



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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March 27, 2000

MEMORANDUM

TO: The Commissioners

THROUGH: James A. Pehrkon *[Signature]*
Staff Director

FROM: Robert J. Costa *[Signature]*
Assistant Staff Director
Audit Division

Rick Halter *[Signature]*
Dep. Asst. Staff Director

Wanda J. Thomas *[Signature]*
Audit Manager

Leroy Clay *[Signature]*
Lead Auditor

SUBJECT: Report of the Audit Division on the Missouri Democratic State
Committee (A97-102)

AGENDA ITEM
For Meeting of: 4-05-00

Attached for your review and consideration is the subject report, along with a legal analysis prepared by the Office of General Counsel. The Office of General Counsel concurs with the findings and recommendations of the Audit Division. Revisions recommended by the Office of General Counsel have been incorporated into the report.

Recommendation

The Audit staff recommends that the report be approved.

This matter is being circulated on a 72 hour tally vote basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session meeting.

Should you have any questions, please contact Leroy Clay or Wanda Thomas at 694-1200.

Attachments as stated



FEDERAL ELECTION COMMISSION
WASHINGTON, D. C. 20463

A# 97-102

**REPORT OF THE AUDIT DIVISION
ON
MISSOURI DEMOCRATIC STATE COMMITTEE**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Missouri Democratic State Committee (the Committee), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by the selected committees to determine if reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period January 1, 1995 through December 31, 1996. During this period, the committee reported a beginning cash balance of \$ 3,827; total receipts for the period of \$4,932,550; total disbursements for the period of \$4,933,927; and an ending cash balance of \$2,449¹.

C. CAMPAIGN ORGANIZATION

The Committee registered with the Federal Election Commission as Missouri Democratic State Committee on September 15, 1980. The Treasurer for the Committee, during the audit period and currently, is Ms. Donna Knight. The Committee maintains its headquarters in Jefferson City, Missouri.

To manage its financial activity, the Committee maintained three active federal checking accounts and two non-federal checking accounts². The Committee did not maintain a separate allocation account to pay for shared federal/non-federal expenses.

¹ The amounts presented in this report have been rounded to the nearest dollar.

² The Committee had two inactive accounts from prior years.

The Committee's receipts were composed of contributions from individuals, other political committees (such as PACs), transfers from affiliated and other party committees, and offsets to operating expenditures (such as refunds and rebates).

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.) ;
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of campaign debts and obligations, including loans;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping of committee transactions (see Finding II.C.);
8. Proper reporting and funding of allocable expenses (see Findings II.B. and D.); and
9. other audit procedures that were deemed necessary in the situation .

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

In the Audit Report on Clinton/Gore '96 Primary Committee, Inc. (the Primary Committee), a media program sponsored by the Democratic National Committee (DNC) was discussed. The program was used to air a number of television commercials between August, 1995 and August, 1996 that featured President Clinton, or President Clinton and Senator Dole. The Primary Committee Audit Report placed the cost of this program at \$46,580,358. It was also explained that DNC funds were routed through the state party committees which in turn effected payment to the media vendors. The DNC

would have been required to use 65% federal funds and 35% non-federal funds to pay for the program. These state party committees involved in effecting payment, on average operated under more favorable Federal/Non-Federal allocation ratios than the DNC.

The Missouri Democratic State Committee was one of 35 state party committees involved with the DNC program, and paid out \$2.2 million to the media vendors which placed the television commercials. In addition, the DNC also routed \$160,000 through the Missouri Democratic State Committee for ads placed related to the general election campaign for the Ninth Congressional District of Missouri.³

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. RECEIPT OF APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(C) of Title 2 of the United States Code and Section 110.1(d) of Title 11 of the Code of Federal Regulations state that no person shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

Section 441a(a)(2)(C) of Title 2 of the United States Code and Section 110.2 (d) of Title 11 of the Code of Federal Regulations state that no multicandidate political committee shall make contributions to any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which on their face exceed the contribution limitations set forth in 11 CFR 110.1 or 110.2, and contributions which do not appear to be excessive on their face, but which exceed the contribution limits set forth in 11 CFR 110.1 and 110.2 when aggregated with other contributions from the same contributor ... may be either deposited into a campaign depository under 11 CFR 103.3(a) or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within sixty days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 110.1(k)(3)(i)(ii)(A) and (B) of Title 11 of the Code of Federal Regulations states that if a contribution to a candidate or political committee, either on its face or when aggregated with other contributions from the same contributor, exceeds the limitations on contributions set forth in 11 CFR 110.1(b), (c) or (d), as appropriate, the treasurer of the recipient political committee may ask the contributor whether the contribution was intended to be joint contribution by more than one person. A

³ In its response to the Interim Audit Report the Committee stated that there is no justification for including this issue in the Audit Report. It stated that the Commission concluded that the procedures used by the DNC and the state parties are consistent with the regulations that permit national party committees to make unlimited transfers to state party committees.

contribution shall be considered to be reattributed to another contributor if - the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be reattributed to each contributor if equal attribution is not intended.

The Audit staff's review of contributions revealed that the Committee received contributions from sixteen individuals and two political action committees (PAC's), which exceeded the limitation by \$80,250. For 9 of the contributions, the excessive portions totaling \$50,000 were transferred timely (within sixty days of their receipt) into a non-federal account. The excessive portions of 5 of the 9 remaining contributions from individuals, totaling \$25,000, were reattributed to spouses of the contributors. Evidence that the Committee requested permission from the contributors to either make the transfers to the Committee's non-federal account or reattribute the excessive portions of the contributions was not presented. Nor was evidence presented to document that the Committee informed the contributors that they may request refunds of the excessive contributions. As of the close of audit fieldwork, no information had been provided for the remaining 4 contributions totaling \$5,250.

The Audit staff provided schedules of the excessive contributions to Committee representatives during the audit fieldwork and at the exit conference and asked them to present evidence that the contributions were not excessive. The Committee was informed that absent such evidence, refunds to the contributors would be required. The Committee representatives agreed to refund the excessive contributions.

In the Interim Audit Report the Audit staff recommended the Committee present evidence that the \$72,250 in contributions from individuals and the \$8,000 in contributions from PACs were not excessive contributions. Absent such evidence, the Audit staff recommended that the Committee refund the excessive contributions to the contributors and submit evidence of the refunds (copies of the front and back of the negotiated refund checks).

The Committee stated in its response to the interim audit report that neither the regulations nor any Federal Election Commission guidance prohibits the transfer of the excessive portions of contributions to its non-federal account. In addition the Committee stated that the rules governing the treatment of excessive contributions are intended to prevent the use of funds in excess of the limits in federal election activity. It further stated that while not required, the Committee requested and received written authorization from eight contributors confirming their consent to redesignate their contributions to its non-federal account. The Committee requested and received written authorization from five contributors to reattribute the excessive portions of their contributions to spouses. Three contributors requested refunds of their contributions which totaled \$25,250 and two contributions were not addressed.

Regarding the Committee's statement that there is no regulation or Federal Election Commission guidance that prohibits the transfer of excessive contributions to its non-federal account, 11 CFR 103.3(b) states that if an excessive contribution is deposited, the treasurer may request redesignation or reattribution of the contribution and if the redesignation or reattribution is not obtained the treasurer shall, within sixty days of receipt of the contribution, refund the contribution to the contributor.

Although requests for redesignations and reattributions from contributors have been received, this remedy is not available to the Committee because the requests were not made within 60 days of the Committee's receipt of the contributions. The redesignation and reattribution letters are dated October 28 and November 9, 1999.

Of the \$80,250 in excessive contributions identified by the Audit staff, the Committee has refunded \$25,250. Thus, excessive contributions totaling \$55,000 have not been refunded as recommended.

B. ALLOCATION OF FEDERAL AND NON-FEDERAL EXPENSES

Section 106.5(g)(1) (i) and (ii) (A) of Title 11 of the Code of Federal Regulations states, in part, that committees that have established separate federal and non-federal accounts under 11 CFR 102.5(a)(1)(i) or (b)(1)(i) shall pay the expenses of joint federal and non-federal activities described in paragraph (a)(2) of this section according to either paragraph (g)(1)(i) or (ii), as follows: the committee shall pay the entire amount of an allocable expenses from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense, or the committee shall establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities. Once a committee has established a separate allocation account for this purpose, all allocable expenses shall be paid from that account for as long as the account is maintained.

Section 106.5(a)(2) (i) and (ii) of Title 11 of the Code of Federal Regulations states that committees that make disbursements in connection with federal and non-federal elections shall allocate expenses according to this section for the following categories of activity: Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate; and Generic voter drives including voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

Section 104.10(b)(4) of Title 11 of the Code of Federal Regulations states that a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for joint federal and non-federal expense or

activity. In the report covering the period in which the disbursement occurred, the committee shall state the full name and address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement. If the disbursement includes payment for the allocable costs of more than one activity, the committee shall itemize the disbursement, showing the amounts designated for administrative expenses and generic voter drives, and for each fundraising program or exempt activity, as described in 11 CFR 106.5(a)(2) or 106.6(b). The committee shall also report the total amount expended by the committee that year, to date, for each category of activity.

Section 104.3(a)(4)(v) of Title 11 of the Code of Federal Regulations states, in part, that unauthorized committees must report the identification of each contributor and the aggregate year to date total for such contributor including each person who provides a rebate, refund, or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such receipt.

If a committee receives a refund or a rebate of an allocable expense, the refund or rebate must be deposited in the federal account or allocation account. The refund or rebate must then be allocated between the federal and non-federal accounts according to the same allocation ratio used to allocate the original disbursement. The federal account must transfer the non-federal portion to the non-federal account. Advisory Opinion (AO) 1995-22 discusses methods for reporting refunds and rebates of allocable expenses.

1. Payment of Allocable Expenses From the Non-Federal Accounts

The Committee maintained separate federal and non-federal accounts and did not utilize a separate allocation account. Under this account structure, the regulations require that all allocable activity be paid initially from a federal account and reimbursements may be made from a committee's non-federal accounts solely to cover the non-federal share of the allocable expense.

According to the Commission's Disclosure Database approximately \$4.3 million in shared expenses for Administrative/Voter Drive activity were identified; the federal share of this activity was \$942,531 and the non-federal share was approximately \$3.3 million. In addition, \$242,547 in disbursements for exempt activity were identified; the federal share was \$79,671 and the non-federal share was \$169,456. The exempt activity included payments for yards signs and direct mail pieces which addressed issues and support for Bill Clinton and Democratic nominees for State offices. The Committee reported direct contributions to federal candidates totaling \$5,500. No coordinated expenditures to federal candidates were reported.

The Audit staff reviewed disbursements from the non-federal accounts during the audit period and identified 115 disbursements totaling \$223,458

which were for allocable expenses. The disbursements were for administrative and generic voter drive expenses such as contract services, travel reimbursements, salaries, bonuses, printing and voter registration. In some cases the same payee received payment from the Committee's federal account for the same type of expenses. Based on the ballot composition ratio, the correct allocation percentage for these expenses for the audit period was 22% federal and 78% non-federal. As a result, the federal share of these allocable expenditures made from the non-federal accounts was \$49,161.

During the fieldwork and the exit conference, the Audit staff provided a schedule of these payments to the Committee representatives. In addition, the Audit staff requested that the Committee provide documentation such as contracts, memoranda or other information to demonstrate that the expenses at issue did not require allocation and were, therefore, properly paid from the non-federal accounts. The Committee representatives had no comment at the exit conference.

In response to the exit conference the Committee provided phone scripts, invoices, radio and television advertisement scripts, affidavits and statements from vendors which demonstrated that \$419,119 of the \$642,577 in expenses initially at issue during fieldwork were attributable directly to non-federal races such as state representative, secretary of state, lieutenant governor and governor as well as for the development of strategies to elect non-federal candidates, state legislative issues and referendum initiatives on the ballot in the spring of 1996. No documentation or other evidence was provided for the remaining \$223,458 in expenses.

In the Interim Audit Report, the Audit staff recommended the Committee:

- provide evidence that the aforementioned \$223,458 in expenses paid from the non-federal accounts related solely to non-federal activities; or absent such a demonstration, reimburse the non-federal account \$49,161, representing the federal portion of the allocable expenses paid for by the non-federal account.

In response to the Interim Audit Report, the Committee stated that there were three special non-federal elections in 1995 and that many of the expenses incurred by the Committee were exclusively non-federal. The Committee stated further that it was unable to document every expense, to obtain affidavits or statements from every vendor to document the content of their work. The Committee believes that the regulations do not require a committee to make this demonstration, but that the regulations simply require that a committee allocate the payment of joint federal and non-federal expenses. It is the opinion of the Committee that the Audit staff has simply presumed, without stating a basis, that certain expenses were allocable unless the Committee can prove otherwise.

The Committee did not provide any documentation in its response to the Interim Audit Report which demonstrated that any of the \$223,458 in expenses were exclusively non-federal, and thereby not allocable; the recommended

reimbursement of \$49,161 was not made to the Committee's non-federal account. As noted above these expenses were for administrative and generic voter drive costs, which pursuant to 11 CFR 106.5(a)(2)(i) & (iv) are allocable expenses. Therefore, absent sufficient, competent, relevant evidence to support the Committee's position, the Committee's response is not persuasive and it remains our opinion that the Committee must reimburse the non-federal account the federal portion of the allocable expenses paid by the non-federal account.

2. Allocation of Refunds and Rebates

The Audit staff's review of offsets to operating expenditures (refunds/rebates) revealed that the Committee received and deposited into a federal account 61 allocable refunds/rebates from vendors totaling \$39,584. The refunds/rebates were related to payments of shared federal/non-federal expenses. The non-federal share of this amount was \$30,662 which consisted of \$2,172 for 11 refunds/rebates traced to the 1994 election cycle, and \$28,490 for the refunds/rebates related to the 1996 election cycle.⁴ The Committee did not reimburse or otherwise make any adjustments to account for the non-federal share of these receipts.

During the fieldwork and also at the exit conference the Audit staff provided a schedule of the refunds and rebates to the Committee representatives and asked them to provide evidence that \$30,662 was reimbursed to the non-federal account, representing its share. The Committee representatives had no comment.

In the Interim Audit Report, the Audit staff recommended the Committee:

- provide evidence that the non-federal account received its share of the \$39,584 in refunds/rebates; or absent such a demonstration, transfer to the non-federal account \$30,662, representing the non-federal share of the refunds/rebates deposited into the Committee's federal accounts.

In its response to the Interim Audit Report the Committee stated,

"...It is extremely difficult to track the refunds and rebates to the original expenditures. Therefore, clerical errors are often made in redepositing these funds... While the Committee takes the position that this transfer is not required, it has in effect already been made. From the period January through May 1999, the Committee allocated expenditures on the following percentages: federal 51%, non-federal 49%. Based on the ballot composition formula, the actual allocation should have been federal 30% and non-federal 70%. As a consequence of this error, the Committee

⁴ During the 1994 election cycle, the Committee's non-federal allocation was 71% ($\$3,059 \times 71\% = \$2,172$). During the 1996 election cycle, the Committee's non-federal allocation was 78% ($\$36,525 \times 78\% = \$28,490$).

expended approximately \$25,000 more in federal funds than was required under the regulations. Therefore, an amount almost equivalent to any transfer that may be required based on the Audit staff's recommendation has, in effect, already been made by the Committee. "

The Committee did not provide sufficient, competent, relevant evidence to support this allocation error or to support that the federal account expended approximately \$25,000 more in federal funds than required. It remains our position that the Committee must transfer \$30,662 to the non-federal account, for the non-federal share of the refunds/rebates deposited into the Committee's federal accounts.

C. JOINT FUNDRAISING ACTIVITIES - REPORTING AND RECORDKEEPING

Section 102.17(c)(8)(B) of Title 11 of the Code of Federal Regulations states that after distribution of net proceeds, each political committee participating in a joint fundraising activity shall report its share of net proceeds received as a transfer-in from the fundraising representatives. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

Section 102.17(c)(4)(ii) of Title 11 of the Code of Federal Regulations states that the fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees. The fundraising representative shall also keep a record of the total amount of contributions received from prohibited sources, if any, and of all transfers of prohibited contributions to participants that can accept them.

Section 102.8(b)(2) of Title 11 of the Code of Federal Regulations states that every person who receives a contribution in excess of \$50 for a political committee which is not an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the political committee: The contribution; the name and address of the contributor; and date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

1. Disclosure of Joint Fundraising Activity

The Committee participated in three separate joint fundraising activities. One activity involved the Association of State Democratic Chairs/Dollars for Democrats (ASDC); the other two involved the Democratic National Committee and various state party committees, hereinafter the Democratic State Party Victory Fund, and the Birthday Victory Fund. The Committee received transfers from these entities totaling \$150,582, which represented the Committee's share of the net proceeds from each joint fundraising activity. Although the Committee on its disclosure reports disclosed the

receipt of the net proceeds, it did not, in each case file memo Schedules A itemizing its share of the gross receipts as contributions from the original contributors. Memo Schedules A were filed in support of transfers received from the Democratic State Party Victory Fund and the Birthday Victory Fund. Transfers from ASDC for the Committee's share of net proceeds totaled \$97,083. However, the Committee filed memo Schedules A for contributions totaling only \$18,427.

2. Recordkeeping for Joint Fundraising Activity

Not present in the Committee's records were itemized listings, from ASDC, Democratic State Party Victory Fund, and the Birthday Victory Fund, of each contributor making a contribution greater than \$50 along with the date amount and address, or for those contributors making a contribution greater than \$200, name, address, date, amount, occupation, and name of employer, as required pursuant to 11 CFR 102.17(c)(4). The Committee maintained copies of memo Schedules A, however, these schedules only contained the required information for contributors whose contributions aggregated in excess of \$200. Contributions of lesser amounts were included on the Schedules A on one line labeled "unitemized receipts." Copies of Schedules A do not satisfy the recordkeeping requirements.

During the fieldwork and at the exit conference, the Audit staff provided a schedule of the transfers to the Committee representatives and also informed them of the irregularities in the reporting and recordkeeping noted above. The Committee representatives had no comment.

In the Interim Audit Report, the Audit staff recommended that, the Committee:

- File the necessary memo Schedules A, itemizing as contributions from the original contributors, its share of the gross receipts related to joint fundraising activities with the Association of State Democratic Chairs/Dollars For Democrats; and
- obtain itemized listings from the Association of State Democratic Chairs/Dollars for Democrats, Democratic State Party Victory Fund, and the Birthday Victory Fund of each contributor who made a contribution greater than \$50 along with the date amount and address, and for those contributors who made a contribution greater than \$200, the occupation, and name of employer, in support of the transfers made to the Committee and submit copies of the listings to the Audit staff.

In its response to the Interim Audit Report, the Committee filed the necessary memo Schedules A related to joint fundraising activities, as well as, itemized listings from the joint fundraising representatives of contributors who made a contribution greater than \$50.



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

February 29, 2000

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Leslie Bright
Associate General Counsel

Rhonda J. Vosdinger
Assistant General Counsel

Albert R. Veldhuyzen ARV
Attorney

SUBJECT: Proposed Final Audit Report on the Missouri Democratic State Committee (LRA #539)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report ("Report") on the Missouri Democratic State Committee ("Committee") dated January 24, 2000. The following memorandum provides our comments on the Report.¹ We concur with the findings in the Report. If you have any questions, please contact Albert R. Veldhuyzen, the attorney assigned to this audit.

¹ The Commission's discussion of this document is not exempt from disclosure under the Commission's Sunshine Act regulations, and the document should be considered in open session. 11 C.F.R. § 2.4.

II. MEDIA EXPENDITURES

The Audit Division has included information in the proposed Report that relates to the Committee's participation in a media program sponsored by the Democratic National Committee ("DNC"). The Audit Division considered these advertisements to be in-kind contributions by the Democratic National Committee to the Clinton/Gore '96 Primary Committee ("Clinton Primary Committee") in the context of the Clinton Primary Committee. According to information available to the Audit Division, and included in the Clinton Primary Committee Audit Report, the DNC transferred funds to state party committees, including the Missouri Democratic State Committee, for the purchase of media advertisements in order to benefit from the more favorable federal/non-federal allocation ratios of the state party committees. The Audit staff has not included a finding against the Committee related to these disbursements in view of the position taken by the Commission with respect to these advertisements in the Clinton Primary Committee Audit and other recent Commission decisions. While it may be appropriate to include this summary of the issue in the Report of the Committee so that the Report is complete and accurate, this issue is no longer being considered by the Commission in any context. In accordance with the memorandum on this issue from Kim Leslie Bright to Robert J. Costa, dated February 18, 2000, this Office recommends that the Audit Division raise with the Commission the question of the advisability of including a discussion of the media programs in the proposed Report.

III. PAYMENT OF ALLOCABLE EXPENSES FROM THE NON-FEDERAL ACCOUNTS (II.B.1.)

The Audit Division identified 115 disbursements totaling \$223,458 which the Committee paid from its non-federal account that it believes should have been allocated between federal and non-federal accounts. See 11 C.F.R. § 106.5(a)(2). Based on checks and other documents, the Audit staff identified more than \$600,000 worth of expenses which might be administrative or voter registration drive expenses. Also, some payees who were paid from exclusively non-federal accounts were at other times paid from federal accounts. During fieldwork, the Audit staff requested that the Committee provide documentation that these expenditures were related solely to non-federal activities. The Committee then supplied Audit with invoices, affidavits, and other evidence which demonstrated that expenses amounting to approximately \$400,000 were 100% non-federal. Despite the reporting and recordkeeping requirements,² the Committee did not present any evidence that the remaining expenses in the amount of \$223,458 were non-allocable. Had the Committee maintained records and properly presented the Audit staff with affidavits, invoices, and other evidence supporting its contention that the expenses were not allocable, the Audit Division might have found that the expenses did not need to be allocated. The proposed Report, however, does not explain the Audit Division's bases for concluding that any of the expenses at issue should have been allocated between the federal and non-federal accounts. Therefore, this Office recommends that the proposed Report be revised to show in greater detail how the Audit Division initially identified the expenses in question as being connected to a federal election.

² The Committee must report allocated disbursements and maintain all records supporting them for three years. See 11 C.F.R. §§ 104.10(b)(4), 104.10(b)(5).

IV. ALLOCATION OF REFUNDS AND REBATES (II.B.2.)

The Audit Division found that the Committee received and deposited into a federal account 61 allocable refunds/rebates from vendors totaling \$39,584. See 11 C.F.R. § 106.5(a)(2). In addition to contesting the validity of requiring the allocation of refunds and rebates, the Committee contends that it should be entitled to an offset as a result of an allocation ratio error from January to May 1999, resulting in an expenditure of \$25,000 more in federal funds than was required. Although no evidence of this allocation error has been presented, the Committee essentially asserts that the allocation error amount be offset against the misallocated refunds and rebates from the 1995-96 election cycle.

This Office agrees with the Audit Division's conclusion that such an offset, at this point, would be inappropriate.³ Certain categories of expenses are allocable and political committees must keep a record of such allocable expenses. See 11 C.F.R. §§ 106.5(a)(2), 104.10(b)(5). Likewise, refunds and rebates which originated from those same categories should be credited back to the federal and non-federal accounts in the same proportions as when they were initially disbursed as expenditures. Otherwise, political committees, through refunds and rebates, could indirectly augment their federal accounts for the purpose of influencing federal elections with non-federal funds.⁴

³ In Advisory Opinion ("AO") 1991-15, the Commission allowed a party committee to transfer an additional \$16,353.43 from its nonfederal to its federal funds to correct the effects of an erroneous allocation ratio despite the provisions of 11 C.F.R. § 106.5(g)(2)(ii)(B) which provide a time limit "during which a nonfederal account may reimburse a Federal account for the nonfederal portion of its allocable expenditures." AO 1991-15 at 2. This transaction was permitted because of "a good faith miscalculation of the proper ballot composition ratio which resulted in an underpayment to a Federal from a nonfederal account." *Id.* at 3. Missouri Democratic State Committee is distinguishable because the original allocation ratio was not in error and the underpayment (of the refunds/rebates) was to a nonfederal account. Furthermore, at the time it issued AO 1991-15, the Commission allowed specific retroactive changes in recognition of the fact that the new allocation regulations were significant revisions to past practice and required a brief period of adjustment. AO 1992-2 at 4. Such is not the case in this instance. There appears to be no Commission precedent for allowing a committee to rectify an indirect diversion of funds (by the use of refunds/rebates) by offsetting them against an alleged faulty allocation ratio used two election cycles later.

⁴ Arguably, the Committee's failure to properly allocate the refunds and rebates within the 60-day requirement of 11 C.F.R. § 106.5(g)(2)(ii)(B) render the transactions loans or contributions "from the non-federal account to a federal account, in violation of the Act." 11 C.F.R. § 106.5(g)(2)(iii).