FEDERAL ELECTION COMMISSION
Washington, DC 20463

JUN 30 1998

Larry P. Weinberg, General Counsel
American Federation of State,
County & Municipal Employees
1101 17th St., N.W.
Suite 1210
Washington, D.C. 20036

RE: MUR 4762
American Federation of State,
County & Municipal Employees
American Federation of State,
County & Municipal Employees-PEOPLE
and William Lucy, as treasurer

Dear Mr. Weinberg:

On June 23, 1998, the Federal Election Commission ("the Commission") found that there is reason to believe the American Federation of State, County & Municipal Employees violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). On the same date, the Commission also found 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). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Thomas J. Andersen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures
Factual and Legal Analysis
Procedures

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 4762

RESPONDENTS: American Federation of State, County & Municipal Employees-PEOPLE and William Lucy, as treasurer
American Federation of State, County & Municipal Employees

I. GENERATION OF MATTER

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

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.[1] Accordingly, the Commission has set forth the following 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

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1 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).

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.[2]

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 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* Advisory Opinions ("AOs") 1984-24, 1984-37.

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2 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).

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.[3]

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

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3 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).

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).

B. Factual Background

American Federation of State, County & Municipal Employees-Public Employees Organized to Promote Legislative Equality ("AFSCME-PEOPLE") disclosed a total of $15,995 in disbursements to its connected organization, the American Federation of State, County & Municipal Employees ("AFSCME"), for in-kind contributions to federal candidates during the 1996 July, August and September Monthly reporting periods. 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.)[4]	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**

On November 26, 1996, the Reports Analysis Division ("RAD") sent Requests for Additional Information ("RFAIs") concerning possible impermissible contributions to federal candidates regarding the above disbursements, and requested that AFSCME-PEOPLE amend its

4 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).

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 "the 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." 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." 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**

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. 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."

During the 1996 30 Day Post-General and Year End reporting periods, AFSCME-PEOPLE disclosed contributions of $5,000 each to the Texas Democratic Party ("State Committee"), Dallas County Democratic Party, Galveston County Democratic Party, Harris County Democratic Party, Jefferson County Democratic Party and the 21st Century Political Action Committee. 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 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]."

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. The response indicated that AFSCME-PEOPLE would send follow-up letters to the county party committees that had not responded.

C. **Analysis**

a. Disbursements to AFSCME

AFSCME, the connected organization of AFSCME-PEOPLE, appears to be a "labor 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. 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. 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. 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. Further, AFSCME-PEOPLE appears to have misreported the disbursements, since they were apparently reported according to the date that AFSCME-PEOPLE 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).

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, it was 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," however, the redesignation occurred more than seven months after the contribution was received by the candidate committee.[5] Accordingly, it appears that AFSCME-PEOPLE untimely redesignated 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 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 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

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

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 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. The $2,500 contribution on October 3, 1996, 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. 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.

c. Excessive Contributions to Texas Democratic Party Committees

The primary issue here 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. 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. 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

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6 As mentioned, 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.

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. During 1996 the State Committee transferred a total of $83,236 to the county committees, and the county committees transferred a total of $108,543 to the State Committee.

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. 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. *See also* MUR 3054. In accordance with the Commission's previous findings 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.

There appear to be no Texas 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 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." 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. According to reports filed with the Commission, 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. 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 Statements of Organization filed with the Commission. None of these county committees has ever filed any subsequent amendments claiming disaffiliation with the State Committee, or offered any explanation that 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 Commission 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.

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 21st Century Political Action 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.

III. CONCLUSION

Based on the foregoing, it appears that AFSCME made prohibited in-kind contributions totaling $15,995 to federal candidates in 1996 in the form of telephone bank services, and that AFSCME-PEOPLE knowingly accepted contributions from AFSCME and failed to properly report them. It also appears that AFSCME-PEOPLE made an excessive contribution of $2,500 to a federal candidate in 1996, and made excessive contributions of $25,000 to affiliated Texas Democratic committees. Accordingly, there is reason to believe that the American Federation of State, County & Municipal Employees violated 2 U.S.C. § 441b(a), and that 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).