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August 13, 1992

Mr. Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1992-33

FEDERAL ELECTION COMMISSION
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Dear Mr. Noble:

The Democratic National Committee and the Republican National Committee ("the national party committees") request an advisory opinion from the Federal Election Commission clarifying how the national party committees should treat in-kind contributions donated in connection with events and administrative expenses that can be paid for with a combination of federal and non-federal funds. Specifically, the national party committees request guidance in how they should treat the acceptance of in-kind contributions from corporations, labor unions, or any other source that would be otherwise prohibited from making contributions in connection with federal elections ("non-federal contributions").

Discussion

Currently, the national party committees accept non-federal in-kind contributions for allocable expenses in connection with administrative and fundraising expenses. Commission regulations require national party committees to pay for these allocable expenses with a combination of both federal and non-federal funds according to an appropriate "split." See 11 C.F.R. §§ 106.1(e); 106.5.

For example, if a corporate vendor agrees to donate flowers, with a fair market value of \$5,000, for a national party committee fundraising event, the national party committee would consider the full amount of this gift as an in-kind contribution to its Non-Federal Corporate Account. See 11 C.F.R. § 100.7(a)(1)(iii)(B). Since expenses for a fundraising event are allocated on a "funds received basis," a portion of all expenses for that event must be paid for with federal funds to the extent that such funds are raised. 11 C.F.R. § 106.5(f). Assuming, for instance, that the event raises funds at a 50% federal / 50% non-federal ratio, \$2,500 of federal funds would have been used to pay for the flowers had the national party committee paid for them directly.

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To ensure that a non-federal donor does not "pay for" the federal portion of an allocable expense, the national party committee determines the federal portion of the allocable expense, depending on whether it was an administrative or fundraising expense, and transfers that amount from its federal account to a non-federal account. In the hypothetical case above, a transfer of \$2,500 would be made from the national party committee's federal account to the appropriate non-federal account. Ultimately, through this transfer, the national party committee has "paid" the federal portion of the allocable expense by transferring the funds for use in connection with state and local elections.

A transfer of the federal portion of the in-kind contribution would be made no earlier than ten days before the receipt of the in-kind contribution, or sixty days after its receipt for an administrative expense.¹ For a fundraising event, the national party committees will have sixty days from the date of the event to make such transfers.

This method of accounting for non-federal in-kind contributions is consistent with the FEC's current allocation regulations, which acknowledge that national party committees undertake activity in connection with both federal, as well as non-federal elections.

The national party committees propose to report this transaction as follows:

1) The receipt and disbursement of an in-kind corporate contribution would be reported on Schedule I, Lines 1 and 5 respectively of the DNC's monthly FEC report. This would be consistent with reporting an in-kind contribution as both a receipt and disbursement. See 11 C.F.R. § 104.13.

¹ This time period is consistent with the rule governing transfers in connection with allocable expenses, which require committees to transfer funds shortly before or after an expense is paid to ensure that a committee's federal account does not receive a prolonged subsidization from a prohibited source. See 11 C.F.R. § 106.5(g)(2)(ii)(B).

In the event that more than one non-federal in-kind contribution is received for an event, we propose that the adjustment be made through one consolidated transfer, rather than making multiple transfers for each in-kind received for a specific event.

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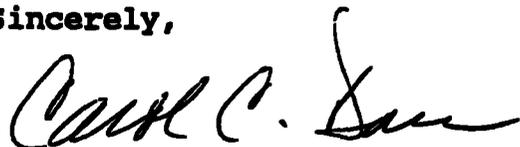
2) The national party committees propose that the transfer of the federal portion of the in-kind contribution be reported on Schedule A, Line 22 of the national party committee's federal report as a transfer to an affiliated committee, which would be clearly identified as a transfer of the federal portion of an in-kind contribution. The non-federal account would report the receipt of the transfer on Schedule I, Line 1.²

Therefore, the national party committees request an Advisory Opinion to confirm that this method of accounting for the federal portion of a non-federal in-kind contribution is permissible.

Thank you for your consideration of this matter.


Benjamin L. Ginsberg
General Counsel
Republican National Committee

Sincerely,


Carol C. Darr
General Counsel
Democratic National Committee

² In the OGC draft for AOR 1991-7, your office devised a reporting system to account for in-kind contributions. This procedure created Schedules H3 and H4 memo entries which turned a simple one-step transaction into a burdensome as well as confusing reporting method.

The method proposed herein would ensure that the FEC could properly track the transfer by identifying on Line 22, for each in-kind received, the specific in-kind contribution for which the transfer is being made, as well as the event for which this in-kind contribution was received. By cross referencing the committee's Schedules H1 and H2, the FEC could easily ascertain whether the transfer is for the proper amount and within the proper time window.