically address whether they make their contributions "in cooperation, consultation or concert with, or at the request or suggestion" of each other. *See* 11 C.F.R. § 110.3(b)(3)(ii). This Office intends to flesh out this issue during the investigation.

are neither established, controlled, nor financed by the State Party Committee. They do not receive funds from the State Party Committee, nor does the State Committee control their expenditures." See Attachment 5 at 2. While these claims may have been accurate at the time they were made, it appears that transfers of federal funds between the State Committee and the county committees generally started to occur after the county committees registered as political committees with the Commission (most registered in the early 1990s) and have continued up to the present. As shown in Attachment 4, during the last two election cycles, the State Committee transferred $365,543 in federal funds to the county party committees involved in this matter, and the county committees transferred federal monies to the State Committee in the amount of $108,563.[11] Accordingly, the State Committee and the county committees appear to have been *partially financed by transfers of federal funds to each other.*

In addition, six of the seven county party committees have listed the "Texas Democratic Party" or "Texas Democratic Party-Federal" as an "Affiliated Committee" in their original and/or amended Statements of Organization filed with the Commission. See Attachment 5 at 3-11.[12] None of these county committees has ever filed any subsequent amendments claiming disaffiliation with the State Committee. Moreover, in their responses to the RFAIs in which they claim independent committee status, none of these committees has offered any explanation that

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11 As indicated in the date columns in the charts, some of the transfers appear to have been reported by only one committee. This Office will attempt to clarify such inconsistencies in its investigation. Also, some of the transfers reported during the 1993-94 election cycle included notations that may indicate joint fundraising activity. This Office will further investigate this possibility, since such fundraising efforts are specifically permitted by 2 U.S.C. § 441a(a)(5)(A) without affecting a party committee's independent status. *See* AO 1978-9.

12 The Harris Committee has never provided any information on Line 6 ("Name of Any Connected Organization or Affiliated Committee") in its Statements of Organization filed with the Commission.

might serve to reconcile their current position with the information they provided upon registering as political committees with the Commission.

In consideration of the foregoing, it is the view of the General Counsel that the facts of the instant matter support a finding of affiliation. The large transfers of federal funds among the Texas Democratic state and county party committees prevent them from avoiding the application of the presumption in 11 C.F.R. § 110.3(b)(3), and raise questions as to whether the county committees are to some extent controlled by the State Committee. As affiliated committees, they were limited to receiving $5,000 in 1996 from any person or multicandidate political committee. Accordingly, the State Committee and seven respondent county committees each appear to have violated 2 U.S.C. § 441a(f) by accepting excessive contributions (see table at p. 11).

RAD Referrals 97L-26 and -27, as discussed below, address the roles of ATLA-PAC and AFSCME-PEOPLE in the making of these excessive contributions. (Of the 11 committees listed as contributor committees in the table at p. 11, only ATLA-PAC and AFSCME-PEOPLE met the RAD threshold criteria for referral to this Office).

C. RAD Referral 97L-26: ATLA-PAC

1. Factual Background

ATLA-PAC disclosed contributions to the Tarrant Committee and to the State Committee of $5,000 each during the 1996 October Monthly reporting period, as shown in Attachment 1.[13] During the 1996 12 Day Pre-General reporting period, ATLA-PAC disclosed $5,000 contributions to the Bexar Committee, Dallas Committee, Galveston Committee, Harris

13 To avoid confusion as to the timing of the contributions, the dates listed in Attachment 1 refer only to when the contributions were *received* by the party committees, as disclosed in the party committees' reports filed with the Commission.

Committee, Jefferson Committee and Travis Committee. See Attachment 1. On May 21, 1997, RAD sent RFAIs notifying ATLA-PAC that 2 U.S.C. § 441a(a) precludes a multicandidate political committee from making contributions to another political committee and its affiliates in excess of $5,000 per calendar year. On June 5, 1997, ATLA-PAC responded that, prior to making the contributions, "it was represented to ATLA-PAC that [the Texas Democratic county committees] were independently run, controlled and financed." Attachment 6 at 1. ATLA-PAC stated that it understood that the committees had demonstrated their independence from the State Committee. *Id.*

On June 12, 1997, RAD sent a Second Notice to ATLA-PAC that local party committees within a state and the state party committee are presumed to be affiliated and share one contribution limit as a single political committee. ATLA-PAC was advised that the recipient committees should be notified and refunds requested of the amounts in excess of $5,000. In a response dated June 23, 1997, Attachment 6 at 2, ATLA-PAC provided copies of letters assertedly sent to the local county committees requesting refunds of the contributions.[14] By letter dated July 1, 1997, ATLA-PAC stated that it would disclose any such refunds on the report covering the period in which they were received. *Id.* at 3. No refunds have been disclosed to date.

2. Analysis

The issue of affiliation among the named Democratic committees in Texas is key to determining whether ATLA-PAC violated the Act's limitations on contributions by a

14 ATLA-PAC's letters to the county party committees requesting refunds were dated June 18, 1997, over eight months after it made the contributions, and approximately one month after being notified by RAD of the apparent violation.

multicandidate committee. As discussed in Part II.B, *supra*, this Office believes that the available evidence supports a finding of affiliation. Accordingly, as a qualified multicandidate committee, ATLA-PAC was restricted to an aggregate contribution limit of $5,000 as to all of the affiliated committees. *See* 2 U.S.C. § 441a(a)(2)(C); 11 C.F.R. § 110.3(b)(3). ATLA-PAC reached this limit on September 30, 1996, when it contributed $5,000 to the Tarrant Committee. Therefore, ATLA-PAC's subsequent contributions to the State Committee and to the six other county party committees, totaling $35,000, appear to have constituted excessive contributions in violation of 2 U.S.C. § 441a(a)(2)(C).

D. RAD Referral 97L-27: AFSCME-PEOPLE

1. Factual Background

AFSCME-PEOPLE disclosed a total of $15,995 in disbursements to its connected organization, AFSCME, for in-kind contributions to federal candidates during the 1996 July, August and September Monthly reporting periods. The report pages showing the itemized disbursements are included as Attachment 7. The contributions are summarized in the following table:

Report	Candidate/Election	Date of Contribution	Amount
1996 July Monthly	Glen Browder/June 4 Primary (AL Sen.) Leslie Byrne/June 8 Primary (VA Sen.)[15]	06/27/96 06/27/96	$4,871 $3,124
1996 August Monthly	Glen Browder/ June 25 Runoff	07/11/96	$5,000
1996 September Monthly	Tom Strickland/August 13 Primary (CO Sen.)	08/21/96	$3,000
		TOTAL:	**$15,995**

15 The Democratic candidate for U.S. Senator from Virginia was nominated by party convention on June 8, 1996. *See* 11 C.F.R. § 100.2(e).

On November 26, 1996, RAD sent RFAIs concerning possible impermissible contributions to federal candidates regarding the above disbursements, and requested that AFSCME-PEOPLE amend its reports to clarify whether the payments to AFSCME were intended to influence federal elections, and to provide the dates on which the connected organization conducted the activities.

In a letter dated December 31, 1996, AFSCME-PEOPLE stated that "[t]he contributions PEOPLE reported were for in-kind contribution [sic] of telephone bank calls in support of the listed candidates. Those calls were made from facilities owned and operated by AFSCME . . . . Thus, AFSCME . . . acted as a vendor of telephone bank services to the PEOPLE committee." Attachment 8. The letter also stated that AFSCME "provides phone bank services to organizations other than PEOPLE, and PEOPLE was charged the normal and usual rate that AFSCME . . . charges other organizations for these services." *Id.* The response, however, failed to list the dates on which AFSCME originally provided the services in support of the federal candidates. On September 11, 1997, a representative of AFSCME-PEOPLE stated in a phone conversation with the RAD analyst that he would provide the dates, but still has not done so.

AFSCME-PEOPLE subsequently disclosed a total of $5,000 in apparently excessive contributions to each of two federal candidate committees in its 1996 30 Day Post-General Report, as summarized in the following table (excessive portion in bold):

Report	Candidate/Election	Date of Contribution	Amount
1996 30 Day Post-General	Elijah Cummings/Gen'l (MD 7th)	05/17/96 **10/18/96**	$5,000 **$2,500**
1996 30 Day Post-General	*Sheila Jackson Lee/Gen'l* (TX 18th)	*06/28/96* 10/03/96 **10/18/96**	$2,500 $2,500 **$2,500**
		TOTAL EXCESSIVES:	**$5,000**

Attachment 9 shows the report pages on which the contributions were itemized.

On April 16, 1997, an RFAI was sent concerning the above excessive contributions. By letter dated June 17, 1997, AFSCME-PEOPLE responded by redesignating the excessive contribution to *Elijah Cummings as a debt retirement* contribution for the 1996 Special General Election, apparently referring to the April 16, 1996 special election in Maryland's 7th Congressional District. Attachment 10. With regard to the $2,500 contribution to Sheila Jackson Lee on October 18, 1996, AFSCME-PEOPLE responded that it "should have been reported as a 1996 Special General Contribution instead of a 1996 General Election." *Id.* at 1. The RAD Referral notes, however, that this response appeared to be inadequate because the candidate was not involved in any such election.

During the 1996 30 Day Post-General and Year End reporting periods, AFSCME-PEOPLE disclosed contributions of $5,000 each to the State Committee, Dallas Committee, Galveston Committee, Harris Committee, Jefferson Committee and Tarrant Committee. See Attachment 1.[16] On July 17, 1997, an RFAI was sent concerning possible excessive contributions to affiliated state and county party committees in Texas totaling $25,000. By letter

16 As mentioned *supra* at footnote 13, the dates listed in Attachment 1 refer only to when the contributions were *received* by the party committees, as disclosed in the party committees' reports filed with the Commission.

dated August 1, 1997, AFSCME-PEOPLE responded that the "contributions to the county committees were made with the understanding that those committees are not affiliated with the [State Committee] or with each other. On that basis, it was, and is, our position that the contributions in question did not exceed statutory limits. However, . . . we have sent . . . letters to each of the county committees . . . asking that they either refund the contribution or provide us with support for the position that they are not affiliated with the [State Committee]."[17] Attachment 11 at 1.

On August 7, 1997, RAD sent a Second Notice further explaining that local parties within a state are presumed to be affiliated with the state party committee, and with each other, and therefore share a contribution limit for one political committee. The letter informed AFSCME-PEOPLE that it should seek refunds for any contribution in excess of $5,000. By letter dated August 25, 1997, AFSCME-PEOPLE responded that two of the Texas county committees had informed it that the contributions were lawful and that neither had issued a refund. Attachment 11 at 2. The response indicated that AFSCME-PEOPLE would send follow-up letters to the county party committees that had not responded. *Id.* On September 9 and 10, 1997, RAD called AFSCME-PEOPLE in an attempt to discuss the matter, but the calls were not returned.

2. Analysis

a. Disbursements to AFSCME

AFSCME, the connected organization of AFSCME-PEOPLE, appears to be a "labor

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17 AFSCME-PEOPLE's letters to the county party committees requesting refunds were dated July 30, 1997.

organization" as that term is defined at 2 U.S.C. § 441b(b)(1). Accordingly, AFSCME is prohibited from making contributions in connection with any federal elections pursuant to 2 U.S.C. § 441b(a). The disclosure reports filed by AFSCME-PEOPLE and the responses to the RFAIs do not indicate when AFSCME provided the "telephone bank calls in support of the listed candidates," as described in the first response. See Attachment 8 at 1. However, the disbursements to AFSCME for the phone bank services, as reported by AFSCME-PEOPLE, occurred *after* the elections in which the listed candidates participated (see table of contributions at p. 22, *supra*). Thus, it appears that they were reimbursements, rather than advances, to AFSCME by its SSF. Because this method of payment presumably involved the initial disbursement of the labor organization's treasury funds on behalf of the listed candidates, the provision of the phone bank services by AFSCME appears to have constituted a prohibited in-kind contribution by that organization. *See* AOs 1984-24 and 1984-37.

The response asserts that AFSCME was simply acting as "a vendor of telephone bank services" to AFSCME-PEOPLE. The rationale that a typical vendor-vendee relationship exists between an SSF and its connected organization, however, is not supported by the Act or by judicial and Commission interpretation. As previously discussed, the Act contains certain enumerated activities which are excluded from the definition of a contribution or expenditure, including the establishment, administration and solicitation costs of a connected organization's SSF. *See* 2 U.S.C. § 441b(b)(2)(C). However, services provided on behalf of specific federal candidates by the connected organization do not fall within the scope of these permitted activities, and thus the initial disbursement of treasury funds to pay for such services "falls squarely within the prohibition of 2 U.S.C. § 441b." AO 1984-24.

By providing phone bank services in support of federal candidates prior to receiving payment from its SSF, AFSCME appears to have made prohibited in-kind contributions totaling $15,995 in connection with federal elections in violation of 2 U.S.C. § 441b(a).[18] The Commission in AO 1984-24 considered such disbursements to be contributions to both the candidates and to the connected organization's SSF; accordingly, AFSCME-PEOPLE appears to have received prohibited in-kind contributions totaling $15,995 in violation of 2 U.S.C. § 441b(a). Further, since the disbursements apparently were reported by AFSCME-PEOPLE according to the date that it reimbursed AFSCME, rather than the date that the in-kind contributions were made (i.e., when the services were provided on behalf of the candidates), it appears that AFSCME-PEOPLE also violated 2 U.S.C. § 434(b).[19]

b. Excessive Contributions to Federal Candidates

When AFSCME-PEOPLE made the $2,500 direct contribution on October 18, 1996 to Elijah Cummings for the 1996 general election (see table of contributions at p. 24), it was

18 Whether the provision of phone bank services falls within the scope of AFSCME's "usual and normal business" is not relevant to this analysis, since advance payment for the services was the *only* purchase method available to AFSCME-PEOPLE. *See* 11 C.F.R. §§ 116.1(c), 116.3 and 100.7(a)(4) (provisions relating to extension of credit).

19 On July 10, 1990, the U.S. District Court for the District of Columbia ruled that AFSCME-PEOPLE violated 2 U.S.C. § 434(b) when it delayed the disclosure of in-kind contributions to the 1982 and 1984 Indiana House campaigns of former Representative Frank McCloskey. *FEC v. AFSCME-PEOPLE*, CA No. 88-3208 (RCL) (D.D.C. 1990). The in-kind contributions consisted of telephone banks that were used in part to advocate the election of McCloskey. AFSCME-PEOPLE reported the contributions in the reporting period in which it disbursed funds to pay for the services, rather than in the earlier reporting period during which the services were provided to the candidate committees. Citing the portion of 2 U.S.C. § 434(b)(6) related to "other political committees," the court held that "in-kind contributions made by [AFSCME-PEOPLE] to the McCloskey campaign . . . are reportable as of the date the contributions were made, not the date of disbursements by [AFSCME-PEOPLE]." On October 31, 1991, the court assessed a civil penalty of $2,000 against AFSCME-PEOPLE for the violations.

permitted to redesignate the contribution in accordance with 11 C.F.R. § 110.2(b). *See* 11 C.F.R. § 103.3(b)(3). Such redesignation must occur within 60 days of the receipt of the contribution or be refunded to the contributor. *Id.*; 11 C.F.R. § 110.2(b)(5)(ii)(B). On June 17, 1997, AFSCME-PEOPLE attempted to redesignate the $2,500 contribution as "a debt retirement for the 1996 Special General Election," see Attachment 10 at 1; however, the redesignation occurred more than seven months after the contribution was received by the candidate committee.[20] Accordingly, it appears that AFSCME-PEOPLE violated 2 U.S.C. § 441a(a)(2)(A) by untimely redesignating the October 18, 1996 contribution to Elijah Cummings in the amount of $2,500.

The $2,500 direct contribution to Sheila Jackson Lee on October 18, 1996 (see table of contributions at p. 24) deserves careful consideration in light of special circumstances which affected certain congressional district elections in Texas during 1996. On August 5, 1996, the U.S. District Court for the Southern District of Texas issued an Interim Remedy and Order redrawing the boundaries of thirteen congressional districts – including the 18th District where Ms. Lee ran for office – resulting from an earlier judicial determination that three of those districts were products of overt racial gerrymandering. *Vera v. Bush*, 933 F. Supp 1341 (S.D.Tex. Aug. 5, 1996). Under the court's plan, the primary election held on March 13, 1996, in which Ms. Lee ran unopposed, was nullified and all qualified candidates were required to compete in a new election on November 5. A runoff election would have been held if no candidate captured a majority, but Ms. Lee won the November election with 77% of the vote.

On September 20, 1996, the Commission issued an advisory opinion as to the application

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20 The contribution was reported as being received by Elijah Cummings' principal campaign committee on October 29, 1996.

of contribution limits to the special general elections in the Texas congressional districts that had been subjects of the district court's order. AO 1996-36. The Commission concluded that any contribution to a candidate for the nullified March 13 primary election remained a contribution for that election, and did not have to be aggregated with any contribution received for the November election. Subsequent to the court decision on August 5, however, Ms. Lee was placed in a new electoral situation whereby she was no longer her party's nominee, but was instead a candidate in an election that could involve other candidates of the same party. "The effect of the court's decision, therefore, was to create a new general election contest, beginning on August 6 and lasting until November 5; this created, in effect, a different election campaign period from the one that lasted from March 13 to August 5." *Id.*

The Commission ultimately concluded that, with certain restrictions, separate contribution limits were available for contributions made before August 6 for the regular general election (which was not held) and for contributions made after August 5 for the special general election. As applied to the instant matter, the contributions made by AFSCME-PEOPLE to Ms. Lee between the primary election in March and the special general election in November (see table of contributions at p. 24) appear to comply with the Commission's ruling in AO 1996-36. AFSCME-PEOPLE initially contributed $2,500 on June 28, 1996, designated for the general election. See Attachment 9 at 3. The $2,500 contribution on October 3, 1996, *id.* at 4, was also designated for the general election, but the $2,500 contribution on October 18, 1996 "should have been reported as a 1996 Special General Contribution instead of a 1996 General Contribution," according to AFSCME-PEOPLE. See Attachment 10 at 1. Accordingly, given the separate limits for the regular general election period and for the special general election, one

of the three $2,500 contributions need not be aggregated with the other two, eliminating the *possibility that* AFSCME-PEOPLE exceeded its contribution limits with regard to Sheila Jackson Lee's campaign during the period in question.[21] Therefore, with respect to its contributions to Ms. Lee in 1996, it appears that AFSCME-PEOPLE did not violate 2 U.S.C. § 441a(a)(2)(A).

c. Excessive Contributions to Texas Democratic Party Committees

Based on the available information, as discussed in Part II.B, *supra*, the Democratic party committees in question appear to be affiliated. Accordingly, as a qualified multicandidate committee, AFSCME-PEOPLE was restricted to an aggregate contribution limit of $5,000 with regard to all of the affiliated committees. It reached this limit on October 24, 1996, when it contributed that amount to the Tarrant Committee. Therefore, AFSCME-PEOPLE's subsequent contributions to the State Committee and to the four other county party committees, totaling $25,000, appear to have constituted excessive contributions in violation of 2 U.S.C. § 441a(a)(2)(C).

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21 The Commission further determined in AO 1996-36 that the allowance for two general election limits "does not extend to permitting the candidate's authorized committees to determine their net debt situation as of August 5 and to collect contributions after that date that are designated by contributors for the regular general election." Accordingly, it would appear that the October 3 contribution, which AFSCME-PEOPLE marked as a "general election" contribution, could not be designated for the *regular* general election. However, this point is rather moot, since the contribution would not cause AFSCME-PEOPLE to exceed the Act's limits when aggregated with its contributions for *either* general election period.

E. RAD Referral 97L-29: Harris Committee

1. Factual Background

The Harris Committee received a $1,280 transfer-in on September 3, 1996 and a $48,171 transfer-in on October 1, 1996 from its non-federal account, which were disclosed on Schedule H3s in its Amended 1996 October Quarterly and its Amended 1996 12 Day Pre-General Reports, respectively. See Attachment 12 at 1-2. A $1,280 disbursement on September 3 was itemized on the Harris Committee's Schedule H4 as a "mailout/Jud#1" with the same amount shown as a 100% non-federal share of allocable activity. *Id.* at 3. The purpose of a $48,171 disbursement on October 1 was reported as "JBA/Exempt"; this amount was also reported as a 100% non-federal share. *Id.* at 4.

On May 7, 1997, an RFAI was sent to the Harris Committee advising it that the $1,280 transfer-in from the non-federal account apparently used for 100% non-allocable activity was impermissible. The RFAI recommended that the full amount of the transfer be returned to the non-federal account. A second RFAI was sent at the same time, informing the Harris Committee that there appeared to have been transfers-in outside of a 70-day permissible time period, based on the $48,171 transfer-in for the "JBA/Exempt" activity reported on the Amended 1996 12 Day Pre-General Report.

On June 2, 1997, the Commission received a response from the Harris Committee, Attachment 12 at 5-6, explaining that the $48,171 disbursement for "JBA/Exempt" activity was "so called because of [its] non-federal content . . . . We recognize that this has caused some confusion, and have renamed [it] 'JBA' on the enclosed report." *Id.* at 5. The response included

a Schedule D listing a debt of $50,068 to the Harris Committee's non-federal account for excess transfers.

In letters dated June 30, 1997, Attachment 12 at 7-8, the Harris Committee again clarified the activity it had reported as "JBA." According to the second letter, "[t]his activity was for the production, printing, and distribution of a brochure that promoted Non-Federal candidates (specifically judicial candidates) . . . ." *Id.* at 8. The first letter stated that the Harris Committee was short on federal funds and had been financially unable to make sufficient transfers to pay off the debt for the impermissible transfers-in, but would pay it off "as soon as it is financially possible." *Id.* at 7. The Harris Committee's 1998 April Quarterly Report, covering the period through March 31, 1998, discloses a $35,516 debt to the non-federal account.

2. Analysis

RAD treated the Harris Committee's use of the first non-federal transfer-in ($1,280 transferred to the federal account on September 3, 1996) as a non-allocable expense because the activity was originally disclosed as a 100% non-federal direct candidate support mailout. The second non-federal transfer-in ($48,171 transferred to the federal account on October 1, 1996) initially appeared to be used by the Harris Committee for an exempt, allocable activity; accordingly, RAD sent an RFAI informing the committee that the transfer had occurred outside the 70-day window required by 11 C.F.R. § 106.5(g), since there were no corresponding federal funds with which it was allocated. The Harris Committee explained by letter that, although it had originally labeled this activity as "Exempt," it actually consisted of 100% non-federal expenditures; *i.e.*, payment for brochures that promoted only non-federal candidates. See Attachment 12 at 7. The transfers-in at issue thus appear to have been used for 100% non-federal

activities, reported as paid out for the activities on the same day that the funds were transferred into the federal account. Such transfers to a federal account for the purpose of financing purely non-federal activities are prohibited, because transfers from a non-federal account to a federal account may be made solely to cover the non-federal share of *allocable* expenses. *See* 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i).

As previously stated, the Commission has found that similar transfers from party committees' non-federal accounts to their federal accounts, which funds were used to pay for 100% non-federal activities, violated 11 C.F.R. § 102.5(a)(1)(i). *See* MURs 4701 and 4709. Accordingly, it appears that the Harris Committee violated 11 C.F.R. § 102.5(a)(1)(i) by improperly transferring a total of $49,451 from its non-federal account to its federal account to pay for 100% non-federal activities.

With certain exceptions that still appear to correspond with provisions of the Act, Texas law prohibits corporations and labor unions from making political contributions or expenditures. *See* Tex. Elec. Code Ann. §§ 253.104 and 257.002 (West 1997). However, there generally are no limits on contributions from individuals. Accordingly, because the improper transfers may have contained excessive contributions from individuals, the Harris Committee appears also to have violated 2 U.S.C. § 441a(f) by accepting these transfers.[22]

III. CONCLUSION

Based on the foregoing, this Office recommends that the Commission find reason to believe that the State Committee, Bexar Committee, Dallas Committee, Galveston Committee,

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22 In 1994 RAD referred the Harris Committee to this Office in connection with the failure to timely file that year's April Quarterly Report. MUR 4162. On February 14, 1995, The Commission accepted a conciliation agreement in which the Harris Committee admitted violating 2 U.S.C. § 434(a)(4)(A)(i) and agreed to pay a civil penalty of $900.

Harris Committee, Jefferson Committee, Tarrant Committee and Travis Committee each violated 2 U.S.C. § 441a(f) by accepting excessive contributions from various political committees (see table at p. 11); find reason to believe that the Harris Committee also violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a)(1)(i) by transferring a total of $49,451 from its non-federal account to its federal account for 100% non-federal activity during 1996; find reason to believe that ATLA-PAC violated 2 U.S.C. § 441a(a)(2)(C) by making excessive contributions of $35,000 to affiliated Texas Democratic committees in 1996; find reason to believe that AFSCME violated 2 U.S.C. § 441b(a) by making prohibited in-kind contributions totaling $15,995 to federal candidates in 1996 in the form of telephone bank services; and find reason to believe that AFSCME-PEOPLE violated 2 U.S.C. §§ 441b(a) and 434(b) by knowingly accepting contributions from AFSCME and by failing to properly report them, 2 U.S.C. § 441a(a)(2)(A) by making an excessive contribution of $2,500 to a federal candidate in 1996, and 2 U.S.C. § 441a(a)(2)(C) by making excessive contributions of $25,000 to affiliated Texas Democratic committees.

IV. DISCOVERY

In order to make the most effective use of Commission's limited resources, and in order to keep the investigation focused on the primary actors and issues, this Office recommends that the Commission approve the proposed Subpoenas for the Production of Documents and Orders to Answer Interrogatories directed to the State Committee (Attachment 13 at 1-7) and to the seven Texas Democratic county committees (sample subpoena and order for the county committees at Attachment 13 at 8-14). These subpoenas and orders are aimed at discovering the precise nature of the relationships between the State Committee and the county committees and

among the county committees themselves, so that issue of affiliation can be more thoroughly examined. In addition, in accordance with the Commission's procedures in such matters, this Office recommends that the Commission approve contingent authority to file a civil suit to enforce the attached Subpoenas and Orders in the event any respondent fails to comply.

V. RECOMMENDATIONS

RAD Referral 97L-28:

1. Open a MUR.

2. Find reason to believe the Texas Democratic Party and Jorge A. Ramirez, as treasurer, violated 2 U.S.C. § 441a(f).

3. Find reason to believe the Bexar County Democratic Party and John J. Murnin, as treasurer, violated 2 U.S.C. § 441a(f).

4. Find reason to believe the Dallas County Democratic Party and David A. Parnell, as treasurer, violated 2 U.S.C. § 441a(f).

5. Find reason to believe the Galveston County Democratic Party and Mary Ellen Brennan, as treasurer, violated 2 U.S.C. § 441a(f).

6. Find reason to believe the Harris County Democratic Party and David Mincberg, as treasurer, violated 2 U.S.C. § 441a(f).

7. Find reason to believe the Jefferson County Democratic Party and Gilbert T. Adams Jr., as treasurer, violated 2 U.S.C. § 441a(f).

8. Find reason to believe the Travis County Democratic Party and Mina Clark, as treasurer, violated 2 U.S.C. § 441a(f).

9. Find reason to believe the 21st Century Political Action Committee and Art Brender, as treasurer, violated 2 U.S.C. § 441a(f).

RAD Referral 97L-26:

10. Open a MUR.

11. Find reason to believe the Association of Trial Lawyers of America Political Action Committee and Dan Cohen, as treasurer, violated 2 U.S.C. § 441a(a)(2)(C).

RAD Referral 97L-27:

12. Open a MUR.

13. Find reason to believe the American Federation of State, County & Municipal Employees violated 2 U.S.C. § 441b(a).

14. Find reason to believe the American Federation of State, County & Municipal Employees-PEOPLE and William Lucy, as treasurer, violated 2 U.S.C. §§ 441b(a), 434(b), 441a(a)(2)(A) and 441a(a)(2)(C).

RAD Referral 97L-28:

15. Open a MUR.

16. Find reason to believe the Harris County Democratic Party and David Mincberg, as treasurer, violated 2 U.S.C. § 441a(f) and 11 C.F.R. § 102.5(a)(1)(i).

Other Recommendations:

17. Approve the attached proposed Factual and Legal Analyses.

18. Approve the attached proposed Subpoenas for the Production of Documents and Orders to Answer Interrogatories to the following respondents:
Texas Democratic Party and Jorge A. Ramirez, as treasurer
Bexar County Democratic Party and John J. Murnin, as treasurer
Dallas County Democratic Party and David A. Parnell, as treasurer
Galveston County Democratic Party and Mary Ellen Brennan, as treasurer
Harris County Democratic Party and David Mincberg, as treasurer
Jefferson County Democratic Party and Gilbert T. Adams Jr., as treasurer
Travis County Democratic Party and Mina Clark, as treasurer
21st Century Political Action Committee and Art Brender, as treasurer

19. Grant the Office of the General Counsel contingent authority to file suit to enforce the Subpoenas for the Production of Documents and Orders to Answer Interrogatories against any respondent who fails to comply with them.

20. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

6/12/98
Date

BY:
Lois G. Lerner
Associate General Counsel

Attachments

1. Chart showing contributions by multicandidate committees to Texas Democratic party committees
2. RFAI responses of party committees
3. Second Notice responses of party committees
4. Charts showing transfers between State Committee and county party committees
5. Statements of Organization filed by State Committee and by county party committees
6. ATLA-PAC responses to RAD inquiries
7. AFSCME-PEOPLE disclosure report pages showing disbursements to AFSCME
8. Letter from AFSCME-PEOPLE to RAD, dated December 31, 1996
9. AFSCME-PEOPLE disclosure report pages showing contributions to candidates
10. Letter from AFSCME-PEOPLE to RAD, dated June 17, 1997
11. Letters from AFSCME-PEOPLE to RAD, dated August 1 and 25, 1997
12. Harris Committee disclosure report pages regarding non-federal transfers to federal account, with responses to RFAIs
13. Proposed Subpoenas for the Production of Documents and Orders to Answer Interrogatories
14. Proposed Factual and Legal Analyses

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel

DATE: June 12, 1998 MUR 4762 4764

SUBJECT: 97L- 26,27,28,29-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of _____

Open Session _____ Closed Session _____

CIRCULATIONS		DISTRIBUTION	
SENSITIVE	☒		
NON-SENSITIVE	☐	COMPLIANCE	☒
72 Hour TALLY VOTE	☒	*Open/Closed Letters*	☐
		MUR	☐
24 Hour TALLY VOTE	☐	DSP	☐
24 Hour NO OBJECTION	☐	STATUS SHEETS	☐
		Enforcement	☐
INFORMATION	☐	Litigation	☐
		PFESP	☐
		RATING SHEETS	☐
		AUDIT MATTERS	☐
		LITIGATION	☐
		ADVISORY OPINIONS	☐
		REGULATIONS	☐
		OTHER	☐

FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM MARJORIE W. EMMONS/LISA R. DAVIS
COMMISSION SECRETARY

DATE: JUNE 18, 1998

SUBJECT: RAD Referrals #97L-26,27,28,29 - First General Counsel's Report dated June 12, 1998.

The above-captioned document was circulated to the Commission on **Monday, June 15, 1998**

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	_
Commissioner Elliott	**XXX**
Commissioner McDonald	_
Commissioner McGarry	_
Commissioner Thomas	_

This matter will be placed on the meeting agenda for **Tuesday, June 23, 1998**.

Please notify us who will represent your Division before the Commission on this matter.