



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RQ-2

Jane Perkins, Treasurer
Democrats 2000
1311 L St., NW, Suite 300
Washington, DC 20005

MAY 18 1994

Identification Number: C00230342

Reference: 30 Day Post-Special Report (1/1/93-5/24/93)

Dear Ms. Perkins:

This letter is prompted by the Commission's preliminary review of the report(s) referenced above. The review raised questions concerning certain information contained in the report(s). An itemization follows:

-On Schedule H3 supporting Line 18 of the Detailed Summary Page you disclosed a transfer of \$20,375.34 on 4/28/93 from your non-federal account to your federal account per Advisory Opinion 1993-3. Subsequently, your committee filed an amended Summary and Detailed Summary Page to the 30 Day Post-Special Report to reflect the increased cash on hand balance. Our records indicate that in 1993 your committee filed amended Summary and Detailed Summary Pages, H2's, H3's and H4's to the 1992 Quarterly & Monthly reports which adjusted for the activity described in Advisory Opinion 1993-3. Therefore, this transfer inflates your current cash on hand balance by \$20,375.34.

On 4/2/93 the Commission ruled in Advisory Opinion 1993-3 (copy attached) on behalf of Democrats 2000 that "(t)he Committee should file with its Mid-Year 1993 report amended H2's and H4's listing each covered expenditure and the revised calculations. See Advisory Opinion 1991-15. If any allocable expenditures have been reported solely as expenditures itemized on Schedule B, the Committee should file Schedule H2's, H3's and H4's for these expenditures, also at the time it files its Mid-Year 1993 report. See Advisory Opinion 1992-27. The Committee should include in its report an explanatory letter noting the reason for the new allocations and resulting transfers."

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"An entry for the adjustment should be made on Schedule H3 when the transfer is actually made. Democrats 2000 should note that this adjustment reflects retroactive reallocations during the period January 1, 1991, through May 31, 1992, made pursuant to Advisory Opinion 1993-3."

In order to be in total compliance with Advisory Opinion 1993-3, the Commission recommends that you amend your 1991-1992 Quarterly and Monthly Reports for the time period 1/1/91-5/31/92 back to their original filing. The corrected H2's and H4's should be filed as amendments to the Mid-Year 1993 report along with the entry for the \$20,375.34 adjustment on Schedule H3 as noted.

-Your report discloses what appear to be in-kind contributions ("donations") from corporations on Schedule H4, supporting Line 21(a) of the Detailed Summary Page. Pursuant to Advisory Opinion 1992-33 (copy attached), the Commission concluded that a "national party committee may accept corporate in-kind donations in connection with administrative and fundraising activities" as long as "the Federal share of goods or services is paid or transferred to the non-federal account in advance" of the acceptance of the corporate in-kind donations by the Federal account.

Three steps were outlined by the opinion regarding the reporting of these in-kind donations: On Schedule H3, the "committee should first disclose a transfer (in-kind) from the non-federal account for the in-kind donation." Also reported on Schedule H3 should be the date the committee receives the in-kind donation, the full amount of the in-kind donation (transfer) and the particular administrative or fundraising event in which the in-kind donation was received. On Schedule H4, "the committee should make two separate entries, the first of which discloses the use or 'expenditure' of the in-kind donation, "and the second of which reflects advance or contemporaneous payment of" the Federal's share of the in-kind donation by the Federal account to the non-federal account. This payment should be made the same day the in-kind donation is transferred to the Federal account.

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Democrats 2000

In order to comply with Advisory Opinion 1992-33, your committee needs to file an amended report with appropriate entries on Schedule H3, and H4 correctly disclosing in-kind donations accepted from your non-federal account.

A written response or an amendment to your original report(s) correcting the above problem(s) should be filed with the Federal Election Commission within fifteen (15) days of the date of this letter. If you need assistance, please feel free to contact me on our toll-free number, (800) 424-9530. My local number is (202) 219-3580.

Sincerely,

Jennifer K. Wall

Jennifer K. Wall
Reports Analyst
Reports Analysis Division

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activities involved Federal elected officials, although none of the activities related to the election of a particular candidate.

From August 1991 to May 1992, the second phase, only nominal transfers were made from the non-Federal to the Federal account. You state that the amount of the transfers was considerably below the amount of the non-Federal share of allocable expenses.

During the period from January 1991 to May 1992, the Committee "understood" that it could spend funds out of the Federal account and make corrections from the non-Federal account later, but was not aware of the time limit on such corrections at 11 CFR 106.6(c)(2)(ii)(B). The Committee was also uncertain as to how to account and report for in-kind contributions.

At the end of May 1992, a law firm assisted the Committee in developing new procedures to "track" and allocate expenses more effectively. Currently, the committee lists each check written from the Federal account individually on an accounting sheet. After that, it lists a total for each category (administrative and separate fundraising activities) in an individual column followed by a Federal column and a non-Federal column for each category. Whenever the Committee makes a transfer from the non-Federal to the Federal account, the totals from the non-Federal columns are added to determine the amount to be transferred.

You state that, in the fall of 1992, the Committee decided to recalculate the allocations made during the period through May 1992 to determine how much it had overpaid from its Federal account. You state that the process was completed in late 1992 and took a long time to complete "because of other demands during the campaign and the minimal staff available to complete this review." It revealed that, if the newly-used method had been used for the period in question, the Committee's cash-on-hand in its Federal account at the end of May 1992 would have been \$21,731.12, instead of \$1,355.78, a difference of \$20,375.34.

You note the caution exercised by the Committee in making greater than necessary payments originally from the Federal account. You request that the Commission permit Democrats 2000 to retroactively reallocate its fundraising and administrative expenses from January 1991 to May 1992 in accordance with the more recent calculations.

The allocation regulations promulgated on January 1, 1991, provide that a political committee, including a non-connected political committee,² which has separate Federal and non-Federal accounts, shall allocate their Federal and non-Federal expenses for certain purposes. 11 CFR 106.6(a). These purposes include: (1) administrative expenses not directly attributable to a clearly identified candidate including rent, utilities, office supplies, and salaries; and (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.

The regulations explicitly provide for the method of allocating administrative expenses and the direct fundraising costs. Administrative costs should be allocated based on the ratio of Federal expenditures to total Federal and non-Federal disbursements made by the committee during the two-year election cycle. An estimate of the ratio may be based upon a prior comparable cycle or a reasonable prediction of disbursements. Calculations of Federal expenditures should include only amounts contributed to or otherwise spent on behalf of specific Federal candidates, and calculations of total disbursements should include only disbursements for specific Federal and non-Federal candidates, and not overhead or other generic costs. 11 CFR 106.6(c)(1). The regulations also provide for adjusting the allocation ratio periodically to reconcile it with actual activity to date, and to make appropriate transfers. 11 CFR 106.6(c)(2).

Direct fundraising costs should be allocated on a funds received basis whereby a committee allocates its fundraising costs based on the ratio of funds received into its Federal account to its total receipts for each fundraising program or event. Estimates of the ratio for disbursements prior to the event should be based upon reasonable predictions and adjustments should be made after the event to correspond to the actual ratio of funds received. 11 CFR 106.6(d).

The allocation regulations have always allowed Federal accounts to pay all committee expenses, if desired. 11 CFR 106.6(a). Furthermore, these regulations have always provided a time window within which non-Federal accounts may transfer funds to the Federal accounts for the non-Federal share of joint expenditures.

In the original proposed rule the window was a brief 10 days after payment from the Federal account (no time before). The 40 day window contained in the final rules, effective January 1, 1991, was

² A non-connected committee includes any committee which conducts activity in connection with an election, but

which is not a party committee, an authorized committee, or a separate segregated fund. 11 CFR 106.6(a).

10 days longer than that advocated in any of the comments received in response to that proposed rule. Nevertheless, in an effort to be even more accommodating to committees, the window was expanded to 70 days (10 days before/60 days after the payment from the Federal account) in an amended rule that took effect on June 18, 1992. 11 CFR 106.61e(2)(ii)(B).³

The Committee's long-standing difficulties occurred despite the guidance and instructions set out in the new allocation regulations, published June 26, 1990, and other Commission publications such as the FEC Record Supplement on Allocation issued in November 1990. Nevertheless, the Commission, on three occasions, has permitted retroactive reallocation to remedy errors by political committees acting in good faith.

In Advisory Opinion 1991-15 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶6019], issued in June 1991, the Commission permitted retroactive application by a state party committee of a ballot composition formula for administrative costs where the initial formula was based on a "good faith miscalculation" and had resulted in transfers of non-Federal funds to the Federal account in amounts that were lower than the permissible share of joint expenditures. The committee stated that it had not realized at first that certain special elections could be counted in the total of statewide offices. In Advisory Opinion 1992-2 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶6045], issued in March 1992, the Commission permitted a national party committee to take a discrete group of expenses that had previously been allocated as administrative costs and retroactively reallocate them as direct costs of fundraising. This group of expenses consisted of salaries and fringe benefits of employees in the committee's Fundraising and Direct Mail divisions. In Advisory Opinion 1992-27 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶6055], issued in August 1992, the Commission permitted a national party committee, which recognized its responsibilities under the rules but which did not have an adequate accounting and reporting system in place until March, 1992, to retroactively break down prior fundraising costs (from the beginning of 1991 through February 1992) into Federal and non-Federal shares and make the necessary transfer to the Federal account.

The Commission's decisions to permit retroactive reallocations and resultant non-Federal to Federal transfers were a recognition that "the allocation regulations represent significant revisions to past practice and require a brief period of adjustment, i.e., the current [1991-92] election cycle, by political committees acting in good faith." Advisory Opinion 1992-2. See Advisory Opinion 1992-27.⁴

Based on the circumstances presented, the Commission concludes that Democrats 2000 may retroactively reallocate its fundraising and administrative expenses for the period from January 1991 through May 1992. The Commission notes that this request was submitted on December 31, 1992, the last day of the 1991-1992 allocation cycle, and that the "brief period of adjustment" referenced in Advisory Opinion 1992-2 has now ended. Consistent with Advisory Opinions 1991-15, 1992-2, and 1992-27, the Committee may, within 30 days after the date of this opinion, transfer \$20,375.34 from its non-Federal to its Federal account.

From an examination of Democrats 2000's reports filed with the Commission, it appears that the joint expenditures from January 1991 through May 1992 have now been reported on Schedule H4's. The Committee should file with its mid-year 1993 report amended H2's and H4's listing each covered expenditure and the revised calculations. See Advisory Opinion 1991-15. If any allocable expenditures have been reported solely as expenditures itemized on Schedule B, the Committee should file Schedule H2's, H3's, and H4's for these expenditures, also at the time it files its mid-year 1993 report. See Advisory Opinion 1992-27. The Committee should include in its report an explanatory letter noting the reason for the new allocations and resulting transfers.

An entry for the adjustment should be made on Schedule H3 when the transfer is actually made. Democrats 2000 should note that this adjustment reflects retroactive reallocations during the period January 1, 1991, through May 31, 1992, made pursuant to Advisory Opinion 1993-3.

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

³ Commission regulations also now provide for a 60-day period after a fundraising program or event for payments to the Federal account by the non-Federal account if the Federal account had paid more than its allocable share. 11 CFR 106.61d(2).

⁴ The Commission notes that the election cycle for allocation purposes differs from that found at 11 CFR 100.3(b), where the cycle is defined with respect to candidates and is considered as ending "on the date on which the general

election for the office or seat that the individual seeks is held." 11 CFR 100.3(b). As was made clear in Advisory Opinion 1991-6 [CCH FEDERAL ELECTION CAMPAIGN FINANCING GUIDE ¶6013], the allocation rules envision a two year cycle which begins on January 1 of each odd-numbered year, and extends through December 31 of the following even-numbered year. Advisory Opinions 1991-15 and 1991-6.

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\$1,000 limit [at 2 U.S.C. 5441a(a)(1)(A)] "eliminates [him] as a serious candidate" and renders the incumbent unbeatable. He also states that, although "party candidates" are subject to the same limit, they "have greater access to political action committees (PACs) which can contribute up to \$5,000" and are eligible for substantial party coordinated expenditures.

You describe Mr. Khachatourian as "an independent candidate who clearly demonstrates that the [section 441a] restriction precludes the mounting of an effective campaign against party candidates," and ask whether those limits should be applicable to him. You enclose a memorandum of law challenging the statutory limit as applied to the candidate; you argue that there is an unequal impact, with advantages extending to major party candidates, and that the First Amendment rights of Mr. Khachatourian may be impaired.

Section 441a(a)(1)(A) of Title 2 was enacted in 1974 as an amendment to the Act, which the Commission is required to administer and enforce. 2 U.S.C. §437c(b). The wording of section 441a(a)(1)(A) applies to all candidates and makes no exceptions. Generally, Federal administrative agencies are without power or expertise to pass upon the constitutionality of legislative action. *Spiegel, Inc. v. Federal Trade Commission*, 540 F.2d 287, 294 (7th Cir. 1976). See *Johnson v. Robison*, 415 U.S. 361, 368 (1974). Therefore, even if the Commission were persuaded as to the merits of your position, it could not accede to Mr. Khachatourian's request and conclude that the limit is inapplicable.

Moreover, the Commission notes that the constitutionality of 2 U.S.C. §441a(a)(1)(A) has been upheld in *Buckley v. Valeo* [1901], 424 U.S. 1 (1976). The Court concluded that the \$1,000 limitation was constitutionally justified because of the need "to limit the actuality and appearance of corruption resulting from large individual financial contributions." 424 U.S. at 26. The Court determined not to question the amount of the limit established by Congress and concluded that a possible lack of "fine tuning" by Congress as to the amount did not constitute an infringement, as overbreadth, of First Amendment rights. 424 U.S. at 30. The Court admitted that the charge of discrimination against minor party and independent candidates is more troubling than a similar charge with respect to major party challengers. Nevertheless, the Court, in viewing the situation of minor party and independent candidates in general, referred to such countervailing factors as the resultant inability of major party candidates to receive large contributions (i.e., contributions they were more likely to receive), and the fact that minor party and independent candidates may have a substantial impact on the outcome of elections. 424 U.S. at 33-35. See *Goland v. United States* [19281], 903 F.2d 1247, 1258 (9th Cir. 1990).

Based on the foregoing analysis, the Commission concludes that the limits of 2 U.S.C. §441a(a)(1)(A) are applicable to Mr. Khachatourian. His campaign may not accept contributions in excess of \$1,000 from any individual with respect to the October 3 open primary.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §4371.

Dated: September 25, 1992.

[16074] AO 1992-33: Reporting In-Kind Contributions for Joint Fundraiser

[In-kind contributions may be accepted for a joint fundraiser held by federal and non-federal committees if the federal portion is paid for in advance or upon receipt; an escrow account may be established to facilitate payment in advance. Answer to Carol C. Darr, General Counsel, Democratic National Committee, 480 South Capitol Street, S.E., Washington, D.C. 20003, and Benjamin L. Ginsberg, General Counsel, Republican National Committee, 310 First Street, S.E., Washington, D.C. 20003.]

This responds to your letter dated August 13, 1992, requesting an advisory opinion on behalf of the Democratic National Committee and the Republican National Committee ("the national party committees") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of in-kind contributions from sources otherwise prohibited by the Act in connection with events and administrative expenses involving shared Federal and non-federal payments.

You state that the national party committees currently accept "non-federal" in-kind contributions for allocable expenses in connection with administrative and fundraising expenses. You believe this is in accordance with Commission regulations at 11 CFR 106.5 requiring national party committees to pay for the allocable expenses with a combination of both Federal and non-federal funds according to an appropriate percentage. You provide the following example of the treatment of "non-federal" in-kind contributions:

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If a corporate vendor donates flowers with a fair market value of \$5,000 for a national party committee fundraising event, the committee would consider the full amount as an in-kind contribution to the non-federal account. Expenses for a fundraising event are allocated on a funds received basis under 11 CFR 106.5(f). Accordingly, if the event raises funds at a 50/50 Federal/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. To ensure that the corporate donor does not "pay for" the Federal portion of the allocable expense, the committee transfers the amount from its Federal account to its non-federal account. For an administrative expense, a transfer of the Federal portion would be made no earlier than 10 days before or no later than 60 days after the receipt of the in-kind contribution. For a fundraising event, the committees would make such transfers within 60 days of the event.¹ If more than one non-federal in-kind contribution is received for an event, the adjustment would be made through one consolidated transfer, rather than by a transfer for each in-kind received for a specific event.

You propose to report the receipt and disbursement of an in-kind non-federal contribution on Schedule I, lines 1 and 5. You also propose that the transfer of the Federal portion be reported on Schedule B, Line 22 of the national party committee's Federal report as a transfer to an affiliated committee and that it 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 line 1 of Schedule I.

You state that there is no need for the committee to file an H3 or H4 schedule. You believe that the reporting will be adequate by identifying on line 22, for each in-kind received, the specific in-kind contribution for which the transfer is made and the event for which the in-kind contribution was received. You assert that, by cross referencing the committee's Schedules H1 and H2, the Commission can ascertain whether the transfer is for the proper amount and within the correct time period.

You ask the Commission to confirm that your proposed "method of accounting" for the Federal portion of an in-kind contribution from an otherwise prohibited source is permissible.

Commission regulations provide for allocation of expenses by party committees making disbursements for administrative expenses, fundraising activities, exempt activities, or generic voter drives in connection with both Federal and non-federal elections. 11 CFR 106.1(e). More specifically with respect to the first two categories, party committees that make disbursements in connection with Federal and non-federal elections shall allocate expenses for (i) administrative expenses not attributable to a clearly identified candidate, including rent, utilities, supplies, and salaries; and (ii) 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 by one committee through such a program or event. 11 CFR 106.5(a)(2)(i) and (ii).

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 disbursement from its non-federal account. Explanation and Justification of 11 CFR Part 106, 55 Fed. Reg. 26058, 26063 (June 26, 1990). Each national party committee, other than a Senate or House campaign committee, shall allocate a fixed percentage of its administrative expenses during a reporting period, and such minimum Federal percentages differ depending upon the year the expenses were incurred. 11 CFR 106.5(b)(1) and (2). These minimum percentages, 65 percent in a presidential election year and 60 percent in other years, reflect the national party committees' primary focus on presidential and other Federal elections, while still recognizing party-building activities at state and local levels. 55 Fed. Reg. at 26063.

Fundraising costs, however, must be allocated on a different basis, i.e., on the basis of the particular event or program. A party committee, whether national or not, allocates the direct costs of each fundraising program or event, where both Federal and non-federal funds are collected by that one committee through such program or event. (This is not to be confused with joint fundraising events conducted by more than one committee.) 11 CFR 106.5(f); 55 Fed. Reg. at 26065. A party committee should allocate its fundraising costs based on the ratio of funds received into its Federal account to its total receipts from each fundraising program or event. Each event or program has its own ratio. The committee estimates this ratio prior to each program or event, based on the committee's reasonable prediction of its Federal and non-federal revenue for the program or event. 11 CFR 106.5(f)(1). The committee adjusts its ratio no later than 60 days following each such event to reflect the actual ratio of funds received. If either the Federal or non-federal account has paid more than its share, then the

¹ You assert that such time periods are consistent with the rules governing transfers for allocable expenses set out at 11 CFR 106.5(a)(2)(H)(B).

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necessary transfers will be made from the other account, and the adjustments will be noted in the report for the period in which they are made. 11 CFR 106.5(f)(2).

The purpose of these allocation rules is to assure that non-federal funds do not pay for the Federal share of a mixed expense. See 55 Fed. Reg. at 26066. Committees have the option of two payment procedures: (1) committees pay an entire bill from the Federal account and transfer funds from the non-federal to the Federal account to cover the non-federal share; or (2) committees establish a separate allocation account, which the Commission considers to be a Federal account, and funds are transferred from the Federal account and the non-federal account solely to make allocable payments. 11 CFR 106.5(g)(1)(i) and (ii). Although the promulgation of the allocation regulations marks the first time that the Commission has allowed non-federal funds to be transferred to a committee's Federal account, this was only for the limited purpose of paying allocable expenses. Under the new rules, committees are prohibited from making such payments through their non-federal accounts. 55 Fed. Reg. at 26066.

The Commission's allocation regulations do not specify how to deal with in-kind donations received in connection with allocable activities or functions. (As a general rule, an in-kind donation for Federal elections is treated as if funds equal to the value of the donation were received by the committee and then the committee expended those funds to purchase the goods or services. See 11 CFR 104.13.) As a general rule, a corporation or labor organization may not contribute "anything of value" for "the purpose of influencing" any election for Federal office. This means that no impermissible funds, including in-kind contributions, may be solicited or accepted for use in Federal election activities. Further, the Commission must ensure that prohibited sources are not utilized to fund the Federal share of allocable activity expenses, even for a brief time. At the same time, the Commission recognizes the difficulty a committee would face in trying to make a transfer from the Federal to a non-federal account in the exact amount of the Federal share of each in-kind donation on the same day the in-kind donation is received.

The Commission concludes that a national party committee may accept corporate in-kind donations in connection with fundraising activities, but only if one of two conditions is met: (1) the amount of the Federal share of goods or services is paid to the non-federal account in advance or on receipt; or (2) sufficient funds to pay for the Federal share of goods or services have been transferred to a non-federal account in advance under the following circumstances.

To meet the latter condition, the committee must, in essence, pre-pay or escrow an amount of funds that corresponds to the value of the Federal share of the expenses associated with in-kind donations that will be received. The committee must make good faith estimates of the amount of such in-kind donations that are expected and transfer a sufficient amount of funds from the committee's Federal account to a non-federal account to cover the Federal share of the expenses associated with the in-kind donations actually received. The committee may make bulk transfers to accomplish this "escrow" function, rather than separate transfers for each anticipated in-kind donation. By allowing this approach, the Commission is relieving the committees of the practical problem of having to calculate and pay the precise amount of the Federal share of expenses associated with in-kind donations on the same day such donations are received. This escrow of funds is separate and distinct from the allocation account described above and set out at 11 CFR 106.5(g)(1)(ii).

The in-kind donations for allocable activities must be reported so that the full amount of the receipts and corresponding expenses appear in the schedules specifically designed for allocable activity receipts and expenses. The committee should disclose the aggregate amount of in-kind donations received for allocable activity on Schedule H3, as transfers in-kind from the non-federal account, broken down into appropriate categories for administrative expense receipts or receipts for particular fundraising events or programs. The corresponding expenses must be itemized as non-federal share disbursements on Schedule H4 in a way that also provides the same donor identification information required on a Schedule A for in-kind contributions for Federal elections.

The payments from the Federal account to the non-federal account for the purpose of "escrowing" the Federal share of expenses relating to in-kind donations for allocable activities must be disclosed on Schedule H4 as Federal share payments. Any adjustment payments from the non-federal account would be reported on Schedule H3 with an explanatory statement.

If the committee chooses to exercise the first option, it may report as follows: For the contribution of \$5,000 in flowers, on Schedule H3 (Transfers from Non-federal Accounts) covering the relevant reporting period, the committee should first disclose a transfer (in-kind) for that fundraising event of the full amount of \$5,000 on the date the committee receives the flowers, e.g., the date of the fundraiser,

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next to a space on line 1 identifying the event.² (If there are other such in-kind contributions on that date for the fundraiser, those amounts should also be included.) On Schedule H4 (Joint Federal/Non-federal Activity Schedule), the committee should make two separate entries, the first of which discloses the use or "expenditure" of the \$5,000 in-kind contribution, and the second of which reflects advance or contemporaneous payment of \$2,500 by the Federal account to the committee's non-federal account. Schedule H4 should also include a description of the reason for the transaction, i.e., transfer of Federal share of in-kind contribution to non-federal account, with a reference to the donation of flowers above. 11 CFR 104.10(b)(4).³

If the flowers were provided for an administrative event or purpose, a payment of \$3,250 would be required (and reported) in a presidential election year and a payment of \$3,000 in any other year. Consistent with the reporting of in-kind contributions, the donor florist should be reported on the Schedule H4 as the payee of the \$5,000. The non-federal account should be reported as the payee of the \$2,500 (or \$3,250 or \$3,000) disbursement. Sample FEC Schedules H3 and H4 illustrate the appropriate reporting entries and are expressly incorporated as part of this opinion.

The committee may use alternative methods on Schedules H3 and H4 in order to minimize entries and avoid duplication. On Schedule H3, the committee may separate out the transfers resulting from in-kind transactions by fundraising event or program or by administrative purpose. Thus, instead of setting out the transfers for in-kind transactions by date (to be aggregated with other transfers on that date), the H3 will show separate listings by the event or program. Therefore, all transfers pertaining to the program or event, regardless of the date made (but made within the reporting period), will be aggregated for that entry. In order to clarify when these transfers occurred, the committee should also note, on the Schedule H3 listing, that the transfer reflected thereon relates to H4 entries of donors that are itemized on specific pages, e.g., H4, p. 4, entries A and C.

Instead of an entry on Schedule H4 for each advance or contemporaneous payment by the Federal account to the non-federal account, the committee may report the aggregate of such payments made on a particular date and the H4 donor entries to which that aggregate sum relates. Accordingly, the "first" entry for each in-kind donation, i.e., the entry listing the donor, must still be itemized.

If the committee is advancing escrowed funds, the H4 schedule should include the amount of escrowed funds transferred, as a transfer to the non-federal account of the anticipated Federal share (for a particular event or program, if known). Such transfers might not correspond to the H4 entries of donors for a particular event or program. As stated above, schedule H3 will disclose adjustment payments back to the Federal account, after the final amounts have been determined, and will explain the adjustment payments, i.e., noting the previous H4 entries to which these adjustments correspond.⁴

On Schedule I, the committee should include the full \$5,000 as an in-kind contribution received by the non-federal account with a supporting memo Schedule A that itemizes the contributor's identification. 11 CFR 104.8(e). In this situation, the \$5,000 amount need not also be reported on Schedule I as a transfer to the Federal account with a memo Schedule B that itemizes the contribution. See 11 CFR 104.9(e). Because of the nature of an in-kind contribution made for the benefit of both the Federal and non-federal accounts of the committee, there would be a complete duplication of the memo Schedule A donor information if the memo Schedule B were also required. In these circumstances, the Commission will not require filing of either the memo Schedule B or the related "transfer disbursement" on Schedule I, line 2. However, in order to reflect the fact that the reported in-kind donations have been expended by the committee in the same period as received, the total amount of the in-kind contributions should be entered on line 5 of Schedule I as another disbursement with a notation reference to the memo Schedule A filed for line 1.

As an alternative to itemizing the contributor identifications on Schedule I, line 1, and memo Schedule A, the committee may include the total amount of in-kind donations to the non-federal account on line 1 and then make a cross reference to the entries on Schedule H4 to which the total amount relates. This reference should specify particular pages of the schedule H4 where the in-kind donors are identified.

² Schedule H3 should reflect not just the remaining non-federal amount (\$2,500) after the \$2,500 transfer from the Federal account, but the total of the corporate gift, i.e., \$5,000. Such figure should be included on line 18 of the Detailed Summary Page; no portion may be reported on line 11a because that transfer cannot be accepted by the Federal account as a contribution.

⁴ Figures corresponding to the disclosure on H4 should be included on line 21 of the Detailed Summary Page, on the appropriate lines.

³ For a reporting period, the totals from Schedule H3 would be carried to line 18 of the Detailed Summary Page. The totals from Schedule H4 would be carried to line 21, on the appropriate lines.

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Advisory Opinions

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This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. This opinion specifically does not apply to a non-federal account's receipt and use of corporate in-kind donations for generic voter drives (see 11 CFR 106.5(a)(2)(iv)) or direct candidate support or exempt activities paid for in conjunction with non-federal activity (see 11 CFR 106.1(a)(2), 106.5(a)(2)(iii)).

Dated October 14, 1992.

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Commission on Federal Election Campaigns

FEDERAL ACCOUNTS

[Attachment to ADVISORY OPINION 1992-33]

NAME OF COMMITTEE National Party Committee		TOTAL AMOUNT TRANSFERRED	
NAME OF ACCOUNT Non-Federal Account		DATE OF RECEIPT 10/1/92	\$ 5,000
BREAKDOWN OF TRANSFER RECEIVED			
	NON-VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
Direct Fundraising (List Events - Amount for Each)			
a) CHAMBER'S GALA		5,000	
b) _____			
c) _____			
d) _____			
e) Total Amount Transferred For Direct Fundraising			
Exempt Activity/Other Candidate Support (List Events - Amount for Each)			
a) _____			
b) _____			
c) _____			
d) _____			
e) Total Amount Transferred For Exempt Activity/Other Candidate Support			
TOTAL FOR BREAKDOWN OF TRANSFER RECEIVED			
	NON-VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
SUBTOTAL THIS PAGE			
TOTAL THIS PERIOD			

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ACTIVITY SCHEDULE

PAGE 1 OF 1
FORM NO. 213

Attachment to: ADVISORY OPINION 1992-33

NAME OF COMMITTEE

National Party Committee

A. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/TYPE	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
Flowers by Foster, Inc. 300 South Highway City, State Zip Code	Flowers for Chairman's Crutch	10/1/92	5,000 In-kind	0	5,000
CATEGORY: <input type="checkbox"/> ADMINISTRATIVE/NOTER DRIVE <input type="checkbox"/> PURCHASING <input type="checkbox"/> EXPENDITURE <input type="checkbox"/> EVENT YEAR-TO-DATE <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
National Party Committee Non-Federal Account	Transfer of Federal share	10/1/92	2,500	2,500	0
CATEGORY: <input type="checkbox"/> ADMINISTRATIVE/NOTER DRIVE <input type="checkbox"/> PURCHASING <input type="checkbox"/> EXPENDITURE <input type="checkbox"/> EVENT YEAR-TO-DATE <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
SUBTOTAL OF JOINT FEDERAL AND NON-FEDERAL ACTIVITY THIS PAGE					
TOTAL THIS PERIOD FOR THE NON-FEDERAL SHARE LESS BY THE 21 OF THE FEDERAL SHARE LESS BY THE 21 OF					
TOTAL THIS PERIOD FOR THE NON-FEDERAL SHARE LESS BY THE 21 OF THE FEDERAL SHARE LESS BY THE 21 OF					

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