



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AGENDA ITEM

May 9, 2002 For Meeting of: 5-16-02

MEMORANDUM

TO: The Commissioners

THROUGH: James A. Pehrkon
Staff Director

Robert J. Costa
Deputy Staff Director

FROM: Joseph F. Stoltz
Assistant Staff Director
Audit Division

Thomas J. Nurthen
Audit Manager

Kendrick D. Smith
Lead Auditor

SUBJECT: Final Audit Report – Philadelphia 2000

Attached for your approval is the subject final audit report. Also attached is the legal analysis provided by the Office of General Counsel. The Audit Division and the Counsel's office are in agreement with all matters discussed in this report.

Recommendation

The Audit staff recommends the report be approved.

It is requested that this matter be placed on the Open Session agenda for May 16, 2000. If you have any questions, please contact Kendrick Smith or Thomas Nurthen at extension 1200.

Attachments:

- Proposed Audit Report on Philadelphia 2000
- Legal Analysis, dated May 8, 2002
- Committee's Response to the Preliminary Audit Report



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
PHILADELPHIA 2000**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on the audit of Philadelphia 2000 (the Committee). The audit sought to determine whether there has been compliance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to 11 CFR §9008.54, which states that the Commission shall conduct an examination and audit of each host committee registered under 11 CFR §9008.51.

B. AUDIT COVERAGE

The audit covered the period from March 12, 1997 through September 30, 2000. The Committee's reports covering this period reflected an opening cash balance of \$-0-, total receipts of \$66,003,645, total disbursements of \$59,957,314, and a closing cash balance of \$6,046,331.

A limited review of the Committee's disclosure reports for the period October 1, 2000 through December 31, 2001 was performed.

C. COMMITTEE ORGANIZATION

The Committee incorporated as a Pennsylvania nonprofit corporation on March 12, 1997, received a 2 U.S.C. §501(c)(3) tax-exempt status on November 21, 1997, and registered with the Federal Election Commission (the Commission) on January 28, 1999. The Committee established and maintained its headquarters in Philadelphia, Pennsylvania. The Treasurer of the Committee is Ms. Karen Dougherty Buchholz.

The Committee utilized seven bank accounts to handle its financial activity. From these accounts, the Committee made approximately 1700 disbursements and received approximately 550 contributions from individuals and local businesses totaling about \$35,077,699. In addition, the Committee received 195 in-kind contributions totaling \$28,621,483. The Committee also received loans totaling \$3,135,000 and interest income of \$41,431.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. REPORTING OF LETTER OF CREDIT

Section 107.2 of Title 11 of the Code of Federal Regulations states each host committee, and each committee or other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention, shall register and report in accordance with 11 CFR §9008.51.

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee.

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished. A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred.

Section 100.7(a)(1)(i) of Title 11 of the Code of Federal Regulations states, in part, that the term contribution includes the following payments, services or other things of value: a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. The term loan includes a guarantee, endorsement, or any other form of security.

On January 22, 1999, the Commerce Bank/Pennsylvania, N.A. (the Bank) issued an irrevocable letter of credit (No. 1147) in the amount of \$20,000,000 in favor of the Committee. It expired on December 29, 2000. The Philadelphia Authority for Industrial Development (PAID), a branch of the Philadelphia City Government, secured the letter of credit. The purpose of the letter of credit was to guarantee that the Committee would meet its funding obligations for the convention.

The letter of credit document was signed by two officers of the Bank. The associated "Guaranty Agreement" was signed by the Chairman of the Committee and by both the President and Secretary of PAID. Even though representatives of the Committee on Arrangements for the Republican National Committee (COA) did not sign either document, it appears that the letter of credit was established in their favor as well.

The letter of credit document (at paragraph 1.) states "we hereby establish in favor of Philadelphia 2000 (the 'PHC')..... this irrevocable Letter of Credit No. 1147 (the 'Letter of Credit') and hereby irrevocably authorize the PHC and, as applicable, its designee, the Committee on Arrangements for the 2000 Republican National Convention

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following general categories:

1. The receipt of contributions from prohibited sources, those from outside of the Metropolitan Area of the convention city (see Finding II.D.);
2. Proper disclosure of contributions from individuals to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;
3. Proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.B.);
4. Review of disbursements to determine compliance with the requirements of 11 CFR §9008.52(c);
5. Proper disclosure of committee debts and obligations (see Findings II.A. and II.C.);
6. The accuracy of total reported receipts, disbursements and cash balances as compared to committee bank records (see Finding II.E.);
7. Adequate recordkeeping for committee transactions; and,
8. Other audit procedures that were deemed necessary in the situation.

As part of the Commission's standard audit process, an inventory of the Committee records was conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on our review of records presented, it was concluded that the records were materially complete and fieldwork began immediately.

Unless specifically discussed below, no material non-compliance with statutory or regulatory requirements was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

B. ITEMIZATION AND DISCLOSURE OF DISBURSEMENTS

Section 434(b)(4) of Title 2 of the United States Code states that each report under this section shall disclose for the reporting period and the calendar year, the total amount of all disbursements, including expenditures made to meet committee operating expenses.

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within a calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

As a result of our review of transactions requiring itemization, the Audit staff identified 62 disbursements, totaling \$380,213, which were not itemized on Schedule B (Itemized Disbursements) for line 21(a) (Convention Expenditures-Itemized). The majority of the disbursements were made from the Committee's operating account in calendar years 1997 through 1999 and were in amounts greater than \$200. The Audit staff could not determine the reason these payments were not itemized. Committee representatives do not know the cause for the omission of disbursements from Schedule B.

Further, the Audit staff identified payments relative to the Committee's payroll, totaling \$672,034, which were not disclosed properly on Schedules B for line 21(a).

With respect to each pay period, the Committee issued a single check to the Greater Philadelphia Chamber of Commerce (GPCC). The GPCC processed the Committee's payroll, issued checks to Committee employees and to the appropriate federal, state and local tax authorities. The Committee itemized the payments to the GPCC rather than itemizing each payment made by the GPCC (payroll, payroll taxes, fees, etc.).

The Audit staff discussed these matters at the exit conference. Committee representatives stated they would review our schedules detailing those disbursements requiring itemization and further they were not aware their method of disclosing the above payments for payroll was not acceptable. However, they agreed to file amended reports.

In the preliminary audit report, the Audit staff recommended that the Committee: (a) file an amended Post-Convention Report which itemized \$380,213 in disbursements on Schedule B for line 21(a); and (b) file amended Schedules B for each report to include memo entries that detailed the actual recipients relative to the \$672,034 in payments made to the GPCC involving the Committee's payroll.

In response, the Committee acknowledged its failure to itemize \$380,213 in disbursements on Schedule B for line 21(a) and stated that the omission of the disbursements was inadvertent and was an oversight by the person preparing the Post-Convention Report.

(the 'COA'), to draw upon Commerce Bank/Pennsylvania, N.A. an aggregate amount not to exceed Twenty Million Dollars” Both documents detail specific procedures required for the letter of credit to be exercised, not only by the Committee but also by the COA.

Documentation made available by representatives of the Bank demonstrated that neither the Committee nor the COA exercised any portion of the letter of credit. The letter of credit was returned to the Commerce Bank and canceled. Even though the letter of credit was not exercised and eventually canceled, in the opinion of the staff, the Committee should have disclosed the letter of credit on Schedules C (Loans) and C-1 (Loans and Lines of Credit from Lending Institutions).

The matter was discussed with Committee representatives at the exit conference. Their response at the exit conference as well as during the response period that followed was similar. They stated:

“nowhere in the regulations applicable to host committees or in the Form 4 in existence at the time of the filing of Philadelphia 2000’s Post-Convention Report is there any requirement to report undrawn letters or lines of credit. The Commission did impose such requirements on political committees.”

Committee representatives further stated:

“Moreover, the Commission, in January 2001, revised Form 4 and its schedules to provide for a new Schedule C-1 ‘Loans and Lines of Credit from Lending Institutions.’ Before this time, there was no reasonable location on Form 4 for a host committee to report a letter of credit that had not been drawn upon, and Philadelphia 2000 correctly concluded that there was no need to report such a letter of credit at that time.”

It should be noted that Section 9008.51 of Title 11 of the Code of Federal Regulations requires host committees to register and file reports of their receipts and disbursements with the Commission. Section 104.3(a)(2) of Title 11 of the Code of Federal Regulations sets out the contents of reports to be filed and includes all contributions, all transfers from affiliated committees, all loans, etc. As noted above, the definition of a loan includes a guarantee, endorsement, or any other form of security. The staff concluded that the letter of credit at issue qualifies as a guarantee or form of security and is reportable on Schedules C and C-1. See 11 CFR §104.3(d).

In the preliminary audit report, the Audit staff recommended that the Commission require the Committee to file amended reports to disclose the letter of credit on Schedules C and C-1. On October 10, 2001, the Commission determined, by vote of 5 to 1, that the Committee was not required to disclose the letter of credit.

report for the reporting period in which such amount is determined.

Section 116.10(a) of Title 11 of the Code of Federal Regulations states, a political committee shall report a disputed debt in accordance with 11 CFR 104.3(d) and 104.11 if the creditor has provided something of value to the political committee. Until the dispute is resolved, the political committee shall disclose on the appropriate reports any amounts paid to the creditor, any amount the political committee admits it owes and the amount the creditor claims is owed. The political committee may also note on the appropriate reports that the disclosure of the disputed debt does not constitute an admission of liability or a waiver of any claims the political committee may have against the creditor.

During the course of the audit, the Audit staff became aware of a dispute between the Committee and the COA. The dispute concerned which entity was responsible for paying outstanding vendor payables in excess of \$8,300,000. Upon request, the Committee provided a detailed schedule of the payables, including a majority of the vendor invoices. Subsequently, an agreement was reached between the Committee and the COA with respect to the disposition of the payables.

The Audit staff reviewed documentation made available relative to the agreement between the Committee and the COA, including vendor invoices where applicable. Further, the Audit staff reviewed the Site City Agreement for the 2000 Republican National Convention (the Agreement), which specifically addressed the transfer of outstanding invoices from the COA to the Committee.¹ As such, invoices addressed to the COA and transferred timely to the Committee via the stipulation noted in the Agreement were considered obligations of the Committee. The majority of the invoices associated with the total outstanding payables were dated between June 2000 and September 2000. A host committee could pay for the types of services provided by these vendors. As a result, the Committee should have reported debts to 45 vendors, totaling \$8,040,643.

The Committee did disclose on Schedule D for line 10 (Debts and Obligations Owed by the Committee) debts owed to 13 of the 45 vendors (Post-Convention Report). However, three debts were listed with amounts as "unknown". In subsequent reports, the amounts previously disclosed as owed, changed to "unknown" or were not continuously disclosed on Schedule D.

This matter was discussed at the exit conference. Committee representatives stated they were unaware that many of the payables existed until well after

¹ Specifically, Article 5, Section 5.2 of the Agreement states, in relevant part, the Committee shall provide or cause to be provided all construction, modifications,in and to the Convention Complex. All invoices for work done or services rendered shall be submitted to the COA. The COA shall deliver such invoices as are approved by the COA to the Committee for payment in accordance with the procedure agreed to pursuant to Section 6.7(e) of the Agreement. In addition, Article 6, Section 6.7(e) states, in relevant part, the COA and the Committee will develop a procedure to permit the prompt payment by the Committee of all such expenditures (including, without limitation, construction expenditures) identified by the COA.

The Committee filed an amended Post-Convention Report that properly disclosed the disbursements on Schedule B.

With respect to the \$672,034 in payroll disbursements that had not been properly disclosed on Schedule B, the Committee stated,

"While the Audit Division has stated in the PAR that Philadelphia 2000's payroll disbursements were not disclosed properly in the Post-Convention Report, there is no federal statute or regulation which provides that the payroll disbursements of a host committee cannot be disclosed in the manner utilized by Philadelphia 2000 (or that such disbursements must be reported in the manner requested by the Audit Division)."

Having stated the above, the amended Post-Convention Report included memo entries that materially disclosed the actual recipients of the payments made by the GPCC.

C. REPORTING OF DEBTS AND OBLIGATIONS

Section 434(b)(8) of Title 2 of the United States Code states that each report shall disclose the amount and nature of outstanding debts and obligations owed by a political committee.

Section 104.3(d) of Title 11 of the Code of Federal Regulations states, in relevant part, that each report filed under 11 CFR 104.1 shall, on Schedule D, disclose the amount and nature of outstanding debts and obligations owed by the reporting committee. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts were extinguished and the amount paid.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished.

Section 104.11(b) of Title 11 of the Code of Federal Regulations states, in relevant part, that a debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time the payment is made or no later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, including a loan, written contract, written promise or written agreement to make an expenditure, the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred. If the exact amount of a debt or obligation is not known, the report shall state that the amount reported is an estimate. Once the exact amount is determined, the political committee shall either amend the report(s) containing the estimate or indicate the correct amount on the

“While the Audit Division has now stated in the PAR that the host committee could have noted in its reports that the disclosure of a disputed debt does not constitute an admission of liability or a waiver of any claims that the host committee may have against the creditor, there is nothing in the regulations applicable to a host committee which suggests that such an approach is available, and the instructions to Form 4 are similarly silent as to the availability of this protection. Thus, at the time of the filing of the Post-Convention Report, Philadelphia 2000 did not have the benefit of the guidance now provided by the Audit Division.”

Finally, the Committee stated that 8 of the payables, totaling \$1,963,512, were paid directly by the COA; that two vendors informed them that the debts in question had been previously paid; that one debt of \$2,400 was converted (by the vendor) to an in-kind contribution; and, that the remaining 34 debts were disclosed on the amended report.

Based on the Committee's response, the Audit staff verified that the COA made payments to the 8 vendors discussed above and that the Committee reported an in-kind contribution of \$2,400 from another vendor.² However, the Committee did not provide any documentation from the two vendors demonstrating that the debts (\$4,044) had been previously paid and therefore not owed.

Further, the Committee filed the necessary amended reports that materially disclosed the debts on Schedule D.³ However, Committee schedules that accompanied the amendments indicated that debts to 9 vendors were reduced by \$2,283,465 (see Exhibit A). For example, the schedule indicated that Bell Atlantic/Verizon was owed \$3,919,337 but contained a notation that “The vendor accepted \$2,050,000 in settlement on April 18, 2001. The payment of this debt is reported in the July 2001 Quarterly Report. Pursuant to the terms of the settlement, Philadelphia 2000 will continue to make certain payments to Verizon to the extent that there are available funds.”

The Committee did not provide any documentation supporting the settlement agreements nor did the creditors notify the Commission by letter of their intent to forgive the above debts. It should be noted that 8 of the 9 vendors who apparently forgave some portion of the debt owed by the Committee are located within the Metropolitan Area of the convention city. As such, the forgiven portion of these debts can be considered in-kind contributions. With respect to the vendor not located within the Metropolitan Area, absent a Commission approved debt settlement, the amount of the forgiven debt, \$65,409 (\$99,547 – \$34,138 [agreed payment]) represents a prohibited

² It was permissible for the vendor to make the in-kind contribution since the vendor's business is located within the Metropolitan Area of the convention city.

³ The amended reports, disclosing the debts paid by the COA, were annotated “The COA paid [amount] on [date].”

the convention. In addition, they were unable to report many of the payables as debts because they lacked the invoices necessary to report the amount of debt, and in certain instances, they assumed payables were liabilities of the COA.

In the response period following the exit conference, the Committee representatives stated that with respect to four of the items in question (totaling approximately \$300,000), the Committee reported a value, and those items should be removed from the list. Further, seven of the remaining items in question were reported as a debt owed in either the Post-Convention or January 2001 Quarterly Reports, but the amount of the payable was disclosed as "unknown". One of the creditors was Bell Atlantic/Verizon (\$4,000,000). According to the Committee, it was not until March 2001 that the vendor provided documentation to support the amount claimed as owed.

The Committee is correct in stating that four of the above debts were initially reported on Schedule D. However, as previously stated the amount of these debts disclosed in subsequent reports was either listed as unknown or completely dropped from the debt schedules. With respect to the Bell Atlantic/Verizon payable, the Audit staff reviewed all the invoices made available. Nearly all of the invoices, dated between June 2000 and October 2000, are addressed to the Committee. Furthermore, the Committee provided a copy of a letter from Bell Atlantic/Verizon dated November 7, 2000, requesting payment of approximately \$3,900,000 from the Committee. The letter was addressed to the COA and indicated that a copy was sent to the Controller of the Committee.

In the preliminary audit report, the Audit staff recommended that the Committee: (a) file an amended Post-Convention Report to disclose 45 debts totaling \$8,040,643 on Schedule D for line 10; and (b) file amended January 2001 Quarterly Report, April 2001 Quarterly Report, and July 2001 Quarterly Report in order to continue to disclose such debts until extinguished.

In response, the Committee stated:

"The basis of the host committee's concerns with respect to certain creditors was not that the expenditures were inappropriate expenditures for a host committee under federal law. Rather, the concern was that certain expenditures that might have been appropriately paid by the host committee were incurred by the COA without proper authorization from the host committee as required by the contractual agreement and procedures agreed to and followed by the COA and the host committee."

The Committee also asserted that had they reported these disputed payables as due and owing, purported creditors might also have seized upon such listings as admissions of liability by the Committee. Furthermore, the Committee stated that at least one creditor made such an assertion. The Committee's response further stated:

The Committee's response stated:

"the payments received by CNN LP LLLP, Access Industries, Inc. and Voter.com were not 'contributions' to the host committee. Rather, these payments represented compensation for goods and services provided by Philadelphia 2000 to the companies in question, and, in such instance, there was no requirement that the companies in question maintain a physical presence within the Philadelphia MA." "Specifically, the payment from CNN LP LLLP ... was expressly for parking spaces provided by Philadelphia 2000 during the time of the nominating convention. The payments by Access Industries, Inc. and Voter.com represented payments for advertising opportunities." The response continues, "There is nothing in the regulations that prevents a host committee from charging for goods and services that it might choose to provide to the public. There is similarly nothing in the regulations that requires a company that is paying a host committee for goods and services to be located within the applicable MA."

With respect to the remaining two contributions in question, the Committee's response stated:

"... Florida Crystals, Inc. has an established business relationship with the Fresh Fields chain of supermarkets whereby products manufactured by Florida Crystals, Inc. are distributed and sold in the Philadelphia MA." The Committee also provided documentation that demonstrated Florida Crystals, Inc. and Flo-Sun, Inc. are affiliated companies.

With respect to the funds received by the Committee in payment for parking services and advertising space, it is the Audit staff's opinion that contributions which the Committee could not accept if made directly by persons/entities outside the Philadelphia MA, cannot otherwise be accepted if made by those same persons/entities indirectly in payment for the aforementioned services.

Finally, the fact that an entity (located outside the Philadelphia MA) markets its products in retail stores (located within the Philadelphia MA) is not, in the Audit staff's opinion, sufficient to rebut the regulatory presumption at 11 CFR 9008.52(c)(2).

In the preliminary audit report, the Audit staff recommended that the Committee, with respect to the donations received from Florida Crystals, Inc. and Flo-Sun, Inc., demonstrate that the contributors maintained an address or had offices or facilities located within the Philadelphia MA. With respect to the donations received for parking and advertising, the Audit staff recommended that the Committee provide documentation

contribution to the Committee.

D. CONTRIBUTIONS FROM OUTSIDE THE PHILADELPHIA METROPOLITAN AREA

Section 9008.52(b) of Title 11 of the Code of Federal Regulations states host committees may accept goods or services from commercial vendors under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

Section 9008.9 of Title 11 of the Code of Federal Regulations states, in relevant part, that commercial vendors may sell, lease, rent or provide their goods or services at reduced or discounted rates, or at no charge, provided that (a) the commercial vendor provides reductions or discounts in the ordinary course of business, (b) the goods and services are provided in exchange for promotional consideration and doing so is in the ordinary course of business, or (c) the items are of *de minimis value*.

Section 9008.52(c)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, that local businesses (including banks), local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization or local organization may donate funds or make in-kind donations to a host committee.

Section 9008.52(c)(2) of Title 11 of the Code of Federal Regulations states that for purposes of this section, any business (including the branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organization with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MA is not local. This presumption may be rebutted by a showing that the volume of business or activity in an area outside of the MA would be directly affected by the presence of the convention.

The Audit staff identified five contributions, totaling \$151,250, received from business entities located outside the Metropolitan Area of the convention city (Philadelphia MA). Further, it does not appear that the business entities, in question, maintained offices or facilities located within the Philadelphia MA.

Three of the five contributions represent fees paid to the Committee for parking (\$16,250) and/or advertising space (\$85,000). Business entities, located within the Philadelphia MA, donated parking facilities to the Committee. In turn, the Committee charged fees for parking in such spaces. Further, the Committee charged for advertising space within the convention facilities (banners, etc.).

This matter was discussed with Committee representatives at the exit conference. In the response period following the exit conference, the Committee submitted documentation to support its position that the contributions were permissible.

chain, nor as a franchise or licensed dealer. The fact that CNN LP LLLP may broadcast its programming on WPHL does not make it part of the Tribune or WB17 organizations. As stated above, 11 CFR §9008.52(c)(2) states that for purposes of this section, any business (including the branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organizations with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local. CNN LP LLLP is not local.

As a result, it remains the opinion of the Audit staff that the Committee received prohibited donations from Florida Crystals, Inc. (\$25,000), Flo-Sun, Inc. (\$25,000) and CNN LP LLLP (\$16,250).

Regarding Voter.com and Access Industries, Inc., the Committee reiterated its original position that the contributions from these entities were actually payments for advertising opportunities. Specifically, the Committee stated:

“While the Audit Division states in the PAR that ‘contributions which the Committee could not accept if made directly by persons/entities outside the MA, cannot otherwise be accepted if made by those same person/entities indirectly in payment for the aforementioned services,’ this is not consistent with the regulations governing host committees. These regulations provide only that ‘donations’ to a host committee must come from persons or entities located within the Philadelphia Metropolitan Area. While the regulations do not define the term ‘donation’ as used in this context, this is a term that has a generally accepted meaning. Specifically, a ‘donation’ is an ‘offering or gift’ – that is, ‘something that is bestowed voluntarily and without compensation.’ Given this definition, the payments by Voter.com and Access Industries cannot be deemed to constitute ‘donations’ to the host committee, for the payments were not given without compensation. Rather, in return for their respective payments, each of Voter.com and Access Industries received advertising opportunities in exchange for its payment to the host committee.”

The Committee did not submit any documentation that demonstrated the amounts received for advertising represented the fair market value of the services provided. Nor did the Committee submit documentation that demonstrated Voter.com and Access Industries maintained a presence within the Philadelphia MA. Therefore, the Audit staff maintains that donations the Committee could not accept if made directly by persons outside the Philadelphia MA, cannot otherwise be accepted if made by those same persons indirectly in payment for the aforementioned services. As a result, it remains the opinion of the Audit staff that the Committee received prohibited funds from Voter.com (\$60,000) and Access Industries (\$25,000).

that demonstrated these entities maintained an address or had offices or facilities located within the Philadelphia MA. In addition, the Committee was requested to provide documentation that demonstrated the amounts received for parking and advertising represented the fair market value of the services provided. Absent the submission of the requested evidence, the Audit staff recommended that the amounts received be returned to the donors. If funds were not available to make the necessary refunds, the donations that required refunds were to be disclosed as debts on Schedule D (Debts and Obligations) until such time that funds became available to make the refunds.

In the response to the preliminary audit report, the Committee asserted that CNN LP LLLP maintains a presence within the Philadelphia MA. The Committee submitted documentation demonstrating that CNN LP LLLP has broadcast affiliates throughout the United States. One of its broadcast affiliates, WPHL, is located within the Philadelphia MA. According to the Committee having a broadcast affiliate within the Philadelphia MA establishes a local presence for CNN LP LLLP.

In footnotes to its response, the Committee stated that CNN LP LLLP paid \$16,500 for 50 parking spaces for one week, or \$47.14 per day, per spot. Accordingly, the Committee believes this charge (\$47.14) represents the fair market value for the parking spots in question because other individuals/entities paid the same amount to the Committee. The fact that the Committee charged every individual/entity \$47.14 per day, per spot is not determinative of the fair market value for parking. The fair market value can only be determined by comparing what the Committee charged to what other commercial vendors charged for similar parking during the relevant period.

With respect to Florida Crystals, Inc. and its corporate parent Flo-Sun, Inc., the Committee stated that both entities have a presence within the Philadelphia MA. According to the Committee, since Florida Crystals engaged the American Sweetener Company to distribute its products and its distribution facility is located in Medford, New Jersey, this business relationship establishes a local presence.

The Committee arguments addressing the contributions from Florida Crystals, Inc., Flo-Sun, Inc., and CNN LP LLLP appear similar. The fact that entities located outside the Philadelphia MA but whose products are distributed by separate entities located within the Philadelphia MA does not, in the opinion of the Audit staff, establish a presence within the Philadelphia MA for either Florida Crystals, Inc., Flo-Sun, Inc., or CNN LP LLLP. Furthermore, the Committee's assertion with respect to parking fees paid by other persons does not render the donation by CNN LP LLLP permissible. The other payments received for parking were from persons located within the Philadelphia MA. CNN LP LLLP was not.

It should be noted that the call letters, WPHL, represent a local Philadelphia television station. That station is owned by WB17, also a Philadelphia television station. WB17 is owned by Tribune Broadcasting, which is part of Tribune. The web cites for Tribune, WB17 and WPHL do not list CNN LP LLLP as part of its national or regional

Exhibit A**Apparent Debt Settlements by the Committee**

Arena Vision	12,203.35	8,000.00	4,203.35
Bell Atlantic / Verizon	3,919,336.78	2,050,000.00	1,869,336.78
Central Parking Corporation	10,857.00	6,285.00	4,572.00
Greater Philadelphia Chamber of Commerce (GPCC)	29,936.32	19,936.32	10,000.00
IKON	86,372.05	69,000.00	17,372.05
QTV *	99,547.41	34,138.06	65,409.35
Staples	115,847.56	70,215.96	45,631.60
Universal Fabric Structures	774,605.08	601,000.00	173,605.08
XEROX	441,667.95	348,333.00	93,334.95
Totals	\$5,490,373.50	\$3,206,908.34	\$2,283,465.16

* Business not located within the Metropolitan Area of the convention city

E. MISSTATEMENT OF FINANCIAL ACTIVITY

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in relevant part, that each report shall disclose the amount of cash on hand at the beginning of each reporting period and the total amount of all receipts and all disbursements for the reporting period and the calendar year.

Section 9008.51(b)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, post-convention and quarterly reports filed by host committees shall disclose all receipts and disbursements, including in-kind contributions, made with respect to a presidential nominating convention.

The Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed material misstatements with respect to reported receipts and disbursements. Reported receipts were understated by \$2,143,811 and reported disbursements were understated by \$2,138,067. These net understatements were due primarily to reporting incorrect valuations for certain in-kind contributions and not reporting certain payments to vendors (see Finding II.B.). In many instances, the Committee reported the value of in-kind contributions based on conversations with the donors. Subsequently, the Committee received documentation from the donor supporting in some cases a higher valuation and in others a lower valuation.

This matter was discussed with Committee representatives at the exit conference who agreed to file amended disclosure reports.

In the preliminary audit report, the Audit staff recommended that the Committee: (a) file amended Post-Convention Reports to disclose certain direct payments to vendors on Schedule B for line 21(a); and (b) file amended Post-Convention Reports to correctly disclose the value of the in-kind contributions on Schedule A for line 14(a) and Schedule B for line 21(a) as appropriate.

In the response to the preliminary audit report, the Committee filed an amended Post-Convention Report correctly disclosing the receipts and disbursements noted above.

II. Donations from Outside the Philadelphia Metropolitan Area (Finding II.C.)

Host committees are permitted to accept donations and in-kind donations from business entities. 11 C.F.R. § 9008.52(c)(1). However, the Commission's regulations limit host committees to only accepting donations from businesses located inside the Metropolitan Area ("MA") of the convention city. 11 C.F.R. § 9008.52(c)(2). Local businesses include a branch of a national or regional chain, a franchise, or a licensed dealer of a business. *Id.*

The Preliminary Audit Report identified five donations totaling \$151,250 to the Committee from business entities located outside of the Philadelphia MA. Three of the five donations, totaling \$101,250, represent fees paid to the Committee for parking spaces and/or advertising space. The Committee provided the parking spaces to CNN LP LLP ("CNN"). It provided the advertising spaces to Voter.com and Access Industries. Local businesses donated parking spaces to the Committee; and the Committee, in turn, charged fees to businesses both inside and outside of the Philadelphia MA for the use of those parking spaces. The advertising space was located on items, such as banners, within the convention facilities. The two remaining donations were monetary in nature, totaling \$50,000 from Flo-Sun, Inc. ("Flo-Sun") and its parent, Florida Crystals, Inc. ("Florida Crystals").

In its response to the Preliminary Audit Report, the Committee argues that the payments received from CNN for the use of the parking spaces and Voter.com and Access Industries, Inc. for advertising space were not "donations" to the Committee, but rather "compensation" for goods and services. The Committee states that there is no regulatory provision that prevents a host committee from charging for goods and services provided to the public or requires that companies paying a host committee for goods and services maintain a physical presence within the Philadelphia MA. According to the Committee, if the "compensation" does not constitute a "donation", then the entities in question are not restricted by the requirement of showing a local presence within the MA.

In the alternative, the Committee argues that CNN maintained a presence within the Philadelphia MA by virtue of the fact that it has a broadcast affiliation with one of the television stations (WPHL) within the MA. The Committee contends that this "affiliation" is sufficient to establish a local presence for CNN.² As for Florida Crystals and Flo-Sun, the Committee states, "since Florida Crystals engaged the American Sweetener Company to distribute its products and its (American Sweetener Company)

² The Committee, in its response to the Preliminary Audit Report, did not assert that Voter.com or Access Industries had a local presence within the Philadelphia MA as required by 11 C.F.R. § 9008.52(c)(1). It also did not provide any documentation demonstrating that the amounts received for advertising from these entities represent the fair market value of the services provided as recommended in the Preliminary Audit Report.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

May 8, 2002

MEMORANDUM

TO: Robert J. Costa
Deputy Staff Director
Audit Division

THROUGH: James Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Gregory R. Baker *GRB*
Acting Associate General Counsel

Lorenzo Holloway *LH*
Assistant General Counsel

Kimberly D. Hart *KDH for RJA*
Attorney

SUBJECT: Proposed Audit Report on Philadelphia 2000 (LRA #609)

I. Introduction

The Office of General Counsel reviewed the proposed Audit Report ("Proposed Report") on Philadelphia 2000 (the "Committee") submitted to this Office on March 23, 2002. The following memorandum summarizes our comments on the Proposed Report.¹ Generally, we concur with the findings in the Proposed Report and provide additional legal analysis on one of the findings in the Proposed Report. We concur with any findings not specifically discussed in this memorandum. If you have any questions concerning our comments, please contact Kimberly D. Hart, the attorney assigned to this audit.

¹ The Office of General Counsel recommends that the Commission consider this document in open session since the Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

The advisory opinions referenced in our comments address contributions to political committees. This audit involves donations to a host committee. The terms are different, but the overriding legal principle is the same. Section 441b prohibits political committees from accepting corporate financing for the purpose of influencing a federal election. The Commission maintained the same concern about corporate financing of federal elections when it promulgated the regulations for host committees and allowed them to accept donations from local businesses. Explanation and Justification for predecessor to 11 C.F.R. § 9008.52, 44 *Fed. Reg.* 63038 (Nov. 1, 1979); See Explanation and Justification for 11 C.F.R. § 9008.52, 59 *Fed. Reg.* 33615 (June 29, 1994). If the Commission was interested in restricting host committee donations from businesses to only those situations where nothing is received in exchange for the donation, it could have easily done so by including this language in the regulations.⁶

There is language in the regulations that requires businesses interested in funding host committees to have a local presence. 11 C.F.R. § 9008.52(c)(2). The local presence requirement is an attempt to ensure that the donations are commercially motivated, rather than for the purpose of influencing a federal election. See 59 *Fed. Reg.* 33615 (June 29, 1994).⁷ However, there is a rebuttable presumption that "any business (including a branch of a regional or national chain, a licensed dealer or a franchise) or a labor organization or other organization located outside the MA is not local." 11 C.F.R. § 9008.52(c). This presumption may be rebutted by a showing that the volume of business or activity in an area lying outside the MA would be directly affected by the presence of the convention. *Id.*

There is no mention in 11 C.F.R. § 9008.52(c)(2) of the concept of "affiliation" or "distribution agreement" as an acceptable means of establishing a local presence in the MA. Section 9008.52(c)(1) requires that the Committee demonstrate that CNN, Florida Crystals and Flo-Sun maintain an office or facility within the MA which can include a branch of a regional or national chain, a licensed dealer or a franchise located within the

⁶ The fact that a host committee may receive something in exchange for the donation is consistent with the principle objective of a host committee to promote commerce within the convention city. 11 C.F.R. § 9008.52(a)(1).

⁷ Section 9008.52(c)(1)(i) - (xi) provides a list of the purposes for which the donation of funds and in-kind donations may be utilized by a host committee. 11 C.F.R. § 9008.52(c)(1)(i) - (xi). All of the purposes listed involve funds or in-kind donations that either defray costs associated with the convention or provide accommodations or other convention services. There is no language contained in § 9008.52(c)(1)(i) - (xi) that permits a host committee to receive an in-kind donation that could then be sold by the host committee as a means of fundraising. Therefore, the Committee should not be permitted to sell in-kind donations, such as parking spaces and advertising space as a means of fundraising in this instance either.

distribution facility is located in Medford, New Jersey, this business relationship establishes a local presence."

The Office of General Counsel believes that host committees receive a donation even when they offer something in exchange for the funds they receive. Neither the Presidential Election Campaign Fund Act ("Fund Act") nor the Commission's regulations define the term "donation" as reflected in section 9008.52(c)(1).³ There are no provisions in the Fund Act or regulations to support the Committee's position that a "donation" cannot result from the Committee's sale of its goods and services.

In instances where the Commission could have drawn a distinction between contributions (with no quid pro quo) and the contributions resulting from the sale of a committee's assets, the Commission specifically chose not to do so.⁴ For example, the Commission's general policy, as enunciated in several advisory opinions, is that the sale or commercial use of committee assets by a committee constitutes fundraising for political purposes, resulting in contributions subject to the limitations and prohibitions of the Federal Election Campaign Act. See Advisory Opinions ("AOs") 1989-4, 1988-12, 1983-2.

In determining if a committee's sale of its assets results in a contribution, the Commission has noted that if a committee receives more than the normal and usual charge, there would be a contribution. See AO 1989-4. If we assume that fair market value is the equivalent of normal and usual charge, then the issue of whether the Committee received the fair market value for the assets would shed light on whether it received a donation.⁵ However, there remains an inherent contribution consequence when a committee sells its assets. See AO 1989-4.

³ The Committee cites to Webster's Dictionary as its source for the definition of "donation".

⁴ However, the Commission has taken the position that when a committee provides names to another political committee in exchange for its own future use of a corresponding number of names, which are of equal value, this constitutes an arms length business transaction between the committees and is not a reportable contribution. See Advisory Opinion 1981-46. The Commission has also indicated that the purchase price at a "usual and normal charge" for mailing lists and other goods in the market place must be reasonably capable of objective verification. AO 1989-4.

⁵ The Preliminary Audit Report recommended that the Committee provide documentation to demonstrate that the amounts received for the parking spaces represented the fair market value of the services provided. In its response to the Preliminary Audit Report, the Committee stated that CNN paid \$16,500 for 50 parking spaces for one week, or \$47.17 per day, per spot. However, the Committee did not submit evidence of the value of similar parking spaces in other locations during the relevant time period. In order for the auditors to assess the fairness of the transaction, there must be some examination of the value of the spaces on the open market. Therefore, the Office of General Counsel recommends that the auditors revise the Proposed Report to include a sentence indicating that the Committee failed to submit evidence of the value of similar parking spaces in other locations within the Philadelphia MA during the relevant time period.

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December 27, 2001

VIA CERTIFIED MAIL

Federal Election Commission
Mr. Robert J. Costa
Audit Division - 7th Floor
999 E Street, N.W.
Washington, D.C. 20463

Re: Philadelphia 2000 (C00342519)

Dear Mr. Costa:

I submit this letter on behalf of Philadelphia 2000 in response to the issues raised by the Audit Division in its "Preliminary Audit Report of the Audit Division on Philadelphia 2000" dated as of October 25, 2001 (the "PAR"). Philadelphia 2000 has filed contemporaneously with this response an Amended Post-Convention Report on Form 4 that addresses, as identified in the discussion below, the issues raised in the PAR (the "Amended Post-Convention Report").¹

I. Itemization and Disclosure of Disbursements.

A. Unreported Disbursements.

The Audit Division has identified 62 disbursements totaling \$380,213 that were not itemized on Schedule B of Philadelphia 2000's Post-Convention Report on Form 4 that was filed with the Commission on October 2, 2000 (the "Post-Convention Report"). The fact that these disbursements had not been reported in the Post-Convention Report was first brought to the attention of the host committee by the Audit Division at the exit conference stage. Upon learning of this oversight, Philadelphia 2000 agreed to amend its Post-Convention Report to

¹ A copy of the Amended Post-Convention Report is enclosed for your convenience. In addition to addressing the issues raised in the PAR, the Amended Post-Convention Report addresses certain other issues that were brought to the attention of the host committee during the audit process, such as changes in the value of in-kind contributions (in addition to those identified by the Audit Division in the PAR).

MA.⁸ CNN may well have an affiliation with WPHL, but there is no evidence that its "affiliation" with WPHL constitutes being a licensed dealer, franchise or a branch of a national or regional chain.⁹ In applying the same standard to Florida Crystals and Flo-Sun, the distribution relationship, in and of itself, between the parent company, Florida Crystals and American Sweetener Company is not sufficient to establish a local presence in the Philadelphia MA. In this instance, the Committee did not attempt to rebut the presumption of no local presence within the MA with a showing that the volume of business or activity outside the MA for those entities in question (CNN, Voter.com, Access Industries, Florida Crystals, Flo-Sun) would be directly affected by the presence of the convention.¹⁰ Therefore, this Office concurs with the Audit staff's position that the Committee did not demonstrate that CNN, Florida Crystals and Flo-Sun have a presence in the Philadelphia MA sufficient to satisfy the requirements of section 9008.52(c)(1).¹¹

⁸ The Office of the General Counsel discovered, through research, that CNN does not have a bureau or any office facilities located within the Philadelphia MA. The closest CNN bureaus are located in New York and Washington, D.C. It is the understanding of the Office of General Counsel that when there are news events in the Philadelphia MA that CNN wants to cover, the bureaus will either send mobile crews to cover a story or obtain coverage through its affiliation with the local television station.

⁹ The Audit staff found that WPHL are the call letters for a Philadelphia television station owned by WB17, also a Philadelphia television station. Tribune Broadcasting owns WB17. The websites for Tribune, WB17 and WPHL do not list CNN as part of its national or regional chain, or as a franchise or licensed dealer. In addition, AOL/Time Warner owns CNN and WB17 is owned by Tribune Broadcasting.

¹⁰ In light of the fact that the volume of CNN's business may be directly affected by the presence of the host convention, the Committee may easily rebut the presumption with sufficient documentation on this issue.

¹¹ The Committee acquired the parking spaces from donations from local businesses. Therefore, there is no problem with respect to the Committee's acquisition of the parking spaces. 11 C.F.R. § 9008.52(c)(2).

committee were incurred by the COA without proper authorization from the host committee as required by the contractual agreement and procedures agreed to and followed by the COA and the host committee. As Philadelphia 2000 further explained in its letter of May 16, 2001, had the host committee reported amounts as due and owing for these disputed debts, purported creditors of the host committee might also have seized upon such listings as admissions of liability by the host committee, when, in fact, the amount claimed as due and owing was less than asserted or the debt in question was not that of the host committee.⁴

In this regard, eight of the debts identified by the Audit Division, totaling \$1,963,512.43 (as set forth on the schedule provided by the Audit Division), were, in fact, paid directly by the COA as debts of the COA. To be responsive to the Audit Division's request, however, Philadelphia 2000 has reported these eight items on Schedule D, Line 10 of the Amended Post-Convention Report, with the amount due and owing listed as zero and a notation added that the debts in question were paid by the COA.⁵

With respect to certain of the other debts identified by the Audit Division, the debts listed for Reilly Sweeping (\$3,168.50) and RTI Mechanical Constructors (\$875) are not debts of the host committee. Philadelphia 2000 mailed payments to these vendors and was subsequently informed that the debts in question had previously been paid. These two items have thus been omitted from Schedule D to the Amended Post-Convention Report. Similarly, the debt listed for Under the Sun Productions (\$2,400) is no longer due and owing to the vendor; Philadelphia 2000 has thus reported the item in the Amended Post-Convention Report as a \$2,400 in-kind contribution from Under the Sun Productions rather than a debt.⁶

⁴ As Philadelphia 2000 further detailed in its response of May 16, 2001, at least one creditor of the host committee made such an assertion. While the Audit Division has now stated in the PAR that the host committee could have noted in its reports that the disclosure of a disputed debt does not constitute an admission of liability or a waiver of any claims that the host committee may have against the creditor, there is nothing in the regulations applicable to a host committee which suggests that such an approach is available, and the instructions to Form 4 are similarly silent as to the availability of this protection. Thus, at the time of the filing of the Post-Convention Report, Philadelphia 2000 did not have the benefit of the guidance now provided by the Audit Division.

⁵ The debts in question are: (a) Tierney & Partners (\$600,000) (payment reported in the April 2001 Quarterly Report of the COA); (b) Weldon, Williams and Link (\$94,771.44) (payment reported in the April 2001 Quarterly Report of the COA); (c) Club Car (\$94,152) (payment reported in the April 2001 Quarterly Report of the COA); (d) Deaf Hearing Communications (\$11,412.30) (payment reported in the April 2001 Quarterly Report of the COA); (e) Freeman Decorating (\$1,086,731.69) (payment reported in the April 2001 Quarterly Report of the COA); (f) Hargrove (\$18,600) (payment reported in the April 2001 Quarterly Report of the COA); (g) Herman Goldner (\$31,595) (payment reported in the July 2001 Quarterly Report of the COA); and (h) Wyndham Franklin Plaza Hotel (\$26,250) (payment reported in the April 2001 Quarterly Report of the COA). The amount paid by the COA with respect to these debts was, in certain instances, for an amount less than that listed by the Audit Division on its schedule and represented the settlement by the COA of a disputed debt with certain of the vendors in question.

⁶ This is reported in Schedule A, Line 19(a) of the Amended Post-Convention Report at page 20 of 40.

report the disbursements in question. The chart attached hereto as Exhibit A identifies where the disbursements have been reported in the Amended Post-Convention Report.

With respect to the failure of the host committee to report these disbursements originally in the Post-Convention Report, the omission of the disbursements was inadvertent and represented an oversight by the person preparing the Post-Convention Report. At no point was there an intent by the host committee to purposefully omit the disbursements, which were all legitimate expenditures by the host committee and which represent less than one percent of the total disbursements reported by the host committee.

B. Payroll Disbursements.

As is explained in the PAR, payroll for the host committee was processed by the Greater Philadelphia Chamber of Commerce ("GPCC"). Specifically, from 1997 to 2000, Philadelphia 2000 made payments to GPCC that were subsequently disbursed by GPCC to employees of Philadelphia 2000 and to the appropriate federal, state and local tax authorities. As Philadelphia 2000's payments were made to GPCC, not directly to the host committee's employees or to the federal, state and local tax authorities, Philadelphia 2000 reported these disbursements as they actually had been made. The Audit Division has requested that the host committee amend the Post-Convention Report to provide memo entries that identify the individual employee salaries and the aggregate tax and other payments that were subsequently paid by GPCC from the host committee disbursements in question.² Philadelphia 2000 has provided the memo entries in the Amended Post-Convention Report as requested by the Audit Division.³

II. Reporting of Debts and Obligations.

The Audit Division has identified 45 debts totaling \$8,040,643 that it believes should be reported by the host committee on Schedule D until extinguished. As the host committee explained in its letter of May 16, 2001 to the Audit Division responding to issues that had been raised at the exit conference stage, the debts identified by the Audit Division originally were not set forth on Schedule D, or were listed with the amount due as "unknown," because Philadelphia 2000 either did not have a reasonable basis upon which to estimate the amount then due and owing or believed that the debt in question was an obligation of the Committee On Arrangements of the Republican National Committee (the "COA"), not the host committee. The basis of the host committee's concerns with respect to certain creditors was not that the expenditures were inappropriate expenditures for a host committee under federal law. Rather, the concern was that certain expenditures that might have been appropriately paid by the host

² While the Audit Division has stated in the PAR that Philadelphia 2000's payroll disbursements were not disclosed properly in the Post-Convention Report, there is no federal statute or regulation which provides that the payroll disbursements of a host committee cannot be disclosed in the manner utilized by Philadelphia 2000 (or that such disbursements must be reported in the manner requested by the Audit Division).

³ The format in which Philadelphia 2000 has provided these memo entries was submitted to the Audit Division for pre-approval. Kendrick Smith informed Philadelphia 2000 by e-mail on December 5, 2001 that the format is acceptable to the Audit Division.

same website printout also indicates, the distributor of Florida Crystals' products maintains an office and distribution facilities in Medford, New Jersey, which is located within the Philadelphia Metropolitan Area. The presence of this distributor within the Philadelphia Metropolitan Area is sufficient to establish a local presence for Florida Crystals and its parent company, Flo-Sun, Inc.

With respect to the payments received from Voter.com and Access Industries, Inc., as the Audit Division notes in the PAR, these payments, totaling \$85,000, were received by the host committee as consideration for advertising opportunities provided by the host committee. While the Audit Division states in the PAR that "contributions which the Committee could not accept if made directly by persons/entities outside the MA, cannot otherwise be accepted if made by those same persons/entities indirectly in payment for the aforementioned services," this is not consistent with the regulations governing host committees. These regulations provide only that "donations" to a host committee must come from persons or entities located within the Philadelphia Metropolitan Area. While the regulations do not define the term "donation" as used in this context, this is a term that has a generally accepted meaning.

Specifically, a "donation" is an "offering or gift" – that is, "something that is bestowed voluntarily and without compensation."¹² Given this definition, the payments by Voter.com and Access Industries cannot be deemed to constitute "donations" to the host committee, for the payments were not given without compensation. Rather, in return for their respective payments, each of Voter.com and Access Industries received advertising opportunities in exchange for its payment to the host committee. As the brochure attached hereto as part of Exhibit C, makes clear, for example, Voter.com was a corporate sponsor of PoliticalFest, a week long celebration of government that was held at The Pennsylvania Convention Center.¹³ Voter.com was prominently listed as a sponsor in such promotional materials and at the event itself. There is nothing in the regulations applicable to host committees that restricts host committees in their ability to charge for such goods and services provided to non-local persons or entities.

In sum, the receipts from Florida Crystals, Inc., Flo-Sun, Inc., Voter.com, Access Industries, Inc., and CNN LP LLLP were properly accepted by Philadelphia 2000, as the entities in question either maintained a presence within the Philadelphia Metropolitan Area or were not required to do so due to the nature of the payments in question.

IV. Misstatement of Financial Activity.

The Audit Division has stated that, due to a variety of factors, the receipts reported by the host committee in the Post-Convention Report were understated by \$2,143,811, and reported disbursements were similarly understated by \$2,138,067. The factors contributing to these

¹² See Webster's II New Collage Dictionary (1995), at pp. 338 and 471 (defining words "donation" and "gift").

¹³ While PoliticalFest was held in conjunction with the nominating convention, it was a separate, bipartisan event that was not attached to the convention itself. Philadelphia 2000, as a 501(c)(3) qualified non-profit corporation is permitted to receive and spend funds in connection with such events.

Philadelphia 2000 has reported the 34 remaining debts identified by the Audit Division on Schedule D, Line 10 of the Amended Post-Convention Report as set forth on the chart attached hereto as Exhibit B.⁷

III. Contributions from Outside the Philadelphia Metropolitan Area.

The Audit Division has identified 5 contributions to the host committee, totaling \$151,250, that the division states were received from business entities located outside of the Philadelphia Metropolitan Area. It is the position of the Audit Division that, unless the host committee can demonstrate a presence within the Philadelphia Metropolitan Area for the business entities in question, these contributions should be refunded (or listed as obligations of the host committee if funds are not available to make such repayments).

With respect to the \$16,250 payment received by the host committee from CNN LP LLLP for parking,⁸ CNN LP LLLP maintains a presence within the Philadelphia Metropolitan Area. Specifically, CNN, which is a national cable news network, maintains broadcast affiliates throughout the United States. As the website printout attached hereto as part of Exhibit C demonstrates, certain of those affiliates are located in the Northeast, and one of those affiliates, WPHL, is located in Philadelphia, Pennsylvania.⁹ The presence of this affiliate within the Philadelphia Metropolitan Area is sufficient to establish a local presence for CNN.¹⁰

Similarly, with respect to the \$25,000 donations received from each of Florida Crystals, Inc. and its corporate parent, Flo-Sun, Inc., Florida Crystals maintains a presence within the Philadelphia Metropolitan Area. Specifically, as the website printout attached hereto as part of Exhibit C demonstrates, Florida Crystals has engaged American Sweetener Company to distribute Florida Crystals' products throughout the East Coast of the United States.¹¹ As the

Philadelphia 2000 has filed contemporaneously with this response amendments to the host committee's previously filed quarterly reports that list until extinguished the 34 debts and obligations reported on Schedule D, Line 10 to the Amended Post-Convention Report. The chart attached hereto as Exhibit B identifies where the payment of the debts in question is reported. All such debts have been paid as of the date of this response.

⁸ CNN LP LLLP paid \$16,500 to the host committee for the rental of 50 parking spaces for a one week period (\$47.14 per day, per parking spot). As is discussed below, this is the same parking fee that was paid by numerous other business entities and individuals to the host committee.

⁹ While the host committee was unable to print the website materials so that they would specifically show the listing for WPHL, if the Audit Division accesses the website and scrolls down the list of CNN Northeast Affiliates, it will see the listing for WPHL in Philadelphia.

¹⁰ In addition, the payment by CNN for parking, \$47.14 per parking spot, per day, was consistent with the payments made to Philadelphia 2000 by other persons and entities for parking. Such payment, thus, represented the fair market value for the parking spots in question and, as is discussed below with respect to the receipts from Voter.com and Access Industries, Inc., should not be deemed a "donation" for purposes of the federal regulations applicable to host committees.

¹¹ As the host committee previously demonstrated in its letter to the Commission of May 16, 2001, Florida Crystals' products are sold within Philadelphia.

C. Cash Contributions Reported as In-Kinds.

The two cash contributions from the City of Philadelphia that were mistakenly reported in the Post-Convention Report as in-kind contributions have been correctly listed as cash contributions of \$144,000 (Schedule A, Line 14(a), page 9 of 28) and \$150,000 (Schedule A, Line 14(a), page 9 of 28). The previously reported entries on Schedule B, Line 21(a) for these items as in-kind contributions have been deleted.

D. Disbursement Reported as In-Kind Contribution.

The disbursement to the Greater Philadelphia Chamber of Commerce that was mistakenly reported in the Post-Convention Report as an in-kind contribution has been correctly listed as a disbursement of \$5,500 (Schedule B, Line 24(a), page 1 of 42). The corresponding entry on Schedule A, Line 19(a) for this item has been deleted.

E. In-Kind Contribution Reported Twice.

The duplicate \$30,000 in-kind contribution from Norell that had been reported in the Post-Convention Report as having been received during CY2000 has been deleted from the Amended Post-Convention Report, as it was previously listed in error.

F. Unreported In-Kind Contributions.

The \$80,000 in-kind contribution from National Association of Realtors that was omitted from the Post-Convention Report has been included in the Amended Post-Convention Report (Schedule A, Line 14(a), page 23 of 28). This item was inadvertently excluded from the Post-Convention Report because the receipt in question was not provided directly to Philadelphia 2000 (it was provided to Liberty Solutions) and was mistakenly overlooked in the production of the Post-Convention Report.

G. Unreported Cash Contributions.

The Audit Division has identified four cash contributions, totaling \$17,000, that were inadvertently omitted from the Post-Convention Report. These contributions all date from 1998, prior to the date that the City of Philadelphia was awarded the 2000 Republican Presidential Nominating Convention, and it appears that the records relating to these contributions were inadvertently overlooked by the person preparing the Post-Convention Report. The contributions in question have been reported in the Amended Post-Convention Report as set forth on the chart attached hereto as Exhibit D.

H. Incorrect Amounts Reported for Cash Contributions.

The Audit Division has identified two cash contributions, totaling \$62,500, that were inadvertently reported in the Post-Convention Report as totaling \$125,000. These contributions

understatements have been addressed by the host committee in the Amended Post-Convention Report as set forth below.

A. Changes in Value of In-kind Contributions.

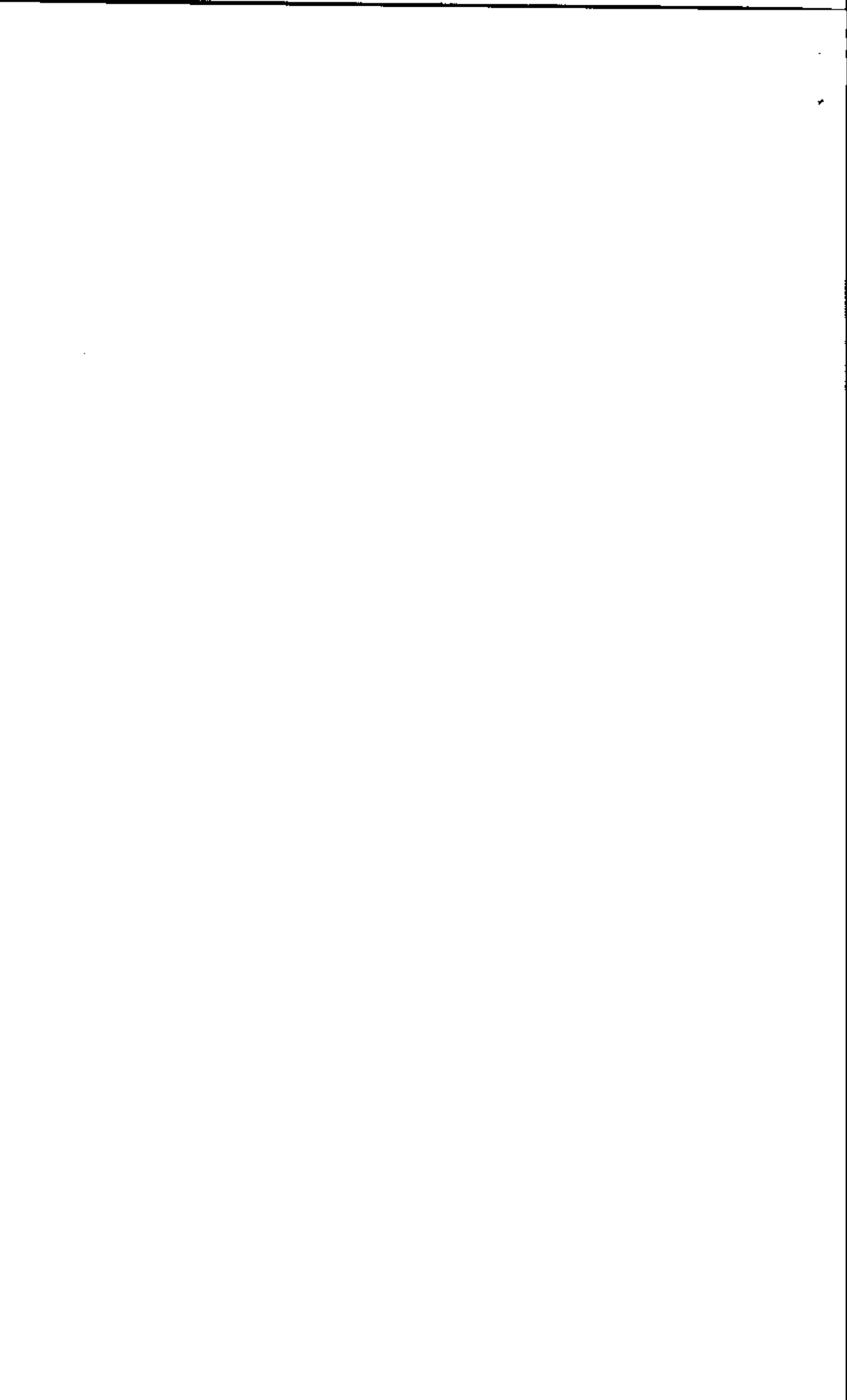
The Audit Division has identified 33 instances in which the fair market value of an in-kind contribution reported in the Post-Convention Report was subsequently determined to be greater or less than the value originally reported. In this regard, Philadelphia 2000 followed an established set of procedures to determine the fair market value of in-kind contributions that it received. Specifically, at or shortly after the time that a vendor provided an in-kind contribution to the host committee, Philadelphia 2000 provided the vendor with an In-kind Verification form to be completed. If an In-kind Verification form was not returned by a vendor to the host committee within a reasonable amount of time after the date of the contribution in question, representatives of Philadelphia 2000 would subsequently contact the vendor by telephone and, in most instances, by letter in an effort to obtain the missing form.

At the time that Philadelphia 2000 prepared and filed its Post-Convention Report, if the host committee had not yet received a completed In-Kind Verification form from a vendor and follow-up efforts to obtain the form had not yet proven successful, Philadelphia 2000 reported its good faith estimate of the fair market value of the contribution in question, which good faith estimate was typically determined by consulting with (i) the vendor in question, (ii) an individual with knowledge of the business of the vendor in question, and/or (iii) representatives of the Committee on Arrangements of the Republican National Committee. After the filing of the Post-Convention Report, Philadelphia 2000 continued in its efforts to obtain completed In-Kind Verification forms from the vendors that had not yet provided the form. These efforts proved to be largely successful, and most vendors subsequently produced completed In-Kind Verification forms to the host committee.

In its response to the issues raised by the Audit Division at the exit conference stage, Philadelphia 2000 agreed to amend the Post-Convention Report to reflect the reported fair market values set forth in the completed In-Kind Verification forms that were received by the host committee after October 2, 2000, the date of the filing of the Post-Convention Report. The chart attached as part of Exhibit D hereto indicates where these amended fair market values are reported in the Amended Post-Convention Report.

B. In-Kind Contributions Reported in Error (No Contribution).

The two in-kind contributions that were previously reported in error for One South Broad Street, L.P. (\$26,138 from 5-12/99 and \$112,966 from 1-9/00) have been removed and are not included in the Amended Post-Convention Report. These contributions were initially included in the Post-Convention Report because the host committee reasonably believed that certain of its monthly rental payments were at a below-market rate. The landlord in question subsequently informed Philadelphia 2000 that its rental payments were, in fact, consistent with the market rate and that there was, thus, no in-kind contribution to be reported.



have been correctly reported on the Amended Post-Convention Report as set forth on the chart attached hereto as Exhibit D.¹⁴

I. Unreported Interest Income Received.

The Audit Division has identified certain interest payments that were inadvertently omitted from the Post-Convention Report. These receipts have been included in the Amended Post-Convention Report as set forth on the chart attached hereto as Exhibit D.

J. Unreported Disbursements.

As noted in Section I above, the issue of unreported disbursements has been addressed by the host committee in the Amended Post-Convention Report. The chart attached hereto as Exhibit A sets forth where in the Amended Post-Convention Report these disbursements have been reported.

K. Incorrect Amounts Reported for Disbursements

The Audit Division has identified three disbursements, the amount of which was incorrectly reported in the Post-Convention Report. The amount of these disbursements has been corrected in the Amended Post-Convention Report as set forth on the chart attached hereto as Exhibit D.

V. Conclusion.

In conclusion, the host committee has complied with the requests of the Audit Division to make various amendments to the Post-Convention Report, and the matters identified in the PAR have now been addressed. As Philadelphia 2000 has used its best efforts to obtain, maintain and submit the information required of a host committee, it should be considered to be in compliance with the regulations applicable to host committees. In these circumstances, Philadelphia 2000 respectfully submits that the Audit Division should recommend that no further action be taken by the Commission with respect to the matters addressed in the PAR.

Sincerely,


David L. Cohen

Enclosures

cc: Karen Dougherty Buchholz, Treasurer (w/enc.)

¹⁴ This mistake apparently occurred because: (a) a \$50,000 check from Subaru of America, Inc. was photocopied on the same page as a \$100,000 check from Wawa, Inc., and the person preparing the Post-Convention Report inadvertently reported the contribution from Subaru as being for \$100,000; and (b) a \$12,500 contribution from Liberty Property, L.P. was inadvertently listed as a \$25,000 contribution because it was attached to a separate \$12,500 contribution from the principal of Liberty Property, L.P. See Exit Conference Outline, at Exhibit A16.

