



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

March 7, 2003

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2003-1

Mitchell J. Eichen  
Treasurer  
NORPAC  
P.O. Box 5595  
Englewood, N.J. 07631

Dear Mr. Eichen:

This responds to your letters on behalf of NORPAC dated November 18, 2002, and December 28, 2002, requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (“the Act”), and Commission regulations to NORPAC’s annual mission to Washington.

***Background***

The Statement of Organization, as amended, filed by NORPAC indicates that it is a nonconnected committee and qualifies as a multicandidate committee. Reports filed with the Commission indicate that NORPAC makes contributions in connection with Federal elections, and has also made donations to non-Federal candidates using Federal funds.

You state that each year “participants” from NORPAC make an annual mission to Washington, where they meet with Members of Congress to discuss issues in support of Israel. You state that participants act solely as individuals. You state that these issues can include bills that have been introduced or that NORPAC would like to have introduced. You further state that no discussions of support for any Member of Congress are held at these meetings. You state that:

1. During the mission, no campaign contributions are delivered to anyone at anytime;
2. During the mission, no receptions or similar events are held for any Member of Congress or candidates for Federal office;
3. NORPAC seeks no assistance from Members of Congress or candidates for Federal office for fundraising activities;
4. Participants do not meet with political party officials as part of the mission;
5. To the best of your knowledge, no Member of Congress or candidate for Federal office has ever signed a fundraising letter for NORPAC, or otherwise participated in fundraising for NORPAC;
6. No contributions of any sort (*e.g.*, to political party committees or to PACs) are made as part of the annual mission; and
7. As a result of these meetings, subsequent decisions about candidate support may be made.

You provide the following examples of expenses incurred in connection with the annual mission to Washington: bus travel; food; rental of meeting space; supplies for participants (pens, folders, pads, etc.); informational packets regarding issues to be discussed; and Congressional directories. You state that payments are made to NORPAC by annual mission participants in the form of an attendance fee to participate in the mission, and that the attendance fee is based in large part on the prior year's fee, and is intended to allow NORPAC to recover the direct costs of its mission.

You state that, until now, all the attendance fees related to the annual mission were deposited into NORPAC's Federal account, and all the disbursements made in connection with the annual mission were made from NORPAC's Federal account. In December 2001, NORPAC established a non-Federal bank account.

***Question Presented***

You ask whether the attendance fees related to the annual mission may be deposited into NORPAC's non-Federal account and whether the disbursements for the annual mission may be made from NORPAC's non-Federal account, or whether the annual mission expenses must be allocated between NORPAC's Federal and non-Federal accounts.

### ***Analysis and Conclusion***

In brief, the Commission concludes that NORPAC may either allocate disbursements for the expenses about which you inquire between NORPAC's Federal and non-Federal accounts, or it may make these disbursements solely from NORPAC's Federal account.

NORPAC has chosen to organize and operate as a Federal political committee. Under 2 U.S.C. 434(a), such a political committee must file reports of receipts and disbursements. Under 2 U.S.C. 434(b)(4), these reports must include "the total amount of all disbursements, and all disbursements" in several categories, such as expenditures, independent expenditures, contributions, loans, transfers and "any other disbursements." Given these statutory reporting requirements and given that NORPAC exists in legal form as a Federal political committee, disbursements for the expenses about which you inquire must be viewed in light of NORPAC's status as a political committee. The major purpose of a political committee is material to the reporting of receipts and disbursements even if those receipts and disbursements are not directly in connection with a federal election.<sup>1</sup>

Since 1977, Commission regulations have required political committees active in both Federal and non-Federal elections to allocate their administrative expenses between the committee's Federal and non-Federal accounts "in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis." See Explanation and Justification to the Final Rules on Methods of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting, 55 FR 26058, 26059 (June 26, 1990). For purposes of this opinion, these rules were not changed by the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat. 81 (March 27, 2002). The cited Explanation and Justification notes that the purpose of these rules is to implement the contribution and expenditure limitations and prohibitions established by 2 U.S.C. 441a and 441b. 55 FR at 26058.

Commission regulations at 11 CFR 106.6 set forth the procedures to be followed by nonconnected committees that make disbursements in connection with both Federal and non-Federal elections. Under 11 CFR 106.6(a), nonconnected committees may make such disbursements in one of two ways: they may make them entirely from funds raised subject to the prohibitions and limitations of the Act; or, if they have established separate Federal and non-Federal accounts pursuant to 11 CFR

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<sup>1</sup> See, e.g., *FEC v. GOPAC, Inc.*, 871 F.Supp. 1466, 1470-71 (D.D.C. 1994) ("*Buckley* (424 U.S. 1 (1976)) authoritatively establishes that *any* payment of \$1,000 or more by an organization whose major purpose has been determined to be the nomination or election of an identified candidate for federal office . . . is, 'by definition, campaign related' and hence, constitutes an 'expenditure' by a 'political committee.'").

102.5, they may allocate them between these accounts. If a nonconnected committee elects to allocate, then it should allocate these disbursements pursuant to the funds expended method described at 11 CFR 106.6(c). Section 106.6(b) provides that “nonconnected committees that make disbursements in connection with federal and non-federal elections shall allocate expenses for the following categories of activity”:

1. Administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate. 11 CFR 106.6(b)(2)(i);
2. 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 through such program or event. 11 CFR 106.6(b)(2)(ii); and
3. 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. 11 CFR 106.6(b)(2)(iii).

The expenses about which you inquire are of the type listed in 11 CFR 106.6(b)(2)(i) (*e.g.*, office supplies, rental of meeting space, etc.). Thus, the Commission finds that these are administrative expenses. Therefore, the Commission further finds that the expenses about which you inquire must be allocated between Federal and non-Federal funds under 11 CFR 106.6, unless they are paid solely from NORPAC’s Federal account.<sup>2</sup>

You ask whether payments to NORPAC by participants in the annual mission to Washington are exempt from the general contribution limitations to a political committee. The attendance fees for the mission to Washington may be deposited in either NORPAC’s Federal or non-Federal account. Contributions by participants to NORPAC’s Federal account are contributions to NORPAC, and thus are subject to the Act’s contribution limitations, prohibitions, and reporting requirements. 2 U.S.C. 434 and 441a. However, donations by participants to NORPAC’s non-Federal account are not subject to the Act’s contribution limitations. *See* 11 CFR 106.6. If participants are merely reimbursing NORPAC at cost for specific earmarked individual expenses (*i.e.*, room deposits), such transfers are not limited as

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<sup>2</sup> You also ask whether certain disbursements in connection with NORPAC’s annual mission to Washington constitute “non-Federal activities” and are therefore exempt from reporting under the Act. As discussed above, disbursements in connection with NORPAC’s annual mission to Washington should be allocated between NORPAC’s Federal and non-Federal accounts, unless these disbursements are solely made from the Federal account.

contributions or expenditures and may pass through the nonfederal account. Similarly, funds advanced by NORPAC for such specific individual expenses need not be allocated, but may be paid from the nonfederal account.

The Commission expresses no opinion concerning any possible application of Federal lobbying statutes (*e.g.*, the Lobbying Disclosure Act of 1995, codified at 2 U.S.C. 1601 *et. seq.*) since those issues are not within its jurisdiction. For the same reason the Commission also expresses no opinion as to the implications of NORPAC's annual mission activities under the Internal Revenue Code, and in particular expresses no opinion as to NORPAC's status as a political organization under 26 U.S.C. 527.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Ellen L. Weintraub  
Chair