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04/02/2004 17 : 01

Erik W. Koeppen letter - March 10, 2004
Reference: AFSCME PEOPLE - C00011114
Amended February Monthly Report (1/1/03 - 1/31/03)
Amended March Monthly Report (2/1/03 - 2/28/03)
Amended May Monthly Report (4/1/03 - 4/30/03)
Amended June Monthly Report (5/1/03 - 5/31/03)
Amended July Monthly Report (6/1/03 - 6/30/03)
Amended September Monthly Report (8/1/03 - 8/31/03)
Amended October Monthly Report (9/1/03 - 9/30/03)

Dear Mr. Koeppen:

In your letter of March 3, you have asked AFSCME PEOPLE to respond to the FEC's concern that AFSCME PEOPLE must allocate its fundraising costs between its federal and nonfederal accounts. As AFSCME PEOPLE has detailed previously, AFSCME PEOPLE believes that it is not required to allocate its fundraising costs between its federal and nonfederal accounts. See, AFSCME PEOPLE's letters of November 19, 2003 and December 19, 2002. Our reasons for this belief are summarized below.

The sole source of funds in AFSCME PEOPLE's federal and its nonfederal accounts is voluntary contributions by AFSCME's restricted class, which are raised in compliance with federal law. All of those contributions are deposited into AFSCME PEOPLE's federal account. AFSCME PEOPLE transfers a portion of those funds to its nonfederal account on an "as needed" basis. These transfers from AFSCME PEOPLE's federal account to its nonfederal account are the sole source of funds for AFSCME PEOPLE's nonfederal account.

It is AFSCME PEOPLE's understanding that a federal committee can pay for its fundraising costs from "funds subject to the prohibitions and limitations of the Act [Federal Election Campaign Act of 1971, as amended]." 11 CFR 106.6(a). In the alternative, a federal committee can choose to pay a portion of its fundraising costs from funds that are not raised subject to the prohibitions and limitations of the Act, if it follows the allocation rules detailed at 11 CFR 106.6. 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 under 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). See also, FEC Campaign Guide for Corporations and Labor Organizations, p. 73. Thus, it is AFSCME PEOPLE's 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. See also, 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 is consistent with the purpose of the allocation regulations: to insure that political committees do not use funds that are not subject to the prohibitions and limitations of the Act to pay for the costs of operating a federal committee. 55 Fed.Reg. 26058, 26066.

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Applying the allocation rules to AFSCME PEOPLE in these circumstances would result in the type of 'merry-go-round' transaction (i.e., a transaction that is performed solely to generate a series of paper records and that have no underlying economic substance), that is generally disfavored by accountants and government regulators. AFSCME PEOPLE could determining an allocation ratio, transferring funds from its federal account to its non-federal account (so that the non-federal account has sufficient funds to pay its allocable share) and the transferring those same funds right back into its federal account (to meet the allocation formula). While these transfers would appear on AFSCME PEOPLE's FEC reports in a way that made it appear that the costs were being allocated between the federal and nonfederal accounts, in fact the federal account would continue to be the source of all funds used to pay for these costs. Because AFSCME PEOPLE'S nonfederal account has no other source of income, it is hard to envision how else the allocation formula might work in these circumstances.

It is AFSCME PEOPLE's understanding that the Reports Analysis Division now agrees that AFSCME PEOPLE is not required to transfer funds from its nonfederal account to its federal account to pay an allocated portion of its fundraising costs. Based upon that understanding, AFSCME PEOPLE intends to continue to pay a portion of AFSCME PEOPLE's solicitation costs from its federal account and does not intend to pay an allocable share of those costs from its nonfederal account. AFSCME intends to pay for all of AFSCME PEOPLE's other administrative solicitation costs as permitted by federal law 2 USC 441b(b)(2)(c). You also asked specifically about AFSCME PEOPLE'S payments for generic voter drives. We are not aware of AFSCME PEOPLE paying for such expenses. If for any reason the FEC disagrees with the approach summarized here, AFSCME PEOPLE would greatly appreciate the opportunity to have further discussions with you or anyone else at the FEC about this matter.