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June 14, 1999

**MEMORANDUM**

Audit Referral 99-07

**TO:** LAWRENCE M. NOBLE  
GENERAL COUNSEL

**THROUGH:** JAMES A. PEHRKON  
STAFF DIRECTOR

**FROM:** ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**SUBJECT:** CLINTON/GORE '96 PRIMARY COMMITTEE, INC.  
REFERRAL MATTERS

On June 3, 1999, the Commission approved the audit report on Clinton/Gore '96 Primary Committee, Inc. In accordance with the Commission approved materiality thresholds, the attached findings from the audit report are being referred to your office.

- Finding III.C - Sheraton New York Hotel & Towers

If you have any questions or wish to review any referenced agenda documents or workpapers please contact Leroy Clay or Thomas Nurthen at 694-1200.

Attachments as stated

Finding III.C - Sheraton New York Hotel & Towers

21-04-399-4956

C. SHERATON NEW YORK HOTEL & TOWERS

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000.

Section 441a(a)(7)(B)(i) of Title 2 of the United States Code states that expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be contribution to such candidate.

Section 110.8(e)(1)(i)(ii) of Title 11 of the Code of Federal Regulations states that a political party may make reimbursement for the expenses of a candidate who is engaging in party-building activities, without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the limitation as long as the event is a bona fide party event or appearance; and no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination for election.

Section 110.8(e)(2)(ii) of Title 11 of the Code of Federal Regulations states that an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures are governed by the contribution and expenditure limitation.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term contribution includes the following payments, services or other things of value: a gift, subscription, loan advance or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. Section 100.7(a)(1)(iii)(A) of Title 11 of the Code of Federal Regulations states that for purposes of 11 CFR 100.7(a)(1), the term anything of value includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services is a contribution.

The Primary Committee made payments to the Sheraton New York Hotel & Towers (the Sheraton) totaling \$252,555. One of the payments was a wire transfer on January 4, 1996 in amount of \$134,739, which appeared to represent a deposit. In addition, the Primary Committee received and paid an estimated bill for an event in the amount of \$117,816.

In response to the Audit staff's inquiry, the Primary Committee provided the following chronology regarding the payments made to the Sheraton. The payment of \$134,739 pertained to an event scheduled to occur in January, 1996. This event was

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subsequently canceled. The Sheraton sent the Primary Committee a refund of \$103,260;<sup>2</sup> a cancellation fee of \$31,479 was charged. This event was then rescheduled to February 15, 1996. On February 8, 1996, a \$117,816 payment was made to the Sheraton for the February 15, 1996 event. Finally, the Primary Committee stated the DNC invited some of its donors to the event, and based on the number of DNC attendees and the expenses incurred by DNC staff, the DNC paid \$19,832. The Primary Committee provided a copy of an invoice issued by the Sheraton to the Primary Committee, dated March 8, 1996, in the amount of \$142,322 plus a copy of an estimated bill issued by the Sheraton to the DNC for \$19,832.

Costs itemized on the DNC's estimated bill were: dinner (\$13,200), floral (\$446), linen (\$185), stanchions, ropes, pipe and drape, (\$220), Clinton-Gore/DNC office rental (\$610), Clinton-Gore/DNC office phone/fax/printer (\$671), and sleeping rooms (\$4,500). Comparison of the charges listed on the Primary Committee's invoice versus the charges listed on the estimated DNC bill, revealed that except for dinners (\$13,200) floral (\$446) and linen (\$185), the remaining categories of itemized charges on the DNC's estimated bill do not appear on the Primary Committee's invoice — the Primary Committee's invoice apparently represents all the categories or types of charges billed by the Sheraton directly related to the event. The expenses representing the difference, \$6,001 (\$19,832 - 13,831) appear to be related to the event, even though not included on the Sheraton's March 8, 1996 invoice. Consequently, absent additional documentation, the Audit staff could not determine how, or if, expenses totaling \$10,675,<sup>3</sup> as reflected on the Sheraton's invoice issued to the Primary Committee were paid.

Based on the information available as of the close of audit fieldwork, the cost of the event appeared to be a qualified campaign expense; the Sheraton invoice referenced a "Clinton/Gore '96 Reception/Dinner." Further, this event did not appear to represent a joint fundraising effort in which the DNC was a participant. Absent documentation demonstrating that the expenses paid by the DNC were expenses NOT in connection with the candidate's campaign for nomination, the Audit staff viewed the amount paid by the DNC as an in-kind contribution. Further, the value of the apparent in-kind contribution (\$19,832) was added to the amount of expenditures subject to the overall limitation.

It was recommended in the Memorandum, that the Primary Committee provide:

- a) The final invoice issued by the Sheraton to the DNC;

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<sup>2</sup> A copy of the refund check was provided.

<sup>3</sup> Apparent total cost of event, \$142,322 less \$117,816 paid by the Primary Committee, less \$13,831 paid by the DNC.

- b) an explanation as to the method used to "allocate" the costs of the event between the Primary Committee and the DNC, along with documentation to support that "allocation" ratio used;
- c) documentation, in the form of canceled check(s) that demonstrates the \$10,675 in event expenses were paid;
- d) documentation to show how the expenses paid by the DNC are expenses not in connection with the candidate's campaign for nomination, and thus not an in-kind contribution to the Primary Committee.

In response to the Memorandum, the Primary Committee provided invoices and documentation which demonstrated that all expenses relating to the event were paid. Although the estimated bill for the DNC was \$19,832, the actual amount paid by the DNC was \$24,926 (catering and room charges). In addition, the Primary Committee provided documentation which explained the method used to "allocate" the cost between the Primary Committee and the DNC. The DNC paid 11% of the cost which it considered as its share for the 165 guests invited by the DNC.

According to the Primary Committee, the primary purpose of this event was to garner support for the Clinton/Gore '96 presidential ticket and to bring attention to the candidates and their agenda in the state of New York. This was not a fundraising event for the Primary Committee. The DNC, however, was conducting fundraising in New York at the time of the event, and when it learned that the President and Vice President would be appearing, asked the Primary Committee to allow the DNC to invite a small number of potential contributors to the event (emphasis added).

The Primary Committee also submitted an affidavit from Joseph Sandler, who at the time of the event was General Counsel at the DNC. Mr. Sandler stated the DNC was raising money in New York during the same time period as the event, and when the DNC heard that the President and Vice President were attending this dinner the DNC invited its own guests. It should be noted that Mr. Sandler makes no reference in his affidavit that the DNC guests were potential contributors. No documentation has been made available that demonstrated the DNC guests received any solicitation as a result of attending this event.

Based on our review of all the information available, it appears that the DNC was conducting fundraising in New York and did invite certain individuals to attend the Primary Committee event. These individuals were among the 1,544 guests attending this event, an event that by the Primary Committee's own admission, "was to garner support for the Clinton/Gore '96 presidential ticket." The cost of this primary campaign

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event may not be apportioned to the DNC or any other political committee without an in-kind contribution resulting.<sup>4</sup>

Accordingly, the DNC made and the Primary Committee received an excessive in-kind contribution from the DNC. Further, the value of the in-kind contribution (\$24,926) is included in the amount of expenditures subject to the overall limitation.

The Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

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<sup>4</sup> A political party may reimburse the expenses of a candidate who is engaging in party building activities without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the limitation as long as the event is a bona fide party event or appearance and no aspect of the solicitation for the event was for the purpose of influencing the candidate's nomination or election.

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