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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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January 5, 2000

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** James A. Pelurkon  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

Kim Bright-Coleman  
Associate General Counsel

Rhonda J. Vosdingh  
Assistant General Counsel

Delbert K. Rigsby  
Attorney

**AGENDA ITEM**  
For Meeting of: 1-27-00

**SUBJECT:** 1996 Democratic National Convention Committee, Inc. -- Administrative Review of Repayment Determination (LRA #471)

The Office of General Counsel has prepared the attached draft Statement of Reasons concluding that the 1996 Democratic National Convention Committee, Inc. (the "Convention Committee") and the Democratic National Convention (the "DNC") must repay \$560,129 to the United States Treasury pursuant to 26 U.S.C. § 9008(h).<sup>1</sup> See 11 C.F.R. § 9008.12(b)(3).

The Convention Committee registered with the Federal Election Commission (the "Commission") as a national convention committee of the Democratic Party on June 6, 1995.

<sup>1</sup> On June 25, 1998, the Commission approved the Audit Report of the Convention Committee and determined that the Convention Committee received an in-kind contribution of \$600,325 from Chicago's Committee for '96 and an in-kind contribution of \$126,510 from the City of Chicago, with a total repayment due of \$726,835. The Commission also determined in the Audit Report that the Convention Committee's interim repayment of \$120,562 to the United States Treasury for unspent funds should be considered a credit against the amount due. In August 1998, the Convention Committee closed its accounts and refunded \$46,144 in unspent funds to the United States Treasury. In upholding its repayment determination, the Commission should consider this refund as a credit against the amount due. Thus, the net repayment amount would be \$560,129 (\$726,835 - \$120,562 - \$46,144).

The Convention Committee received \$12,364,000 in public funds under the Presidential Election Campaign Fund Act. 26 U.S.C. §§ 9001-9013. After the Convention was completed, the Commission conducted an audit and examination of the Convention Committee's receipts and disbursements. 26 U.S.C. § 9008(g); 11 C.F.R. § 9008.11. The findings were summarized in an Audit Report that was approved by the Commission on June 25, 1998. 11 C.F.R. § 9008.11. The Audit Report concluded that the Convention Committee received apparent impermissible in-kind contributions of \$600,325 from Chicago's Committee for '96 (the "Host Committee") and \$126,510 from the City of Chicago, which resulted in the Convention Committee exceeding the expenditure limitation for presidential nominating conventions. 11 C.F.R. § 9008.8. Accordingly, the Commission determined that the Convention Committee should make a net repayment of \$606,273 (\$726,835 - \$120,562 interim repayment) to the United States Treasury for the in-kind contributions received from the Host Committee and the City of Chicago. 26 U.S.C. § 9008(h) and 11 C.F.R. § 9008.12(b)(3).

On September 8, 1998, the Convention Committee submitted legal and factual materials to demonstrate that no repayment is required to be paid to the United States Treasury, 11 C.F.R. § 9007.2(c)(2)(i), and requested an opportunity to address the Commission in open session pursuant to 11 C.F.R. § 9007.2(c)(2)(ii). Attachment B at 1. The Commission approved the Convention Committee's request, and the oral hearing was held on January 13, 1999.

In its submissions, the Convention Committee disputes the repayment determination contained in the Audit Report which results from the telephone charges paid by the Host Committee and the City of Chicago being considered in-kind contributions to the Convention Committee. The Convention Committee contends that no repayment should be required because the Commission did not provide "fair notice" that 11 C.F.R. § 9008.52(c) prohibited a host committee's payment of telephone service charges. *Id.* at 2. The Convention Committee also argues that the Commission is imposing a "civil sanction" against the Convention Committee without giving the Convention Committee notice of the conduct that is prohibited. *Id.* at 3. The Convention Committee asserts that the language of the regulation does not enable persons to distinguish between equipment, facilities and services that are permissible host committee expenses and telephone charges.

Furthermore, the Convention Committee argues that the Audit Division applied 11 C.F.R. § 9008.52(c) in a contradictory and inconsistent manner because it allowed the Host Committee to pay for Convention Committee expenses such as pager charges, usage charges for cellular phones, rental of certain office equipment, office supplies and postage, but not telephone charges. *Id.* at 7, 8.

Section 9008.52 of the Commission's regulations is a "very narrow exception" to the statutory limitation on expenditures by publicly financed convention committees, which allows host committees to accept funds to defray expenses to promote the city and pay for convention-related facilities and services. 11 C.F.R. § 9008.52, and Explanation and Justification for 11 C.F.R. § 9008.7(d), 44 Fed. Reg. 63038 (November 1, 1979). Section 9008.52 is based on previous 11 C.F.R. §§ 9008.7(b) and (d)(3), which permitted government agencies to make

certain expenditures for facilities and services with respect to a convention without the value of the facilities and services counting toward the party's expenditure limitation, and which dealt with host committees, respectively. 59 Fed. Reg. 33614 (June 29, 1994), 44 Fed. Reg. 63037 (November 1, 1979). While the provisions dealing with host committees permitted unlimited donations from individuals, local businesses, local government agencies, and union locals to donate funds to the host committee for use in promoting the city and its commerce, "far greater restrictions [were] placed on funds received and expended to defray convention expenses." 44 Fed. Reg. 63037 (November 1, 1979). Specifically, only local retail businesses may donate funds to defray convention expenses; "these donations are limited to an amount proportionate to the commercial return reasonably expected during the life of the convention by the particular business." 44 Fed. Reg. 63037 (November 1, 1979). This provision for the host committee to defray convention expenses under these limited circumstances is "intended to be a narrow exception to the statutory limitation on convention expenses." 44 Fed. Reg. 63038 (November 1, 1979).

The current regulation provides for local businesses, local labor organizations and other local organizations or individuals to make donations or in-kind donations to the host committee to be used for certain purposes. 11 C.F.R. § 9008.52(c)(1). A careful review of the types of expenses specified in 11 C.F.R. § 9008.52(c) indicates that the purposes relate to promoting the city and its commerce<sup>2</sup> or preparing the convention site.<sup>3</sup> Other purposes for host committee donations are to provide similar convention related facilities and services, and to defray administrative expenses incurred by the host committee. 11 C.F.R. § 9008.52(c)(1)(xi); 11 C.F.R. § 9008.52(c)(1)(iv). Moreover, the expenses relating to preparing the convention site are for providing the infrastructure to host the convention as opposed to providing funds to operate a convention. 11 C.F.R. § 9008.52(c)(1)(v). Despite assertions at the oral hearing that the telephone charges were for the purpose of putting on the convention in the city and for the staff to communicate with each other and with vendors, the Convention Committee has not provided any documentary evidence to support or confirm that all telephone charges were for this purpose. Host committees are not permitted to pay the convention committee's or the national party's overhead and administrative expenses related to the convention. Explanation and Justification for 11 C.F.R. § 9008.52, 59 Fed. Reg. 33614 (June 29, 1994).

The Office of General Counsel recommends that the Commission make no revision to its repayment determination, 11 C.F.R. § 9007.2(c)(3), other than to consider the additional refund of \$46,144 by the Convention Committee to the United States Treasury in August 1998 as a credit against the amount due. Thus, the Office of General Counsel recommends that the Commission make a determination that the Convention Committee must repay a net amount of \$560,129 to the United States Treasury for accepting impermissible in-kind contributions which caused the Convention Committee to exceed the expenditure limitation (\$726,835 - \$120,562 -

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<sup>2</sup> See 11 C.F.R. §§ 9008.52(c)(1)(i) thru (iii) and (vi) thru (xi).

<sup>3</sup> See 11 C.F.R. § 9008.52(c)(1)(v).

\$46,144). 26 U.S.C. § 9008(h). 11 C.F.R. § 9008. We have prepared the attached draft Statement of Reasons in support of the Commission's determination.

## **RECOMMENDATIONS**

The Office of General Counsel recommends the Commission:

1. Accept the additional refund of \$46,144 by the Convention Committee to the United States Treasury in August 1998 as a credit against the amount due and determine that the 1996 Democratic National Convention Committee, Inc. and the Democratic National Committee must repay a net amount of \$560,129 to the United States Treasury pursuant to 26 U.S.C. § 9008(h) and 26 U.S.C. § 9007;
2. Approve the attached Statement of Reasons; and
3. Approve the appropriate letters.

## **Attachment**

Proposed Statement of Reasons (with Attachments A-E)

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of

3 The 1996 Democratic National )  
4 Convention Committee, Inc. )  
5 )  
6 )  
7 )

LRA #471

8 **STATEMENT OF REASONS**

9 On \_\_\_\_\_, 1999, the Federal Election Commission (the "Commission") determined  
10 that the 1996 Democratic National Convention Committee, Inc. (the "Convention Committee")  
11 and the Democratic National Committee (the DNC") must repay a net amount of \$560,129 to the  
12 United States Treasury for in-kind contributions received from Chicago's Committee for '96 (the  
13 "Host Committee") and the City of Chicago which caused the Convention Committee to exceed  
14 the expenditure limitation for presidential nominating conventions.<sup>1</sup> 26 U.S.C. § 9008; 11 C.F.R.  
15 § 9008.8(a)(1). The Convention Committee and the DNC are ordered to repay \$560,129 to the  
16 United States Treasury within 30 calendar days after service of this determination. 11 C.F.R.  
17 § 9007.2(d)(2). This Statement of Reasons sets forth the legal and factual basis for the  
18 repayment determination. 11 C.F.R. § 9007.2(c)(3).

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<sup>1</sup> On June 25, 1998, the Commission approved the Audit Report of the Convention Committee and determined that the Convention Committee received an in-kind contribution of \$600,325 from Chicago's Committee for '96 and an in-kind contribution of \$126,510 from the City of Chicago, with a total repayment due of \$726,835. The Commission also determined in the Audit Report that the Convention Committee's interim repayment of \$120,562 to the United States Treasury for unspent funds should be considered a credit against the amount due. In August 1998, the Convention Committee closed its accounts and refunded \$46,144 in unspent funds to the United States Treasury. In upholding its repayment determination, the Commission considered this refund as a credit against the amount due. Thus, the net repayment amount is \$560,129 (\$726,835 - \$120,562 - \$46,144).

1 **I. BACKGROUND**

2 On June 6, 1995, the Convention Committee registered with the Commission as a  
 3 national convention committee of the Democratic Party. The Convention Committee received  
 4 \$12,364,000 in public funds under the Presidential Election Campaign Fund Act. 26 U.S.C.  
 5 §§ 9001-9013. After the Convention was completed, the Commission conducted an audit and  
 6 examination of the Convention Committee's receipts and disbursements, as provided in the  
 7 Presidential Election Campaign Fund Act and the Commission regulations. Attachment A;  
 8 26 U.S.C. § 9008(g); 11 C.F.R. § 9008.11.

9 Chicago's Committee for '96 (the "Host Committee") was established to serve as a host  
 10 committee for the Democratic National Convention pursuant to 11 C.F.R. §§ 9008.50 - 9008.54.  
 11 The Host Committee did not receive any public funds pursuant to Title 26 of the United States  
 12 Code. However, the Host Committee received \$21,481,973 from other sources, and it spent  
 13 \$20,960,388 in connection with the 1996 Democratic National Convention.<sup>2</sup>

14 On August 7, 1997, the Commission's Audit staff held an exit conference with the  
 15 Convention Committee to discuss preliminary findings and recommendations based upon  
 16 information obtained during the audit that the Audit staff planned to submit to the Commission  
 17 for approval. See 11 C.F.R. §§ 9008.11, 9038.1(b)(2)(iii) and 9007.1(b)(2)(iii). The Audit  
 18 Division's preliminary findings and recommendations were contained in an Exit Conference  
 19 Memorandum ("ECM"). See *id.* In the ECM, the Audit staff identified payments to Ameritech  
 20 totaling \$512,637 from the Host Committee and \$105,621 from the City of Chicago for local  
 21 telephone charges related to Convention Committee telephone numbers or accounts assigned to

<sup>2</sup> Pursuant to 11 C.F.R. § 9008.54, the Commission audited the Host Committee, and the receipts and expenditures stated above are as of March 31, 1997, the effective date of the Audit Report. The Commission approved the Host Committee's Audit Report on June 25, 1998.

1 the Convention Committee. Attachment A at 11. The Audit staff also identified payments to  
2 AT&T totaling \$87,688 from the Host Committee and \$20,889 from the City of Chicago for long  
3 distance charges related to Convention Committee telephone numbers or accounts assigned to the  
4 Convention Committee. *Id.* Memoranda from the Host Committee also attributed the  
5 expenditures for telephone charges to the Convention Committee. *Id.*

6 The Audit staff requested that the Convention Committee provide documentation that the  
7 telephone charges were a permissible host committee expense pursuant to 11 C.F.R.  
8 § 9008.52(c). *Id.* The Audit staff also cited the Explanation and Justification for 11 C.F.R.  
9 § 9008.52, 59 Fed. Reg. 33614 (June 29, 1994), which states that the revised rules do not permit  
10 host committees to pay for the convention committee's or the national party's overhead expenses  
11 for the convention. *Id.* at 10. Finally, the Audit staff concluded that the telephone charges were  
12 an overhead expense of the convention, and did not promote the City of Chicago or prepare the  
13 convention site. *Id.* at 12.

14 On October 21, 1997, the Convention Committee filed its written response to the ECM.  
15 The Convention Committee stated that it interpreted 11 C.F.R. § 9008.52(c) to permit the Host  
16 Committee to pay for telephone service charges for the convention, and that the regulation does  
17 not distinguish between the costs of office telephones and the costs of using the telephones.  
18 Attachment A at 11. Moreover, the Convention Committee argued that the Explanation and  
19 Justification for 11 C.F.R. § 9008.52 should not be given precedence over the plain language of  
20 the regulation, and that the language of the Explanation and Justification is ambiguous. *Id.*

21 On June 25, 1998, the Commission approved the Audit Report of the Convention  
22 Committee, including a determination that the Host Committee made in-kind contributions  
23 totaling \$600,325 to the Convention Committee, and the City of Chicago made in-kind

1 contributions totaling \$126,510. *Id.* Thus, the Commission determined that the Convention  
 2 Committee should make a repayment of \$726,835 to the United States Treasury for the in-kind  
 3 contributions received from the Host Committee and the City of Chicago. *Id.* at 12; 26 U.S.C.  
 4 § 9008(h); 11 C.F.R. § 9008.12(b)(3).

5 On September 8, 1998, the Convention Committee submitted legal and factual materials  
 6 to demonstrate that no repayment is required to be paid to the United States Treasury.  
 7 Attachment B;<sup>3</sup> 11 C.F.R. § 9007.2(c)(2)(i). The Convention Committee also requested an  
 8 opportunity to address the Commission in open session pursuant to 11 C.F.R. § 9007.2(c)(2)(ii).  
 9 Attachment B at 1. On November 8, 1998, the Commission granted the Convention  
 10 Committee's request for an oral hearing, which was held on January 13, 1999. Attachment D.  
 11 Within five days after the oral hearing, the Convention Committee submitted a supplemental  
 12 submission. Attachment E.

## 13 II. CONVENTION COMMITTEE'S RESPONSE TO THE REPAYMENT 14 DETERMINATION

15 The Convention Committee disputes the repayment determination based on the  
 16 conclusion that telephone charges paid by the Host Committee and the City of Chicago are in-  
 17 kind contributions to the Convention Committee. Attachment B at 1. The Convention  
 18 Committee states that there should be no repayment because the Commission did not provide  
 19 "fair notice" that 11 C.F.R. § 9008.52(c) prohibited a host committee's payment of telephone  
 20 service charges. *Id.* at 2. The Convention Committee argues that the Commission is imposing a

<sup>3</sup> The Commission's Audit Division noted that there was no need to modify the conclusions reached in the Audit Report based on these materials. Attachment C.



1 "civil sanction"<sup>4</sup> against the Convention Committee without giving the Convention Committee  
2 notice of the conduct that is prohibited. *Id.* at 3.

3 Specifically, the Convention Committee asserts that the language of the regulation does  
4 not enable persons to distinguish between equipment, facilities and services that are permissible  
5 host committee expenses and telephone charges. *Id.* at 4. In addition to items specifically  
6 mentioned in 11 C.F.R. § 9008.52, the regulation provides that host committees may pay for  
7 "other similar convention-related facilities and services." 11 C.F.R. § 9008.52(c)(xi). The  
8 Convention Committee argues that telephone service charges should be considered as other  
9 similar convention-related facilities and services. *Id.* Moreover, it argues that telephone service  
10 charges should not be considered any different from items such as air conditioning and  
11 electricity, which are specifically mentioned in the regulation as permissible host committee  
12 expenses. *Id.*

13 Additionally, the Convention Committee argues that the administrative history of  
14 11 C.F.R. § 9008.52 does not give fair notice that telephone charges are excluded as permissible  
15 host committee expenses. Attachment B at 5. The Convention Committee states that the  
16 language in the Explanation and Justification, which reads "please note that the revised rules do  
17 not permit host committees . . . to pay the convention committee's or the national party's  
18 overhead and administrative expenses related to the convention," directly contradicts the  
19 language of the regulation which permits administrative and overhead expenses, such as "offices  
20 and office equipment." Attachment B at 6.

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<sup>4</sup> There is a critical distinction between repayments and civil liability or violations of law. A repayment involves the return of public funds received by a political committee to the United States Treasury. Contrary to the Convention Committee's assertion, the Commission's repayment determination does not impose any civil penalty upon the Convention Committee. See *Kennedy v. FEC*, 734 F.2d 1558, 1565 (1984); see also *Reagan Bush Comm. v. FEC*, 525 F. Supp. 1330, 1337 (1981) (repayment determinations are not considered to involve violations of law).

1 Furthermore, the Convention Committee argues that the Audit Division applied 11 C.F.R.  
2 § 9008.52(c) in a contradictory and inconsistent manner because it allowed the Host Committee  
3 to pay for Convention Committee expenses such as pager charges, usage charges for cellular  
4 phones, rental of certain office equipment, office supplies and postage, but not telephone charges.  
5 Attachment B at 7, 8. Moreover, the Convention Committee disagrees with the Commission's  
6 reliance upon 11 C.F.R. § 9008.7(a)(4)(x) with respect to the types of convention expenses that  
7 should be paid by the convention. Attachment B at 8. Specifically, the Convention Committee  
8 argues that because a convention committee may pay for certain expenses with its own funds, it  
9 does not necessarily mean that the host committee may not also pay for such expenses. *Id.*

10 Finally, the Convention Committee asserts that the notice of proposed rulemaking on  
11 11 C.F.R. § 9008.52 contained no suggestion that there would be prohibitions on host committee  
12 use of funds to pay convention committee administrative and overhead expenses. Attachment B  
13 at 12-15. While it acknowledges that agencies may modify proposed rules, the Convention  
14 Committee argues that language in the Explanation and Justification for 11 C.F.R. § 9008.52,  
15 which restricts a host committee's payment of convention administrative and overhead expenses,  
16 appears to control the entire scope of section 9008.52(c), that it was inserted at the final  
17 Commission meeting on the proposed regulation, and that they did not have notice or opportunity  
18 to comment upon such language. *Id.* at 13, 14.

19 During the oral hearing, the Convention Committee's counsel argued that the  
20 Commission's regulations restrict only the source of funds that can be donated to host  
21 committees, but does not restrict "the purposes for which the Host Committee could spend its  
22 funds in terms of covering the costs of convention facilities and services." Attachment D at 10.

1 The Convention Committee's counsel also stated that "in prior conventions, the Host  
2 Committees clearly paid these [telephone] charges." *Id.* at 23.

3 In its supplemental submission to the Request for an Administrative Review of the  
4 Repayment Determination, the Convention Committee noted that after searching its records,  
5 it appears that a substantial amount of local telephone service charges for  
6 the 1992 Convention Committee were paid for by the City of New York.  
7 We are unable to determine whether the City of New York or the 1992  
8 Host Committee paid for any long distance service charges. We are also  
9 unable to determine who paid for the 1988 Convention Committee's local  
10 and long distance telephone service charges.

11  
12 Attachment E at 3. The Convention Committee also states that its contract with the City of  
13 Chicago required the City and/or the Host Committee to pay for telephone charges. *Id.* at 3, 4.  
14 This contract provision required the "City to pay for cellular telephone usage charges (air time)  
15 and long distance service charges for the Convention Committee." *Id.* at 4. Furthermore, the  
16 Convention Committee states that "we have been unable to determine definitively how the Audit  
17 Division treated cellular telephone and pager charges, because we cannot determine exactly  
18 which invoices were included in the \$726,835 disallowed." *Id.*

### 19 III. ANALYSIS

#### 20 A. LAW

21 In order to be eligible to receive public funds to finance the presidential nominating  
22 convention, a national party committee must establish a convention committee, which is  
23 responsible for conducting the day to day arrangements and operations of that party's presidential  
24 nominating convention and must register with and report to the Commission as a political  
25 committee. 11 C.F.R. §§ 9008.3(a)(1), (a)(2) and (b). A national party committee and its  
26 convention committee must also file a written agreement with the Commission agreeing to

1 conditions set forth in 11 C.F.R § 9008.3(a)(4)(i) through (viii) to be eligible for public funding.  
2 11 C.F.R. § 9008.3(a)(4). As part of this agreement, the national party committee and its  
3 convention committee must agree to comply with 2 U.S.C. §§ 431 through 451, 26 U.S.C.  
4 § 9008, and applicable Commission's regulations. 11 C.F.R. § 9008.3(a)(4)(vii). Thus, the  
5 committees must agree to abide by 2 U.S.C. §§ 441a and 441b, which prohibit, *inter alia*,  
6 corporate and labor organization contributions or expenditures in connection with conventions,  
7 and they must agree to comply with the applicable expenditure limitation set forth at 26 U.S.C.  
8 § 9008(d) and 11 C.F.R § 9008.8. 11 C.F.R. § 9008.3(a)(4)(vii) and (i), respectively. The  
9 national committee of a major party may not make expenditures with respect to a publicly-  
10 financed presidential nominating convention which, in the aggregate, exceed the amount of  
11 payments to which such committee is entitled under 26 U.S.C. § 9008(b)(1). 26 U.S.C.  
12 § 9008(d)(1). Thus, the expenditure limitation is equal to the convention committee's  
13 entitlement to public funds. 26 U.S.C. § 9008(d).

14 A host committee may be created to represent a city hosting a nominating convention in  
15 matters involving a presidential nominating convention. 11 C.F.R. § 9008.51. Any local  
16 organization that is not organized for profit, whose net earnings do not inure to the benefit of any  
17 private shareholder or individual and whose principal objective is the encouragement of  
18 commerce in the convention city, as well as the projection of a favorable image of the city to  
19 convention attendees, may serve as a host committee. 11 C.F.R § 9008.52(a).<sup>5</sup>

20 Host committees may receive funds or in-kind donations from local businesses  
21 (excluding banks), local labor organizations, and other local organizations and individuals for

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<sup>5</sup> Section 9008.52(a) gives the following examples of local organizations that may serve as host committees:  
a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention  
bureau.

1 specific purposes relating to hosting a national party convention.<sup>6</sup> The purposes for which a  
2 host committee may use funds in connection with a nominating convention are specified in  
3 11 C.F.R § 9008.52(c)(1)(i) through (xi) and include: (i) "promoting the suitability of the city  
4 as a convention site;" (ii) "welcoming the convention attendees to the city;" (iii) "facilitating  
5 commerce;" (vi) "local transportation services;" (vii) "law enforcement;" (viii) "convention  
6 bureau personnel to provide central housing and reservation services;" (ix) "hotel rooms at  
7 no charge or at a reduced rate;" and (x) "accommodations and hospitality for committees  
8 of the parties responsible for choosing the site of the conventions." 11 C.F.R. § 9008.52(c)(1)(i)-  
9 (iii) and (vi)-(x). Host committees may also provide "use of an auditorium or convention center  
10 and to provide construction and convention related services" such as "construction of podiums,  
11 press tables, false floors, camera platforms, additional seating, lighting, electrical, air  
12 conditioning and loud speaker systems, offices, office equipment, and decorations." 11 C.F.R.  
13 § 9008.52(c)(1)(v). Finally, in addition to those facilities and services specifically enumerated in  
14 11 C.F.R § 9008.52(c)(1)(i) through (x), a host committee is permitted to provide "other similar  
15 convention-related facilities and services" under section 9008.52(c)(1)(xi).

16 A convention committee may use its public funds only for the purposes set forth at  
17 11 C.F.R § 9008.7. See 26 U.S.C. § 9008(c). Convention expenses include all expenses incurred  
18 by or on behalf of a political party's national committee or convention committee with respect to  
19 and for the purpose of conducting a presidential nominating convention or convention-related  
20 activities. 11 C.F.R. § 9008.7(a)(4). Some examples of convention expenses include

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<sup>6</sup> Host committees may also accept goods or services from commercial vendors under the terms and conditions set forth at 11 C.F.R. § 9008.9, which also apply to convention committees. 11 C.F.R. § 9008.52(b).

1 administrative and office expenses for conducting the convention including stationery, office  
 2 supplies, office machines, and telephone charges, but exclude the cost of any services supplied by  
 3 the national committee at its headquarters or principal office if such services are incidental to the  
 4 convention and not utilized primarily for the convention. 11 C.F.R. § 9008.7(a)(4)(x).

5 Generally, convention expenses incurred with respect to a presidential nominating convention are  
 6 subject to the expenditure limitation. *See* 11 C.F.R. § 9008.8(a). Nevertheless, certain  
 7 expenditures related to a convention are not subject to the expenditure limitation. For example,  
 8 permissible host committee expenditures like those examples listed in 11 C.F.R. § 9008.52 shall  
 9 not be considered convention committee expenditures and shall not count against the convention  
 10 committee's expenditure limit. 11 C.F.R. § 9008.8(b)(1).<sup>7</sup> Host committee expenditures that are  
 11 not in accordance with section 9008.52 are in-kind contributions to the convention committee  
 12 that may be considered convention committee expenditures and count against the expenditure  
 13 limit. *See id.*

14 If the Commission determines that a national party committee accepted contributions to  
 15 defray convention expenses which, when added to the amount of payments received, exceeds the  
 16 expenditure limitation, it shall notify the national committee of the amount of contributions so  
 17 accepted, and the national committee shall pay the amount specified to the United States  
 18 Treasury. 11 C.F.R. § 9008.12(b)(3); *see also* 26 U.S.C. §§ 9007(b)(3), 9008(h); and 11 C.F.R.  
 19 § 9008.12(a).<sup>8</sup> A convention committee's entitlement to public funds shall be adjusted so as

<sup>7</sup> Additionally, Host Committee expenditures that are permitted under section 9008.52 are exempt from the prohibition of corporate and labor organization contributions or expenditures. 11 C.F.R. § 114.1(a)(2)(viii).

<sup>8</sup> The statute authorizes the Commission to require repayment of public funds equal to any contributions, 26 U.S.C. § 9007(b)(3), while the regulation requires a repayment equal to those contributions that, when added to the amount of public funds received, exceed the expenditure limit, 11 C.F.R. § 9008.12(b)(3). In these

1 not to exceed the difference between the expenditure limitation and the amount of private  
 2 contributions received to defray convention expenses. 11 C.F.R. § 9008.5(b). If the Commission  
 3 determines that any portion of the payments to the national committee or convention committee  
 4 was in excess of the aggregate payments to which the national committee was entitled under  
 5 11 C.F.R. §§ 9008.4 and 9008.5, it shall notify the national committee and the national  
 6 committee shall pay an amount equal to such portion to the United States Treasury. 11 C.F.R.  
 7 § 9008.12(b)(1); *see also* 26 U.S.C. § 9007(b)(1). If the Commission determines that the  
 8 national committee or convention committee incurred convention expenses in excess of the  
 9 limitation, it shall so notify the national committee and the national committee shall pay an  
 10 amount equal to such excessive expenditures to the United States Treasury. 11 C.F.R.  
 11 § 9008.12(b)(2); *see also* 26 U.S.C. § 9007(b)(2). In the case of in-kind contributions from a  
 12 host committee, government agency or municipal corporation that cause the convention  
 13 committee to exceed the expenditure limitation, the Commission may seek repayment if a  
 14 convention committee knowingly helps, assists or participates in the making of a convention  
 15 expenditure by a host committee, government agency, or municipal corporation that is not in  
 16 accordance with 11 C.F.R. §§ 9008.52 or 9008.53. 11 C.F.R. § 9008.12(b)(7).

17 **B. REPAYMENT DETERMINATION UPON ADMINISTRATIVE REVIEW**

18 The Commission determines that the telephone charges of \$726,835 paid by the Host  
 19 Committee and the City of Chicago were in-kind contributions to the Convention Committee, the  
 20 expenditures were not made in accordance with 11 C.F.R. § 9008.52, and the Convention  
 21 Committee knowingly helped, assisted and participated in making the impermissible

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circumstances, the full amount of any contributions is subject to repayment under either the statute or the regulation because the Convention Committee received public funds equal to its expenditure limit.

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 10 18

1 expenditures. These expenditures count against the Convention Committee's expenditure  
2 limitation. Since the Convention Committee received all of the public funds to which it was  
3 entitled under 11 C.F.R. § 9004, the in-kind contributions caused the Convention Committee to  
4 exceed its expenditure limitation. See 26 U.S.C. § 9008(d); 11 C.F.R. § 9008.8. Therefore, the  
5 Commission determines that the DNC and the Convention Committee must repay a net amount  
6 of \$606,273 (\$726,835 - \$120,562 interim repayment) to the United States Treasury.

7 The Commission concludes that the telephone charges are administrative and office  
8 expenses of the convention instead of permissible host committee expenditures because  
9 11 C.F.R. § 9008.7(a)(4)(x) specifically includes telephone charges as administrative and office  
10 expenses for conducting a convention. Telephone expenses are necessary operating costs of the  
11 convention. Moreover, the telephone charges are not permissible host committee expenditures  
12 pursuant to 11 C.F.R. § 9008.52 because they were not for the purpose of promoting the city or  
13 related to preparing the convention site.<sup>9</sup> The Commission's repayment determination includes  
14 those cellular phone and pager charges that the Audit Division discerned from invoices and  
15 memoranda to be for the Convention Committee. The Commission was consistent in classifying  
16 expenses as permissible host committee expenditures under 11 C.F.R. § 9008.52 or as  
17 convention expenses.<sup>10</sup> The Commission allowed office equipment to be paid by the Host  
18 Committee because it is specifically listed as a permissible host committee expense under

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<sup>9</sup> The Commission's interpretation of the statute is entitled to deference if it is reasonable. *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 37 (1981); *FEC v. National Republican Senatorial Committee*, 966 F.2d 1471, 1475-1476 (D.C. Cir. 1992).

<sup>10</sup> The Audit staff's review of the Host Committee's expenses for office supplies and postage for the Convention Committee did not reveal any material noncompliance.



1 11 C.F.R. § 9008.52(c), and leased equipment is treated in the same manner as equipment that is  
2 purchased.<sup>11</sup>

3 As a threshold matter, the Commission determines that the Convention Committee  
4 knowingly helped, assisted, and participated in the Host Committee and City of Chicago's  
5 expenditures of funds on telephone charges based on letters noting the Convention Committee's  
6 approval of the expenses, and the Convention Committee's contract with the City of Chicago and  
7 the United Center Joint Venture. With respect to most convention expenditures including  
8 telephone charges, the Host Committee prepared letters listing the vendor, budget line item and  
9 amount of the expenditure and requested the Convention Committee to sign the letters  
10 acknowledging and approving such Host Committee expenditures. Those letters provide  
11 evidence that the Convention Committee knowingly participated in the Host Committee's  
12 expenditure of funds that were not in accordance with 11 C.F.R. § 9008.52. Furthermore, the  
13 Convention Committee's contract obligated the City of Chicago to provide a telecommunications  
14 system, a cellular phone system including air time usage charges, and pay for long-distance  
15 charges incurred by the Convention Committee at the convention site. Thus, the Commission  
16 may seek a repayment from the Convention Committee for its role in the impermissible  
17 expenditures by the Host Committee and the City of Chicago pursuant to 11 C.F.R.  
18 § 9008.12(b)(7).

19 The principal objective of a host committee must be the encouragement of commerce in  
20 the convention city, as well as the projection of a favorable image of the city to convention  
21 attendees. Host committees may receive donations and in-kind donations from local businesses

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<sup>11</sup> Expenses for electricity and air conditioning can be distinguished from telephone charges because electricity and air conditioning are intrinsic to providing the national committee with use of an auditorium or convention center suitable for a convention. 11 C.F.R. § 9008.52(c)(1)(v).

1 and organizations to be used for the purposes set forth in 11 C.F.R. § 9008.52(c). Section  
2 9008.52(c) is based on previous 11 C.F.R. § 9008.7(b) and (d), which permitted government  
3 agencies to make certain expenditures for facilities and services with respect to a convention  
4 without the value of the facilities and services counting toward the party's expenditure limitation,  
5 and permitted host committees to promote the convention city and its commerce, 11 C.F.R.  
6 § 9008.7(d)(2) (1994), and to make expenditures similar to government agencies, 11 C.F.R.  
7 § 9008.7(d)(3) (1994). See 11 C.F.R. § 9008.7(b), (d) (1994); Explanation and Justification for  
8 11 C.F.R. § 9008.52, 59 Fed. Reg. 33614 (June 29, 1994); Explanation and Justification for  
9 11 C.F.R. § 9008.7, 44 Fed. Reg. 63037 (November 1, 1979). While the provisions dealing  
10 with host committees permitted unlimited donations from individuals, local businesses, local  
11 government agencies, and union locals to donate funds to the host committee for use in  
12 promoting the city and its commerce, "far greater restrictions [were] placed on funds received  
13 and expended to defray convention expenses." 44 Fed. Reg. 63037 (November 1, 1979).  
14 Specifically, only local retail businesses may donate funds to defray convention expenses and  
15 "these donations are limited to an amount proportionate to the commercial return reasonably  
16 expected during the life of the convention by the particular business." 44 Fed. Reg. 63037  
17 (November 1, 1979). This provision for the host committee to defray convention expenses under  
18 these limited circumstances, i.e., 11 C.F.R. § 9008.7(d)(3), is "intended to be a narrow exception  
19 to the statutory limitation on convention expenses." 44 Fed. Reg. 63038 (November 1, 1979).

20 The current regulation, which was based on the previous section 11 C.F.R. § 9008.7,  
21 provides for local businesses, local labor organizations and other local organizations or  
22 individuals to make donations or in-kind donations to the host committee to be used for certain  
23 purposes, such as promoting the city and preparing the convention site. 11 C.F.R.

1 § 9008.52(c)(1). Moreover, the expenses relating to preparing the convention site are for  
 2 providing the infrastructure to host the convention as opposed to providing funds to operate a  
 3 convention. See 11 C.F.R. § 9008.52(c)(1)(v). Host committees are not permitted to pay the  
 4 convention committee's or the national party's overhead and administrative expenses related to  
 5 the convention. Explanation and Justification for 11 C.F.R. § 9008.52, 59 Fed. Reg. 33614  
 6 (June 29, 1994).

7 Because the Commission's regulation regarding permissible host committee expenditures  
 8 is an exception to the convention committees' expenditure limits, it must be narrowly construed  
 9 in order to preserve the statutory expenditure limit. Similarly, because host committees may  
 10 accept funds from local corporations and local organizations that would otherwise be prohibited  
 11 from use in connection with conventions, the regulatory exception must be construed narrowly.  
 12 2 U.S.C. § 441b. Host committee expenditures are not, however, limited in amount.<sup>12</sup> But host  
 13 committee expenditures are limited in purpose, which reflects the Commission's determination  
 14 that expenditures for purposes such as those listed in 11 C.F.R. § 9008.52(c)(1)(i) through (xi)  
 15 are consistent with the host committee's principal objective, the encouragement of commerce in  
 16 the convention city, as well as the projection of a favorable image of the city to convention  
 17 attendees, 11 C.F.R. § 9008.52(a), rather than election-influencing purposes.

18 Contrary to the Convention Committee's contention that the telephone charges should be  
 19 permissible host committee expenses under section 9008.52(c)(1)(xi) because they are other  
 20 similar convention-related facilities and services, the Commission interprets 11 C.F.R.  
 21 § 9008.52(c)(1)(xi) to mean that any similar convention-related facilities and services must

<sup>12</sup> This permits a wider variety of cities to compete to host conventions as host committees are permitted to provide construction services in order to provide a suitable convention center or auditorium. 11 C.F.R. § 9008.52(c)(1)(v).

1 either promote the city or prepare the convention site. Thus, the telephone charges would not be  
2 permissible host committee expenditures pursuant to 11 C.F.R. § 9008.52(c)(1)(xi). The long-  
3 standing, narrow exception provided in the regulations at section 9008.52 does not permit  
4 host committees to pay the convention committee's or the national party's overhead and  
5 administrative expenses related to the convention. Explanation and Justification for 11 C.F.R.  
6 § 9008.52, 59 Fed. Reg. 33614 (June 29, 1994).

7 The Convention Committee also argues that the Commission's reliance upon the  
8 Explanation and Justification for 11 C.F.R. § 9008.52 in prohibiting the host committee's  
9 payment of the telephone charges constitutes a new regulation without providing the Convention  
10 Committee with fair notice to comment. However, section 9008.52 is based upon the previous  
11 11 C.F.R. §§ 9008.7(b) and (d)(3) in which the Commission has consistently interpreted the host  
12 committee's payment of convention expenses to be a narrow exception to the statutory limitation  
13 on convention expenses. *See* 44 Fed. Reg. 63038 (November 1, 1979). In proposing Section  
14 9008.52, the Commission complied with the applicable notice and comment provisions of the  
15 Administrative Procedure Act with respect to proposed rulemaking. *See* 5 U.S.C. §§ 553(b)  
16 and (c).

17 Moreover, a broad interpretation of this regulation would undermine the expenditure  
18 limitation on publicly financed party nominating conventions. If host committees were permitted  
19 to pay a convention's operating expenses, such as telephone charges, then most convention  
20 expenses could be considered permissible host committee expenditures, and publicly financed  
21 convention committees could circumvent the expenditure limitation by having host committees  
22 pay operating expenses. Furthermore, if host committees, which receive funds from corporations  
23 and labor unions, are permitted to pay a convention's operating expenses, it would contradict the

1 statutory prohibition on contributions from corporations and labor unions in connection with a  
2 federal election. 2 U.S.C. §441(b)(a).

3 Finally, despite the Convention Committee's assertion that its contract with the City of  
4 Chicago required the City and/or the Host Committee to pay for the telephone charges, the  
5 Commission's regulation set forth at 11 C.F.R. § 9008.52 is controlling, and any contract entered  
6 into by the Convention Committee must be in compliance with Commission regulations. The  
7 Convention Committee agreed to comply with FECA, 26 U.S.C. § 9008, and the Commission's  
8 regulations. 11 C.F.R. § 9008.3(a)(4)(vii).

#### 9 IV. CONCLUSION

10 For the foregoing reasons, the Commission determines that the Convention Committee  
11 received in-kind contributions totaling \$726,835 from the Host Committee and the City of  
12 Chicago, and these contributions in the form of expenditures for telephone charges were not  
13 made in accordance with 11 C.F.R. § 9008.52. Thus, these expenditures count against the  
14 expenditure limit, and resulted in the Convention Committee exceeding the expenditure  
15 limitation for presidential nominating conventions by \$676,218.<sup>13</sup> 26 U.S.C. § 9008(d).  
16 The Convention Committee received all of the public funds to which it was entitled under  
17 11 C.F.R. § 9008.4. The Convention Committee and the DNC must repay public funds of  
18 \$726,835 to the United States Treasury, as a result of accepting contributions to defray  
19 convention expenses which, when added to the amount of payments received, exceeded the  
20 expenditure limitation. 11 C.F.R. § 9008.12. After allowing for the Convention Committee's

<sup>13</sup> The Audit Report of the Convention Committee indicated a deficit of \$676,218 on the Statement of Net Outstanding Convention Expenses (NOCE Statement). If the in-kind contributions of \$726,835 were not counted against the expenditure limit, the NOCE statement would have indicated a surplus of \$50,617. See Audit Report of the Convention Committee at p.19.

1 interim repayment and the additional refund to the United States Treasury, the Commission  
2 determines that a net repayment of \$560,129 (\$726,835 - \$120,562 interim repayment - \$46,144  
3 additional refund) be made by the 1996 Democratic National Convention Committee, Inc. and  
4 the Democratic National Committee to the United States Treasury. 26 U.S.C. § 9008(h).

5 **Attachments**

- 6 A. Audit Report on the 1996 Democratic National Convention Committee, Inc., approved  
7 June 25, 1998.  
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9 B. Request of 1996 Democratic National Convention Committee, Inc. for Administrative  
10 Review of Repayment Determination, dated September 8, 1998.  
11  
12 C. Memorandum from Robert Costa to Kim Bright-Coleman regarding the 1996 Democratic  
13 National Convention Committee, Inc.'s response to the Audit Report, dated January 4, 1999.  
14  
15 D. Transcript of the 1996 Democratic National Convention Committee, Inc. Oral Hearing before  
16 the Federal Election Commission on January 13, 1999.  
17  
18 E. Supplemental Submission of the 1996 Democratic National Convention Committee, Inc.,  
19 dated January 21, 1999.