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Washington, D.C. 20463


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December 7, 2001

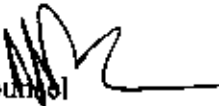
**AGENDA ITEM**  
For Meeting of: 12-13-01

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon   
Staff Director

FROM: Lawrence H. Norton   
General Counsel

N. Bradley Litchfield   
Associate General Counsel

SUBJECT: Second Revised Draft Advisory Opinion 2001-16

Attached is a second revised draft of the subject opinion for the Commission's consideration on the December 13 agenda. The revised opinion draft is prepared pursuant to the Commission's discussion at the November 29 meeting and also in response to informal comments made thereafter by the offices of several Commissioners. The revisions are on pages 2 and 3, and are denoted by using a **bold font**. There were extensive deletions from Agenda Document No. 01-60, which are not marked in the attached revised draft.

Also attached is an alternative letter that would be sent by OGC to close the file on this advisory opinion request in the event the Commission does not approve an advisory opinion. This letter has one sentence that departs from the usual content of the standard letter used by OGC when the Commission is unable to issue an opinion. It states: Therefore, the DNC remains subject to the allocation regulations, including the transfer deadline of 11 CFR 106.5(g)(2)(ii)(B).

This office has prepared these documents in order to facilitate the Commission's further discussion and disposition of this opinion and makes no recommendation with respect to either of them.

Attachments

1 ADVISORY OPINION 2001-16

2  
3 Joseph E. Sandler  
4 Sandler, Reiff & Young, P.C.  
5 50 E Street S.E.  
6 Suite 300  
7 Washington, DC 20003

8  
9 Dear Mr. Sandler:

10 This responds to your letter dated September 28, 2001, as supplemented by your  
11 letters dated October 25 and 23, on behalf of the Democratic National Committee  
12 ("DNC"), concerning the application of the Federal Election Campaign Act of 1971, as  
13 amended ("the Act"), and Commission regulations to the DNC's proposed schedule for  
14 making allocation transfers from its non-federal accounts to its Federal accounts on dates  
15 that would exceed the 60 day period prescribed in Commission regulations.

16 The request explains that the DNC transfer proposal stems from the national  
17 emergency that ensued after the tragic events of September 11. The national emergency  
18 "made it appropriate for the DNC to suspend its fundraising events and mail  
19 solicitations" after that date. Transfers from non-federal DNC accounts to its Federal  
20 accounts would cover the allocable expenses of various activities conducted by the DNC  
21 for both Federal and non-federal election purposes that are subject to allocation between  
22 its Federal and non-federal accounts. See Commission regulations at 11 CFR 106.5(a),  
23 106.5(b), 106.5(f), and 106.5(g). Among other requirements, these regulations prescribe  
24 a 60 day period, beginning once an allocable expenditure is made, during which transfers  
25 related to the non-federal portion of each designated (and allocable) expenditure must be  
26 made. 11 CFR 106.5(g)(2)(ii)(B).<sup>1</sup> Your request indicates that the proposed delay in  
27 DNC transfers would occur during a period that started on or about August 27, 2001, and  
28 would end on April 30, 2002.

29 The request further describes the circumstances underlying the proposed time  
30 periods for future DNC transfers from its non-federal to its Federal accounts:

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<sup>1</sup> The cited allocation regulations also provide that, for certain expenditures, an advance transfer is permitted 10 days prior to the actual expenditure if a reasonable estimate of the final cost can be made. 11 CFR 106.5(g)(2)(i). In addition, special time schedules and procedures are prescribed for transfers resulting from adjustments in the "direct costs of fundraising" that qualify for allocation. 11 CFR 106.5(a)(2)(ii), 106.5(f)(2). The application of these provisions is not fully discussed in this opinion.

1 In the aftermath of the events of September 11, the DNC immediately  
2 suspended significant aspects of its fundraising operations. This action was taken  
3 out of respect for the victims of this enormous tragedy and to ensure that no  
4 element of partisanship be permitted to undermine or detract from the strong  
5 unified bipartisan support for President Bush in his leadership of the nation's  
6 response to this unprecedented challenge.

7 While it is possible that fundraising activities may be resumed on a limited  
8 basis in the coming weeks, in view of the elections still scheduled for 2001 and  
9 other factors, it is impossible to determine in the present circumstances which  
10 activities will be deemed appropriate if any. In any event, any such activities  
11 would necessarily be greatly reduced in scale and frequency in view of the need  
12 for the attention and energies of all elected officials and political leaders to be  
13 focused on the tasks and challenges at hand.<sup>2</sup>

14 In these circumstances, it will likely continue to prove extremely difficult for  
15 the DNC to raise funds of all kinds, in particular, non-federal funds, for the  
16 foreseeable future.

17  
18 The request also asserts that the "current situation is truly one in which sufficient  
19 amounts of non-federal monies are not being received by the DNC in time to make  
20 allocation transfers because of circumstances outside the control of the committee or its  
21 agents." [Internal quotation marks omitted.]

22 Given the circumstances described, the DNC requests permission from the  
23 Commission to extend the 60 day window cited in 11 CFR 106.5(g)(2)(ii)(B) to one  
24 hundred twenty (120) days, for allocable expenditures made from August 27, 2001,  
25 through and including December 31, 2001. The effect of such an extension would be that  
26 transfers designated for allocable expenditures within this period could be made presently  
27 and continue, subject to a rolling 120 day window, until no later than April 30, 2002.

28 **As a result of the issues raised in this advisory opinion request, the**  
29 **Commission considered granting some temporary and circumscribed relief from**  
30 **compliance with the transfer deadline set forth in 11 CFR 106.5(g)(2)(ii)(B) through**  
31 **a Statement of Policy. See 2 U.S.C. §437c(b)(1) [Commission has duty to**  
32 **administer, seek to obtain compliance with, and formulate policy with respect to,**  
33 **the Act]. The Commission considered but failed to approve by a vote of 3-3, such a**  
34 **Statement of Policy. See, Agenda Document No. 01-61, Commission meeting of**

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<sup>2</sup> Quoting a named DNC official, it was reported in *The Washington Times* of October 2, 2001, that the DNC had resumed some fundraising, with an event scheduled for October 1, and other events planned in the days and weeks ahead. In addition, *The New York Times* of October 11 reported that, during the first week of October, the DNC distributed its first mailed solicitation since September 11.

1 **November 29, 2001, and a published Notice titled: *Request for Comment on Draft***  
2 ***Statement of Policy Regarding Party Committee Transfers of Nonfederal Funds for***  
3 ***Payment of Allocable Expenses, 66 Fed. Reg. 56247 (November 7, 2001). Likewise,***  
4 **the Commission has determined not to grant the requested relief from the transfer**  
5 **deadline through an advisory opinion.**

6 This response constitutes an advisory opinion concerning the application of the  
7 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
8 set forth in your request. *See 2 U.S.C. §437f.*

9 Sincerely,

10  
11 Danny L. McDonald  
12 Chairman  
13  
14



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December xx, 2001

AOR 2001-16

Joseph E. Sandler  
Sandler, Reiff & Young, P.C.  
50 E Street S.E.  
Suite 300  
Washington, DC 20003

Dear Mr. Sandler:

This responds to your letter dated September 28, 2001, as supplemented by your letters dated October 25 and 23, on behalf of the Democratic National Committee ("DNC"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the DNC's proposed schedule for making allocation transfers from its non-federal accounts to its Federal accounts on dates that would exceed the 60 day period prescribed in Commission regulations.

Enclosed is Agenda Document #01-60, which the Commission considered on November 29, 2001, and Agenda Document #01-xx, which the Commission considered on December 13. The Commission failed to approve either document by the required affirmative vote of four members. Therefore, the DNC remains subject to the allocation regulations, including the transfer deadline of 11 CFR 106.5(g)(2)(ii)(B).

In accord with Commission regulations at 11 CFR 112.4(a), you are hereby advised that with this letter the Commission has concluded its consideration of Advisory Opinion Request 2001-16.

Sincerely,

Lawrence H. Norton  
General Counsel

by:

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N. Bradley Litchfield  
Associate General Counsel

Enclosures

