ETEXT ATTACHMENT

Reference: AUGUST Monthly Report (7/1/03-7/31/03)

AFSCME PEOPLE believes that it is not required to allocate fundraising costs that are paid for entirely with 'funds subject to the prohibitions and limitations of the [Federal Election Campaign Act of 1971, as amended]. 11CFR 106.6(a). In adopting the allocation regulations, the FEC stated that a political committee could choose to pay more than the allocable share of the costs from its federal account. 55 Federal Register 26058, 26063 (June 26, 1990)(Final Rules on Methods of Allocation Between Federal and Non Federal Accounts;Payments;Reporting). 'One of the alternatives described in the Notice of Proposed rulemaking offered committees the option of defraying the total cost of an allocable activity with funds raised under federal law. This option has been retained in paragraph 106.5(a)(1), reflecting the Commission's view that allocating a portion of certain costs to a committee's non-federal account is a permissive rather than a mandated procedure. Thus, the amounts that would be calculated uner the rules for a committee's federal share of allocable expenses represent the minimum amounts to be paid from the committee's federal account, without precluding the committee from paying a higher percentage with federal funds.' 55 Fed.Reg. at 26063 (emphasis added).

Thus, it is our understanding that the allocation formula is a minimum and a political committee can pay all of its solicitation costs out of federal funds instead of allocating the costs between a federal and non-federal account. The FEC has acknowledged this in subsequent advisory opions. See, e.g., AO 2001-14 ('All administrative expenses must be allocated between Federal and non-Federal accounts, if incurred by a committee that makes disbursements in connection with both Federal and non-Federal elections and that chooses to pay any portion of such disbursements from its non-Federal accounts.')(emphasis added).

This view is consistent with the purpose of the allocation regulations: to insure that political committees don not use non-federal funds to pay for the federal share of a mixed expense. 55 Fed.Reg. 26058,26066. While the FEC is discussing party committees at this point in the Explanation and Justification, it later states that the rules are no different for separate segregated funds. 55Fed.Reg. at 26066. ('Paragraph 106.6(b) describes the categories of activities that are to be allocated by each type of committee. These categories are generally the same as those defined in paragraph 106.5(-a)(2) for party committees, with one important difference. Unlike party committees and nonconnected committees, separate segregated funds need only allocate their administrative and fundraising expenses if those expenses are not paid by their connected organizations, as permitted by II CFR 114.5(b).'). Those concerns seem misplaced here. AFSCME PEOPLE's non-federal account accepts no funds that are not 'subject to the prohibitions and limitations of the [FECA].' Even if AFSCME PEOPLE had used the union's treasury funds, instead of its federal account, to fund its solicitation costs, the use of those treasury funds would have been permitted. 2 U.S.C. 441b(b)(2)(C).

AFSCME PEOPLE'S decision to pay fo some of its solicitation costs from its federal account is even more understandable in this context, because AFSCME PEOPLE's federal acount is the sole source of funds for its non-federal account. Put more simply, the non-federal account in question has no source of funds other than AFSCME PEOPLE's federal account. In the context of the statute, even the non-federal account consisists solely of funds from 'funds subject to the prohibitions and limitations of the [Federal Election Campaign Act of 1971, as amended].'