FEDERAL ELECTION COMMISSION
Washington, DC 20463

Andrew Tobias, Treasurer
Democratic National Committee
430 South Capital Street, SE
Washington, DC 20003

October 25, 1999

RE: MUR 4936

Dear Mr. Tobias:

On October 15, 1999, the Federal Election Commission found that there is reason to believe the Democratic National Committee/DNC Services Corporation ("Committee") and you, as treasurer, violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(b)(2)(D), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, 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.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such

counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(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 Tara Meeker, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Scott E. Thomas
Chairman

Enclosures
Factual and Legal Analysis
Procedures
Designation of Counsel Form

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Democratic National Committee/ DNC Services Corporation and Andrew Tobias, as treasurer

MUR: 4936

This matter was generated based on information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2), and a complaint filed with the Federal Election Commission by Mark Kleinman. *See* 2 U.S.C. § 437g(a)(1).

This matter involves a certain fund-raiser held by the Democratic National Committee/ DNC Services Corporation ("DNC") and Clinton/Gore General Election Legal and Accounting Compliance Fund ("GELAC") in 1996, for which it appears the Hollywood Women's Political Committee ("HWPC") advanced funds to the vendors. The issues here stem from the initial payments for the fund-raiser by the HWPC and subsequent transfers of funds from the DNC to HWPC. Mr. Kleinman alleges that the DNC violated 2 U.S.C. § 441a(a)(2)(C) by making an excessive contribution "of over 17,000" to the HWPC, thus violating the contribution limit of $5,000 for multicandidate committees.

The Federal Election Campaign Act of 1971, as amended ("the Act"), states that no multicandidate political committee shall make contributions to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000. 2 U.S.C. § 441a(a)(2)(B). Furthermore, no multicandidate political committee shall make contributions to any other political committee that is neither an authorized committee nor a

national party committee in any calendar year which, in the aggregate, exceeds $5,000. 2 U.S.C. §441a(a)(2)(C). 2 U.S.C. § 441a(f) states that no candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of section 441a, and that no officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under section 441a. Under the Act, it is unlawful for any corporation or labor union to make or for any candidate, political committee, or other person to knowingly receive a contribution to a candidate for federal office. 2 U.S.C. § 441b(a). A contribution includes a gift, loan, advance, deposit of money, or anything of value. 2 U.S.C. § 431(8)(A)(i). Under 2 U.S.C. §§ 434(b)(2)(D) and (b)(4)(H)(ii), all reports filed with the Commission by a committee must disclose contributions from and to other political committees.

11 C.F.R. § 102.5(a)(1)(i) states that each organization, including a party committee, which finances political activity in connection with both federal and non-federal elections and which qualifies as a political committee under 11 C.F.R. § 100.5 has two options. The organization shall either establish a separate federal account or establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act. For those organizations which choose to establish a separate federal account:

> Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 C.F.R. §§ 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections, except as provided in 11 C.F.R. §§

> 106.5(g) and 106.6(e). Administrative expenses shall be allocated pursuant to 11 C.F.R. § 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections.

According to 11 C.F.R. § 106.6 or § 106.5, committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity:

> (i) Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate; (ii) The direct costs of a fundraising program or event including disbursements for solicitation of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected by one committee through such program or event.

The transactions at issue appear to have arisen out of a joint fundraising event entitled "Victory '96," held by the DNC and the Clinton/Gore GELAC in Los Angeles, CA on September 12, 1996.[1] There is no information to indicate that the HWPC was a participating committee in the joint fund-raiser, as the term is used in 11 C.F.R. § 102.17, or that the event was in any other manner raising money for the HWPC. Indeed, the issues discussed below appear to stem from the HWPC's initial payment for the costs of the event on behalf of the DNC, and subsequent DNC payments to the HWPC.

The DNC initially reported a total of $309,129.71 in "payments" to the HWPC on its 1996 October Quarterly, 1996 12 Day Pre-General, and 1996 30 Day Post-General Reports. The payments were described variously as being for production costs, equipment rental, telephones,

[1] The invitation states that the event was paid for by Victory '96, a joint fundraising project of the Clinton/Gore '96 GELAC and the DNC. It further states that contributions received from individuals and partnerships which meet the federal election law limits will be divided 10% to Clinton/Gore GELAC and 90% to the DNC. Contributions from federal PACs and contributions which did not meet the limitations of federal election law were to be allocated solely to the DNC. Since there is no information indicating that "Victory '96" filed as a separate committee, and based on the facts at hand, it appears that the DNC was designated as the fund-raising representative for this event.

and messenger services for the "Victory '96" fundraising event. Although the DNC paid the HWPC for this activity out of its federal account, the DNC also appears to have reported receiving reimbursement for fifty percent of the expenses of this fund-raiser from its non-federal account for what it describes as the non-federal share of the fundraising activity.

The HWPC reported receiving the money from the DNC's federal account on its 1996 October Quarterly, 1996 12 Day Pre-General, and 1996 30 Day Post-General and 1996 Year End Reports. The 1996 October Quarterly report initially listed $288,143 of this amount on Schedule A, supporting line 11(b), which reflects contributions received from political party committees. The HWPC later amended its 1996 October Quarterly Report, moving the $288,143 from the party committee contribution segment of the report to line 15, which reflects offsets to operating expenditures. In the amendment, the purpose of the receipt was listed as "Event Reimbursement."

The HWPC sent a follow up letter disclosing the amounts and dates of the initial expenditures for the fund-raiser, including an itemized list of each vendor and payment made for the event, as well as the precise timing of the payments made by the DNC. According to that letter, the HWPC made payments totaling $311,961.85 to vendors on behalf of the DNC Services Corporation Victory '96 Federal in connection with this fund-raiser, of which $309,129.71[2] was provided to the HWPC by the DNC. Reports filed by the DNC revealed that payments made to the HWPC were composed of allocated (federal and non-federal) funds. Based on the allocation

[2] Of this total amount, $17,702.96 was reported initially on HWPC's 1996 12 Day Pre-General Report and also listed on Schedule A as a receipt from a political party, the DNC Victory '96 Federal Committee. As noted above, HWPC later amended the Pre-General report, as it had the October Quarterly, moving the $17, 702.96 to line 15, representing offsets to expenditures. This transaction is the basis of the complaint filed against the DNC.

percentage provided by the DNC, it was determined that 50% of the funds paid to the HWPC consisted of impermissible, non-federal money.

RFAIs regarding these transactions were sent to the DNC. Two RFAIs dated March 12, 1997 (one for the 1996 October Quarterly Report and one for the 1996 12 Day Pre-General Report) to the DNC, stating that the $305,845.96 in funds sent from the federal account to the HWPC constituted contributions to another federal political committee and, therefore, could not be paid with allocated (federal and non-federal) money. The RFAIs instructed the DNC to notify the HWPC and request a refund of any amount in excess of $5,000 and, furthermore, to immediately transfer back to its non-federal account the total amount received by its federal account in connection with the payment of funds to the HWPC. Several subsequent RFAIs dated April 7, 1997, April 23, 1997 and May 22, 1997 again asked the DNC to notify the HWPC that it made a prohibited and excessive contribution and to request a refund of the entire prohibited non-federal share of the reimbursement and of the amount which exceeded $5,000 of the federal share. The DNC has steadfastly refused to do as requested.

In response to the RFAIs, the DNC has maintained consistently that there is no violation of the contribution limits or prohibitions as a result of these transactions. The DNC argued that the money conveyed to the HWPC reflected nothing more than a dollar-for-dollar reimbursement for fundraising costs paid to vendors by the HWPC on behalf of the DNC. The DNC states that it:

> has no intention of requesting a refund of any payments made to HWPC, since such payments would lead to the impermissible acceptance of an in-kind contribution by our committee. Furthermore, since the DNC believes that it was entitled to allocate these expenditures, it has no intention to request a refund of the non-federal portion of these expenditures.

Letter from Asst. Treasurer dated April 18, 1997.

Specifically, the DNC cites Advisory Opinion 1995-22, MUR 2345 and MUR 2611 for the proposition that not all transfers between two federally registered political committees are, by definition, contributions.[3] The DNC further asserts that the transfer from its non-federal to its federal account represented payment for the non-federal portion of the Victory '96 fund-raiser, and that it was permissible.

Analysis of the dates on which the HWPC paid vendors on behalf of the DNC, compared to the dates on which the DNC repaid the HWPC, shows that at some points during these transactions the HWPC was apparently advancing money to the DNC for the "Victory '96" fund-raiser, and that at some points the HWPC was spending money which the DNC had paid it in advance.

On June 25, 1996, the HWPC apparently began paying vendors on behalf of the DNC. By September 6, 1996, the HWPC had apparently advanced a cumulative total of $95,954 to vendors on behalf of the DNC. On September 9, 1996, the DNC paid the HWPC $288,143, which in effect not only reimbursed the HWPC, but also left $192,189 for the HWPC to spend on behalf of the DNC. Between September 9, 1996 and October 1, 1996, the HWPC appears to have spent down $180,871 of this amount. On October 2, 1996, the HWPC paid vendors

[3] There are important distinctions between the authority cited by the DNC in support of their proposition that this series of transactions was permissible under the FECA and the situation at hand. Briefly, the situation in AO 1995-22, unlike the present matter, involved transfers between two affiliated national party committees. According to 11 C.F.R. §102.6, transfers of funds may be made without limit on amount between affiliated committees, or between or among a national party committee, a State party committee and/or and subordinate party committee. In MUR 2611, the parties involved are a state party committee and federal candidate committees, which is different from those committees involved in the present matter. In addition, the DNC also cited MUR 2345. However, MUR 2345 appears to deal with shared coordinated expenses and the volunteer exemption and does not appear to be applicable to the present situation.

$26,870.93 on behalf of the DNC; this exhausted the remaining $11,318 of the DNC's first payment to the HWPC, and constituted an additional advance of $15,552.93 from the HWPC to the DNC. On October 9, 1996 the DNC paid the HWPC $17,702.96 more to spend on its behalf, which effectively reimbursed the HWPC and left $2,150.03 for future expenses. Between October 9, 1996 and January 8, 1997, the HWPC spent this money and additional payments received from the DNC totaling $4,580.92. On January 8, 1997 the HWPC paid $5,703.72 to vendors, thereby spending down the last money it had on hand from the DNC and making a final, additional advance of $2,832.11. See chart at Attachment 1.

The transactions at issue involve two major components: the advance of funds by the HWPC to vendors on behalf of the DNC, and the DNC's apparent reimbursement and advance payments to the HWPC. In addition, the DNC paid the HWPC for this activity with allocated (federal and non-federal) money.

Based on the available information, this Office believes that violations may have occurred when the HWPC advanced funds to the vendors on behalf of the DNC. Between June 25, 1996 and September 6, 1996, the HWPC advanced $95,954 to the DNC. On October 2, 1996, the HWPC advanced $15,552.93 to the DNC, and again on January 8, 1997 the HWPC advanced $2,832.11 to the DNC for a total of $114,339.04. See Attachment 1. Under 2 U.S.C. § 431(8)(A)(i), the federal share of these advances constituted contributions to the DNC at the time they were made.

The DNC argues that a vendor relationship existed between itself and the HWPC. The regulations, however, define a commercial vendor under 11 C.F.R. §116.1(c), as "any persons providing goods and services to a candidate or political committee whose *usual and normal business* involves the sale, rental, lease or provision of those goods or services" (emphasis

added). A commercial vendor could make reasonable extensions of credit under 11 C.F.R. § 116.3 without it being considered a contribution. However, under the FECA the HWPC was not a commercial vendor and, therefore, could not make extensions of credit to the DNC. Furthermore, in viewing disclosure reports this Office has seen no evidence which would indicate that the HWPC acted in this fashion for anyone other than the HWPC.

There is no indication that the HWPC was a participating committee in "Victory '96." It is important to note that the invitation to the event never mentioned the HWPC; in fact the invitation explicitly stated that the event was paid for by "Victory '96, a joint fundraising project of the Clinton/Gore GELAC and the DNC." Even if the HWPC had been a participating committee in "Victory '96," its advances to the DNC would not have been permissible. 11 C.F.R. § 102.17, which outlines the procedure for an advancement of funds by a participant in a joint fund-raiser, states that a participant may advance more than its proportionate share of the fundraising costs only to the extent that any amount in excess of a participant's proportionate share does not exceed the amount that participant could legally contribute to the remaining participants. Of course, the money advanced by the HWPC to the DNC for "Victory '96" far surpassed the $15,000 the HWPC could legally contribute to the DNC under 2 U.S.C. § 441a(a)(2)(B). Thus, these transactions would be impermissible even under the joint fund-raiser regulations.

The total amount advanced by the HWPC on behalf of the DNC in connection with the fund-raiser was $114,339.04. Because the DNC was using a 50% allocation formula for expenditures for the presidential fund-raiser, in effect 50% of what the HWPC advanced to the DNC ($57,169.52) represented contributions to the non-federal account and, therefore, were not excessive contributions to the DNC under the FECA. The remaining $57,169.52 in advances by

the HWPC constituted contributions to the DNC federal account, $15,000 of which was permissible. See 2 U.S.C. § 441a(a)(2)(B). Therefore, $42,169.52 of the amount advanced to the DNC by the HWPC appears to constitute an excessive in-kind contribution to the DNC in violation of 2 U.S.C. § 441a(a)(2)(B).[4] Since a portion of the funds advanced by the HWPC were excessive contributions, then $42,169.52 of the payments made by the DNC to the HWPC, in effect, became reimbursements of excessive contributions.

In addition, the transactions between the DNC and the HWPC raise questions under 2 U.S.C. § 441b and 11 C.F.R. § 102.5. It is true that the DNC's reimbursements paid to the HWPC initially came entirely from the DNC's federal account. However it is not entirely clear from the face of the DNC's reports whether the reimbursements contained solely federal funds, or a mix of federal and non-federal funds. It appears that the DNC's first transfer from its non-federal to its federal account occurred prior to its first repayment to the HWPC. Because HWPC was a federal political committee, the DNC's payments to that committee in this manner may have violated 2 U.S.C. § 441b.

Accordingly, there is reason to believe that the Democratic National Committee/ DNC Services Corporation and Andrew Tobias, as treasurer ("DNC") violated 2 U.S.C. §§ 441a(f), and 441b(a) by accepting excessive contributions and by making repayments to a federal committee from its non-federal account; and 2 U.S.C. § 434(b)(2)(D) by failing to report the advances as a contribution from another political committee.

Attachment:
1. Chart

[4] $114,339.04 / 50%=$57,169.52-$15,000=$42,169.52