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2004 JUN 10 A 8:57

**AGENDA ITEM**  
For Meeting of: 6-10-04

June 10, 2004

**SUBMITTED LATE**

MEMORANDUM

TO: The Commission  
FROM: Scott E. Thomas   
SUBJECT: Draft Advisory Opinion 2004-12 (Ag. Doc. No. 04-53)

I will offer an amendment along the lines suggested in my recent e-mail (attached).



Scott Thomas/FEC/US  
06/08/2004 05:43 PM

To Commissioners Office, James Pehrkon/FEC/US@FEC,  
Lawrence Norton/FEC/US@FEC, James  
Kahl/FEC/US@FEC, Rosie Smith/FEC/US@FEC, Brad  
cc Marilyn Jones/FEC/US@FEC, Dora Walls/FEC/US@FEC

bcc

Subject Amendment to draft AO 2004-12

I think we should add a footnote suggesting the possibility that DFW and the participating state parties could work with the joint fundraising rules if someone's contribution would cause an excessive contribution to one or more of the state parties. If a donor has maxed out to only one of the state parties, e.g., but the contribution would be OK if split among the other state parties, DFW should be able to refund it and get it resubmitted as a joint fundraising contribution that will be split among the other eight state parties. This would require that the participating state parties enter a joint fundraising agreement, that the contribution then be split and sent to the eight state parties, that DFW and the state parties report their joint fundraising activity pursuant to 102.17, and that all other requirements of 102.17 be followed. If the state parties later wanted to transfer their share of the joint fundraising proceeds back to DFW, that would be permissible. This might be a cumbersome option, but it allows some relief from a flat 1/9 contribution split.

Indeed, it might be possible for DFW and the state parties in advance to build into all DFW solicitations a joint fundraising alternative for contributions that would cause an excessive under the 1/9 rule. This would remove the need to return the contribution to the donor, though it would not remove the need to distribute the proceeds to the state parties. The solicitation would have to say something like: "Your contribution will be treated as if split evenly among the nine listed state party federal accounts and each 1/9 share will count against your \$10,000 per year contribution limit for each of those state party federal accounts. If your contribution would cause an excessive contribution as to any of those state party federal accounts, it will be treated as a joint fundraising contribution and distributed evenly among the other state party federal accounts and count against your \$10,000 per year contribution limit for each of them."

There are other options the requestor might explore as well, but I think a general reference to joint fundraising allowances would be appropriate, without suggesting specific plans. I'd add the following footnote on p. 7, line 7:

DFW may be able set up procedures following the joint fundraising rules at 11 CFR 102.17 to handle contributions that cause an excessive contribution regarding one or more of the Participating State Committees. This would require advance approval of a written joint fundraising agreement, an appropriate fundraising notice, distribution of the joint fundraising proceeds, and proper reporting by all committees involved. The Commission expresses no opinion on this option because you have not submitted a specific proposal to utilize this approach.