

0-UNION-UNITED-VEHICLE-999

REPORT OF THE AUDIT DIVISION
ON
SAN DIEGO HOST COMMITTEE/SAIL
TO VICTORY '96

Approved April 23, 1998



FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

11/11/98 11:15:15 AM

REPORT OF THE AUDIT DIVISION
ON
SAN DIEGO HOST COMMITTEE/SAIL
TO VICTORY '96

Approved April 23, 1998



FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.

TABLE OF CONTENTS

SAN DIEGO HOST COMMITTEE/ SAIL TO VICTORY '96

	Page
Executive Summary	1
Audit Report	
Background	3
Findings	6
Attachment 1	55
Attachment 2	63
Legal Analysis	65
Transmittal to Committee	71
Chronology	73

001211210 11/15/96 11:51:38 AM



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
SAN DIEGO HOST COMMITTEE/SAIL TO VICTORY '96**

EXECUTIVE SUMMARY

The San Diego Host Committee/Sail to Victory '96 (the Host Committee) registered with the Federal Election Commission on September 8, 1995, as a host committee in connection with the City of San Diego's responsibilities as host city for the 1996 Republican National Convention.

The audit was conducted pursuant to 11 CFR §9008.54 which states that the Commission will conduct an examination and audit of each host committee registered under 11 CFR §9008.51. The Host Committee received and disbursed approximately \$23 million.

The findings of the audit were presented to the Host Committee at an exit conference held on May 20, 1997 and in the Exit Conference Memorandum. The Host Committee's responses to those findings, as well as those of the 1996 Committee On Arrangements for the Republican National Committee (Committee On Arrangements), are contained in the audit report.

The following is an overview of the findings.

CONVENTION RELATED EXPENDITURES — 11 CFR §9008.52(c)(1) The Staff concluded the Host Committee made in-kind contributions to the Committee On Arrangements in the amount of \$2,128,122. The transactions involved three vendors: Weldon Williams and Lick for convention badges and tickets; AT & T for an electronic voting system; and, David Nash, Inc. for the production of the live event and the related television coverage. The Commission determined that amounts paid to Weldon, Williams and Lick, and AT&T were permissible Host Committee expenditures. In addition, amounts totaling \$1,096,979 paid to David Nash, Inc. were determined to be permissible Host Committee expenditures, while amounts totaling \$892,489 were impermissible. These amounts are in-kind contributions to the Committee On Arrangements.

CITY OF SAN DIEGO EVENTS FUND 11 CFR §9008.53(b). The Staff concluded that the City of San Diego Events Fund (Events Fund) failed to comply with the restrictions placed on municipal funds. Specifically the Events Fund accepted donations from persons outside the San Diego Metropolitan Area, during the period through the

1996 REPUBLICAN NATIONAL CONVENTION

convention its activities were restricted to the Republican National Convention, and it both solicited and accepted donations designated for use in connection with the Republican National Convention. The Events Fund received donations totaling \$6.7 million all of which was transferred to the Host Committee. At least \$3.5 million of that amount was initially received by the Host Committee, forwarded to the Events Fund for deposit, and subsequently transferred back to the Host Committee.

01-01-1980



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON THE
SAN DIEGO HOST COMMITTEE/SAIL TO VICTORY SAN DIEGO '96**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the San Diego Host Committee/Sail to Victory San Diego '96 (the Host 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 July 1, 1994 through October 10, 1996. During this period, the Host Committee's reports reflect an opening cash balance of \$-0-, total receipts of \$23,080,276, total disbursements of \$22,923,061, and a closing cash balance of \$157,215. In addition, a limited review of the Host Committee's activity through December 31, 1996 was also conducted.

C. COMMITTEE ORGANIZATION

The Host Committee registered with the Federal Election Commission on September 8, 1995. The Treasurer of the Host Committee is Patrick Shea. The Host Committee established and maintains its headquarters in San Diego.

The Host Committee used three bank accounts to handle its financial activity. From these accounts, it made approximately 1,570 disbursements. The Host Committee received approximately 204 contributions from individuals and local businesses, totaling about \$13,244,000, including the transfers from the City of San Diego Events Fund discussed at Section III below. In addition, the it reported receiving 111 in-kind contributions totaling \$4,404,916. The Host Committee also received 14 payments from the City of San Diego totaling \$2,539,636, 6 payments from the San Diego Convention and Visitor's Bureau totaling \$750,000, and a payment from the San Diego Convention Center Corporation, Inc. of \$585,000. The remainder of the receipts

were offsets to expenditures and items such as the proceeds from the sale of merchandise and transportation passes.

D. AUDIT SCOPE AND PROCEDURES

The audit of the San Diego Host Committee/Sail to Victory San Diego '96 included testing of the following general categories:

1. The receipt of contributions from prohibited sources, those from outside of the San Diego Metropolitan Area (see Section III.B.);
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;
4. review of the disbursements to determine compliance with the requirements of 11 CFR §9008.52(c) (see Sections II.A., B., & C.);
5. proper disclosure of Host Committee debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to Host Committee bank records;
7. adequate recordkeeping for Host Committee transactions; and,
8. other audit procedures that were deemed necessary in the situation.

As part of the Commission's standard audit process, a records inventory is 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. In addition to the above procedures, the Audit staff also reviewed the records for receipts deposited in the City of San Diego's City Civic Events Fund - Account No. 90501 (Events Fund). The Commission determined that if a host committee receives money from a Fund of a government agency or municipality as described at 11 CFR §9008.53, the committee receiving the money or the entity transferring the funds is required to provide records which demonstrate the original source of such funds. The Audit staff contacted the responsible City of San Diego officials and were provided with the records of the Events Fund. The results of our review of those records is discussed at Section III.

WFOVINS VIS 03

The Host Committee received payments totaling \$850,000 from the San Diego Convention & Visitors Bureau (Convis).¹ Convis is a nonprofit corporation and not a fund of the City of San Diego. Convis apparently receives its funding, in part, from entities such as the City of San Diego, the local hotel and motel association, the Port Authority, and local businesses. The Audit staff does not know if Convis receives any of its funding from outside the Metropolitan Area of San Diego. Therefore, we were unable to verify that the all of funds received by the Host Committee from Convis originated from local sources. The Audit staff further notes that Convis received a \$1.3 million contribution from Amway Corporation which originally was to be used to defray the costs of GOP-TV's² broadcast of the Republican National Convention. However, Convis apparently determined that this transaction would not be appropriate and the money was returned to Amway. Amway later made a \$1.3 million dollar contribution to the Host Committee although the Host Committee did not use those funds for the costs of airing GOP-TV. Those costs were paid by the 1996 Committee On Arrangements for the Republican National Convention (Committee On Arrangements). Convis also sent a letter to the Commission on September 4, 1996 stating that it was registering as a host committee. Convis filed a disclosure report on January 14, 1997 which disclosed \$500,000 in payments to the Host Committee for specific purposes. This activity was all that was included on the disclosure report although the cover letter to the report noted an additional \$350,000 in hotel commissions which were forwarded to the Host Committee.³ The Audit staff has verified that these are the amounts received by the Host Committee from Convis. However, no audit of Convis was conducted.

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

¹ According to a report from Dun & Bradstreet Inc., the San Diego Convention & Tourists Bureau is a non-profit enterprise whose objective is to promote the San Diego County area as a convention and visitor destination. The bureau has 1,500 members whose dues are based on size and involvement of the business. The bureau started in 1954, has its headquarters in San Diego, and currently has branch offices in Washington, DC and Chicago, IL.

² According to *GOP-TV* (visited April 17, 1997) <http://www.rnc.org/movie/what.html>, GOP-TV is a news and entertainment television network established by the Republican Party to provide the latest news-breaking information on the Republican Party's leaders, ideas, issues and concerns. Its programming is available direct via satellite, cable systems and television stations nationwide.

³ The cover letter also noted that Convis administered a "Youth Fund Account" on behalf of the Committee on Arrangements which received \$368,000 from approximately 1,500 students and sponsors. These funds were distributed to vendors as part of the "Young Voter Program," which provided youths with an opportunity to participate in convention activities while serving as convention pages and delegation aides.

II. AUDIT FINDINGS AND RECOMMENDATIONS — CONVENTION-RELATED EXPENDITURES

Section 9008.52(c) of Title 11 of the Code of Federal Regulations states, in part, that contributions received by host committees may be used for the following: to defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site; to defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours; to defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR §9008.9(c); to defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance; and to provide the national committee use of an auditorium or convention center and to provide construction and convention related services for that location such as: construction of podiums; press tables, false floors, camera platforms; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations.

Further, contributions may be used to defray the cost of various local transportation services, including the provision of buses and automobiles; to defray the cost of law enforcement services necessary to assure orderly conventions; to defray the cost of using convention bureau personnel to provide central housing and reservation services; to provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention; to provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and to provide other similar convention-related facilities and services.

During a review of the Host Committee's disbursement records, the Audit staff identified payments to three vendors, totaling \$2,439,913, which appeared to be for convention-related expenditures and not for items noted at 11 CFR §9008.52(c). The issue of the permissibility of these payments was addressed in the Exit Conference Memoranda resulting from the audits of both the Host Committee and the Committee On Arrangements. Information provided by both committees is incorporated in the discussions below:

In their responses to the respective Exit Conference Memoranda, both the Host Committee and the Committee On Arrangements argue that most or all of the expenses discussed below are covered by one of the categories of permissible host committee expenses at 11 CFR §9008.52(c)(1) or, referring to 11 CFR §9008.52(c)(1)(xi), are "similar" to expenses covered by one of the permissible expense categories. To read 11 CFR §9008.52(c)(1) as broadly as both committees propose, would effectively negate the limitation on convention expenses at 26 U.S.C. §9008(d); the prohibition on contributions to a convention committee that has received the full federal payment (11 CFR §9008.6(a)); the prohibition on the use of corporate contributions in connection with federal elections at 2 U.S.C. §441b; and the Commission's clear statement in the

Explanation and Justification supporting the provisions contained in 11 CFR §9008.52(c)(1) that allowing the host committee to pay selected convention expenses is "intended to be a very narrow exception to the statutory limitation on convention expenses".

Each of the three vendors are discussed below.

A. WELDON, WILLIAMS & LICK, INC.

Section 9008.7(a)(4)(ix) of Title 11 of the Code of Federal Regulations states that "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications.

The Audit staff identified one payment to Weldon, Williams & Lick, Inc. for the production of credentials and badges related to the convention. The agreement between the Host Committee and Weldon, Williams, & Lick established that the Host Committee would purchase up to 325,000 "...tickets for admission to the 1996 Republican National Convention." These credentials contained the Convention session number and were of different colors that were used for access to the convention hall. According to the Host Committee, any of these credentials would gain a person entry into the convention hall and the different colors were used to limit the areas of the convention hall to which a person would have access. For example, one color would only grant access to the hospitality suite area, one color would be used by delegates for floor access, one color would be for the alternate delegates, and one color would be for the individuals who had access to the entire convention hall. The Host Committee paid a total of \$106,645 for production of these items. It further appeared that the City of San Diego paid an additional \$38,638.⁴ In the Exit Conference Memoranda, the audit staff concluded that, given these credentials were distributed for access within the convention hall and were considered a ticket or pass as envisioned at 11 CFR §9008.7(a)(4)(ix), this disbursement was a convention-related expense and was not a permissible host committee expenditure as defined at 11 CFR §9008.52(c). It was concluded that the Host Committee had made an apparent in-kind contribution of \$106,645 to the Committee On Arrangements.

In the Exit Conference Memoranda, the Audit staff recommended that both committees provide documentation and information which demonstrated that this disbursement was allowed by 11 CFR §9008.52(c) and should not be considered a contribution to the Committee On Arrangements.

⁴ This disbursement is outside of the scope of this audit report; however, we do note that expenditures made by a municipality or government agency should also meet the requirement of 11 CFR §9008.52(c).

In response to its Exit Conference Memorandum, the Host Committee stated that:

While it is true that the regulations specifically authorize committees such as the Committee on Arrangements (the "COA")⁵ to make expenditures for "tickets, badges, passes ..." (11 C.F.R. §9008.7(a)(4)(ix)), this is irrelevant. Nowhere do the regulations make a distinction between permissible host committee expenses and permissible COA expenditures. In fact, the list of permissible COA and host committee expenditures overlap. For example, either committee may pay for: convention hall rental (11 C.F.R. §§9008.7(a)(4)(i); 9008.52(c)(1)(v)); platforms, seating, decorations and utilities (Id.); transportation system (11 C.F.R. §§9008.7(a)(4)(vii); 9008.52(c)(1)(vi)); and security or law enforcement (11 C.F.R. §§ 9008.7(a)(4)(i); 9008.52(c)(1)(vii)). Had the Commission intended to restrict host committees to making only those expenditures which the COA could not make, it could have, and presumably would have, done so.

The Host Committee further states that "...since the regulations governing permissible expenditures by the COA and the Host Committee are not mutually exclusive, the only germane question is whether or not the cost of the credentials are permissible host committee expenditures." The Host Committee believes that 11 CFR §9008.52(c)(1)(vii) which covers law enforcement expressly permits a host committee to make these types of expenditures. In support of this position, the Host Committee provided a declaration from the Assistant Chief of Police for the City of San Diego to confirm "the importance of the convention credentials and badges to convention security." The Host Committee also stated that "[t]he concerns for security were especially high, not only because of the number of federal, state and local officials attending the convention, but also because of the bombing at the Olympic Games in Atlanta which occurred only a short time before."

The declaration provided by the Host Committee states that:

The City of San Diego Police Department worked very closely with the San Diego Host Committee's security consultants to develop and authorize the use of security access badges for the 1996 Republican National Convention. During the convention last August, all San Diego law enforcement officers assigned to the Convention Center and the auxiliary Republican National Committee sites recognized and permitted access to the bearers of these badges. These badges served as viable law enforcement and security devices because they had a special design that made unauthorized duplication virtually impossible

As a result of the above, "...it is the Committee's position that payments made for convention credentials and badges by both the Committee and the City are permissible payments expressly permitted by 11 C.F.R. §9008.52(c)(1)(vii) and generally permitted by 11 C.F.R. §9008.52(c)(1)(xi)." In response to its Exit Conference

⁵ COA refers to the 1996 Committee on Arrangements for the Republican National Convention. The Host Committee, the Committee on Arrangements, and the City of San Diego use this abbreviation several times in their respective responses to the Exit Conference Memorandum.

Memorandum, the Committee On Arrangements also argues that these badges were critical for law enforcement and security and explains that the badges were designed so they could not be reproduced.

The Audit staff does not dispute that the credentials might have a security component or that there are many expenses that are permissibly paid by either a host committee or a convention committee. However, in our opinion, the security aspect was not the primary reason for the issuance of credentials. Credentials were the means by which the Party hosting the convention not only decided who could attend its convention, but also managed those authorized attendees once inside the building so that it could conduct the proceedings as it desired. If security was the only purpose of these credentials, then once a person was within the convention hall, there would be no need for the different colors to restrict where the person might go. All that would be needed would be an initial security checkpoint.

Further, the Host Committee argues that since credentials have a security aspect, they fall under the host committee regulations at 11 CFR §9008.52(c)(1)(vii). This regulation allows a host committee to pay for law enforcement services necessary to insure orderly conventions; therefore, services provided by either the City of San Diego Police or private security firms could be paid for by the City of San Diego or the Host Committee. However, the staff concluded that there is a distinct difference between law enforcement services and the production of credentials for limiting access to the Party's Convention and managing those authorized attendees once inside the convention hall.

The Host Committee also makes the point that the need for security was magnified as a result of the Atlanta Olympic Games bombing. It is noted that the Host Committee entered into its agreement with Weldon, Williams, and Lick on July 17, 1996, and the Atlanta bombing did not occur until July 27, 1996.

While it is agreed that the regulations regarding host committees and convention committees are not mutually exclusive, the staff concluded that allowing a host committee to pay for the production of items that control the persons who may attend the convention, and where those persons might go, was not the type of disbursement envisioned for a host committee. The Host Committee believes that if the Commission had intended to place any restrictions on a host committee, then it would have done so. In the opinion of the staff the Commission clearly did. As noted above, the Explanation & Justification for the original host committee regulations (Federal Register , Vol. 44 No. 213; November 1, 1979) states that "[d]efrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses."

The Committee on Arrangements' response does establish that portions of the badges were used outside the convention facility and after the Convention was over. The related costs, totaling \$12,058, are expenditures permissibly paid by the Host

Committee. The staff concluded that the Host Committee made an in-kind contribution to the Committee On Arrangements in the amount of \$94,587 [\$106,645 — \$12,058].

The Commission discussed this matter at its meeting of April 16, 1998, in the context of the audit report on the Committee On Arrangements. It decided that the \$94,587 was a permissible Host Committee expense. (See Attachment 1, page 2, item 1^o for a copy of the vote certification.)

B. AT & T

In addition, the Audit staff identified two payments to AT & T for invoices totaling \$251,982 which appeared to be for convention-related expenses. These payments were for delegate multi-media stations which were described as a voter tabulation system. According to Host Committee officials, the computer system was designed so that each state delegation had a computer terminal in its section of the convention hall. These terminals would allow each delegation to record its votes on different issues in the event that results needed to be tabulated quickly. In addition to the actual cost of the system, the payments were for setup, operation, and tear down of the system. Thus, this system was not installed in the convention hall to be used permanently for any convention held in San Diego, but rather was installed specifically for the Republican National Convention. The Host Committee believed that this system was never actually used during the Convention. Also, when the Exit Conference Memoranda were prepared, it was not known whether any other information was included or accessible from this system or if it was strictly to be used to tabulate votes of the delegates.

Although 11 CFR §9008.52(c)(1)(v) allows a host committee to pay for office equipment, a computer system which allows votes by delegates to a national convention to be tabulated is not office equipment and instead is an expense related to conducting the Convention. It is irrelevant that the system may never have been used; rather the purpose of the system governs whether it is a convention-related expense. Therefore, in the Exit Conference Memoranda it was concluded that these payments represented an in-kind contribution of \$251,982 by the Host Committee to the Committee On Arrangements.

In the Exit Conference Memoranda, the Audit staff recommended that the Host Committee provide documentation and information which demonstrated that the above payments represented allowable Host Committee expenses pursuant to 11 CFR §9008.52(c) and were not contributions to the Committee On Arrangements.

^o Attachment 1 references \$133,225. The Commission vote on this matter occurred in connection with the audit report on the Committee On Arrangements that addressed an additional amount paid by the City of San Diego. That payment is not addressed herein.

Documentation was to include a description of the specific information contained on the computer system and precisely how it was designed to be used.

In response its Exit Conference Memorandum, the Host Committee makes numerous arguments as to why this computer system should be an allowable Host Committee expense. It argues that the installation is part of the construction necessary for preparing the convention site; that the computer system falls under the category of "office equipment"; that the Host Committee was assured that it was a permissible expense by the Committee On Arrangements; that its functions other than voter tabulation qualify the system for treatment as an "information booth" that is specifically allowed under Commission regulations; and, that it is simply a modern version of past voter tabulation systems that utilized a microphone and loudspeakers and were an allowable expenditure under 11 CFR §9008.52(c)(1)(v).

In addition, the Host Committee noted that more detail on the functions and capabilities of this computer system would be supplied by the Committee On Arrangements in its response to the Exit Conference Memorandum issued as a result of our audit of that committee. The Host Committee states that it "...incorporates those factual materials by reference." In the Committee On Arrangements' document, many of the same arguments are put forward, more detailed information about the computer system's capabilities is provided, and the fact that the voting system was not used is confirmed. Material was provided from AT & T and a subcontractor that allocated the cost of the system between the vote tabulation function and the system's other capabilities. The vote tabulation function is covered by a single invoice in the amount of \$44,067⁷.

The computer system's non-vote tabulation capabilities are described in a affidavit from an AT & T representative. They include an electronic bulletin board that could be used to leave messages for other delegates as well as receive information about convention scheduling, limited internet service that allowed delegates access to maps of the convention center and the city, information on local points of interest, and information on local restaurants.

Given the computer system's multiple purposes and the cost allocation provided, the Audit staff concluded that the costs associated with the non-vote tabulation functions were permissibly paid by the Host Committee as an "information booth" or a "shopping and entertainment guide". The amount attributable to these functions in the response is \$207,916.

However, the staff concluded that the balance, \$44,067, was not a permissible Host Committee expense. This system is not "office equipment". No evidence is provided that this amount related in any way to any office provided by the

⁷ It appears that the allocation of cost is an incremental analysis. The invoice that references the vote tabulation system covers only labor. There is no apparent charge for software or hardware

Host Committee. Though it is true that office equipment often includes computer equipment, it does not follow that all computer services and equipment are office equipment. Also, the provision of the voting software is not construction of the site. Rather, it is an expense incurred by the Committee On Arrangements for the conduct of a critical part of the Convention. The fact that the Committee On Arrangements assured the Host Committee that the expense was permissible is of no significance. Finally, it can not be likened to the registering of votes by voice via a host committee provided sound system. The sound system in a convention hall serves many functions, both in past and in present day facilities, with announcing votes being only one.⁸ Finally, the vote tabulation system clearly is not any sort of shopping or entertainment guide.

Therefore, the staff concluded that the Host Committee made a contribution to the Committee On Arrangements of at least \$44,067.

During its meeting of January 22, 1998, the Commission decided that this expense was properly paid by the Host Committee. (See Attachment 1, page 1 for a copy of the vote certification.)

C. DAVID J. NASH ASSOCIATES, INC.

Between July 1, 1996, and August 9, 1996, the Host Committee made four payments to David J. Nash Associates, Inc. (Nash) totaling \$2,645,520. Each of these payments was supported by invoices indicating that they were for television production. Invoices related to three of the four payments stated that they were from David J. Nash, "Executive Producer COA-TV."

On July 25, 1996, the Host Committee entered into a contract with Nash which stated that Nash was to "render such television production and related services consistent with the specifications and requirements for the Convention established by the COA." The payments due under this contract were based on a production budget which totaled \$2,421,714. Line items in the budget included producers, directors, production staff, music/orchestra, rigging staging labor, special effects, makeup & hairdressing, video operations, sound operations, video segments, editing, and graphics. The contract further stated that "[t]he Consultant shall arrange to timely obtain the services and equipment specified in the Production Budget, provided, however, that the Consultant shall be required to obtain the approval of the Convention Manager or the Chief Financial Officer of the COA, prior to incurring, or committing to incur, any amount stated in

⁸ No information is provided in either response on how voting records were kept or documented in the past. For example it seems likely that some record of the votes cast by members of delegations would be kept and collected centrally to avoid any later disputes. Such records would not be collected via the host committee provided sound system in the convention hall. In contrast, had the electronic voting system been used, a computer record would be generated for Committee On Arrangements records.

Production Budget line items greater than \$5,000." In addition to these items, Michael E. Simon, Chief Financial Officer for the Committee On Arrangements, submitted to the Host Committee for approval on August 2, 1996, a change order to add \$223,806 to the original budgeted amount. This addendum included items such as "Film Shoot - Russell" for \$75,000, "Sail Area" for \$127,500, and "Sail Area Entertainment" for \$12,000.

The Host Committee paid for all of these budgeted amounts. After all services were provided, Nash was to provide a final accounting of his services and refund any unused moneys. The contract between Nash and the Host Committee specified that "[t]he Consultant shall maintain separate bank accounts for all monies relating to the television production of the Republican National Convention. Said funds shall be subject to audit and shall not be commingled with funds from other productions or projects. The Consultant shall provide the COA with a full and complete accounting of the Consultant's services including such copies of all checks, receipts, disbursements and other such documentation as may relate to such services."

Prior to entering into the contract with Nash, the Host Committee received a memorandum from the Committee On Arrangements which stated, in part, that "David Nash Associates has been engaged by the COA to produce the television event and staging of the Convention proceedings. David Nash and a staff of professional television production and technical associates will present and enhance the Republican message for presentation to the television networks and the media in general." In addition, the Host Committee created a line item in its budget called "RNC Television Production Services" to which it charged the payments to Nash.

As of February 22, 1997, Nash had refunded to the Host Committee a total of \$400,000, which left a total net payment of \$2,245,520. After conclusion of audit fieldwork, the Host Committee provided a summary from Nash which stated how much had been spent as of February 22, 1997 for the general ledger codes which correspond to the line items in the original budget. This summary showed that \$110,214 remained to be spent. The Host Committee also provided a detailed description of each major general ledger category indicating the types of expenses included under that category. This document stated that of the \$110,214 remaining, an additional \$88,456 was to be paid for the Nash share of the camera package, including labor, used to film the Convention, and \$13,332 to be paid for wind down and audit. In addition, the Host Committee provided bank statements from Nash and representative copies of invoices from vendors that provided services to Nash. These invoices documented a total of \$933,241 of the amount shown by Nash as having been spent to date.

* The memorandum also states that one of the reasons Nash was selected was based on his performance of similar services for the 1992 convention. It appeared that the television production services for that convention were paid by the Committee on Arrangements rather than by the Houston Host Committee. The Houston Host Committee reported paying Nash only \$46,000 for consulting and insurance. The 1992 Committee On Arrangements paid Nash \$1,125,000.

According to the Host Committee, the payments to Nash covered two specific areas: (1) infrastructure, facilities, and other services for television production; and (2) improvements to and entertainment at the Sail Area of the San Diego Convention Center. With respect to the television production, the Host Committee stated:

the audience for modern presidential nominating conventions includes delegates, other convention attendees and television viewers. Therefore, the San Diego Convention Center had to be prepared for television cameras, crews and facilities. Nash hired the professionals who coordinated the installation of the television facilities as well as the laborers who did the actual installations. In addition, Nash hired the professionals who implemented the production of the convention show from the perspective of the television audience. This included producers, directors and technicians. These individuals were responsible for implementing the 'picture' or 'show' that was seen by convention attendees (on screens throughout the Convention Center, including the Sail Area), as well as television viewers. However, Nash services to the SDHC had nothing to do with convention content; the speakers, the message and the sequencing of the convention were all determined by officials of the Committee on Arrangements. Nor did Nash provide any commentary or explanation of convention proceedings for convention attendees or television viewers.

Of the total spent by Nash for production, \$264,022¹⁰ represented payments to producers, directors, and production staff. These individuals included the television producer who was "[r]esponsible for television coverage, including live remotes and creation of video segments for big screens" and directors who "directed television coverage of the convention that was distributed as a basic feed via satellite throughout the United States, as well as to monitors throughout the convention center" and "[a]lso directed the video mix of material that was displayed on the giant projection screens." Production staff included the stage manager, who was "[r]esponsible for running the operation of the podium during the convention, including cueing the talent (speakers) and stage effects. Coordinates podium activities with the executive producer (in the Convention Control Room), and the television director (in the television facilities truck)" and the script supervisor who "[f]ormats the television script after assembling all the written materials and technical information" and "[g]enerates a daily work schedule to the television and production staffs, the talent, and all convention program personnel."

Other categories of expenditures included music and orchestra; special effects such as confetti, balloons and fireworks; makeup and hairdressing; closed captioning; stand-ins for convention participants during television technical rehearsals; various categories of travel; and other expenses for personnel or minor expenses which were incurred. Major categories of expenditures included \$540,345 for rigging and staging labor which included "[l]abor costs for stage hands, electricians, riggers for installation and operation during the convention sessions." It appeared this category covered electricians who rigged lighting and cameras and that some of the expenses for camera rigging were reimbursed by ABC, NBC, CBS, and CNN.

¹⁰ Nash actually was paid an additional \$100,000 as Executive Producer. The funds for these payments were provided by the Committee on Arrangements.

Another major category of expenditure was \$421,652 spent for video operations. This includes payments for "television crew labor, television mobile unit for screen control, satellite time, TelePrompTer, other television equipment, and the remote productions." Expenses related to the technical director were included under this category. The technical director had the overall responsibility for "the coordination of all aspects of the video engineering, including the timing and gen-lock synchronization of cameras, the design and routing of the intercom systems, and signal path and test designs for both incoming and outgoing satellite signals." The remote production costs represented \$138,442 of the above amount and was originally to be for live television transmissions during the convention from six different locations. Two of the locations were later canceled and live transmissions occurred from Miami, FL; Russell, KS; Sacramento, CA; and San Diego, CA. According to the description provided by Nash, the:

Russell remote was a gathering of several thousand citizens of Russell, Kansas who witnessed and participated in the nomination of Dole on the second to last night of the convention (included fireworks). Two high school students spoke on behalf of Russell. The Miami shoot highlighted a woman's work in health care. The San Diego shoot was of Bob Dole watching Liddy Dole give her speech. The Sacramento shoot was with Steve Young and high school students concerning the students' dreams for the future.

Other categories of interest included \$263,205 classified as for video segments which were "[e]xpenses associated with producing video clips highlighting profiles of delegates participating in the process" and \$10,000 for a continuity writer who was a "[s]peech coach and transition writer [who] helped to reword speeches to help them flow better, added jokes, and in general punched up the speeches. He was not involved in any content decisions or writing of speeches." Also, \$70,000 was spent for a Russell, KS shoot which contained "footage on the history of Russell, KS and the current Russell, KS (small town America)." According to the Host Committee, this footage was not used in the convention and was not the same as the "Dole film."¹¹

A final item of note with respect to the production was contained on a vendor invoice related to makeup. An item on the invoice stated that "[a]ir travel, [h]otel, and ground transportation to be covered by RNC." The Audit staff had been told that these items were not paid by the Committee On Arrangements; thus, it was assumed that the invoice meant the Republican National Committee.

In the Exit Conference Memoranda, the Audit staff concluded that the disbursements related to television production were not expenses properly paid by a host

¹¹ Although this footage was apparently not used during the convention, the Audit staff had no record of the disposition of the footage. For example, we did not know if the footage may have been transferred to either the Republican National Committee or the Dole for President Committee.

committee pursuant to 11 CFR §9008.52(c). Rather, they were convention expenses that should have been paid by the Committee On Arrangements pursuant to 11 CFR §9008.7(a). The Host Committee argued that at least some of the payments should be considered permissible host committee expenses. As noted previously, some of these disbursements appeared to relate to salaries for electricians and other individuals for labor such as rigging cameras and lighting. Although 11 CFR §9008.52(c) allows a host committee to defray salaries and convention-related expenses such as construction of camera platforms and lighting, the Audit staff believed that the expenses paid by Nash related to rigging cameras and lighting were not host committee expenses. Rigging cameras and lighting for the purpose of providing a television picture that meets the television producer's requirements is not the same as building a platform from which cameras can be used for the television production. The Host Committee made numerous other disbursements, separate from the Nash expenditures, which related to construction at the convention center, lighting, sound systems, podiums, and platforms. The disbursements in this case appear to be related to the overall process of television production which should have been paid by the Committee On Arrangements.

The categories of disbursements at 11 CFR §9008.52(c) deal with disbursements for preparing the convention site to host the convention and to promote the convention city. The Host Committee noted that the Nash disbursements related to implementing the "picture" or "show" that was seen by Convention attendees as well as the television viewers but provided no commentary to the proceedings and was not involved with convention content, thus implying that they should be legitimate Host Committee disbursements. However, as noted previously, the Committee On Arrangements wrote that Nash "...will present and enhance the Republican message for presentation to the television networks and media in general." Presenting the Republican message is clearly convention-related and not the type of disbursement envisioned under the host committee regulations. Further, preparing the convention site for television broadcast across the country and providing satellite uplinks and producing the "picture" and "show" of the Convention as seen on television is for the purpose of conducting the Presidential Nominating Convention and should have been paid by the Committee On Arrangements. This is not preparing the convention center or site for the convention or promoting the City of San Diego. Instead, these disbursements are related to putting on a "show" to be seen by the country in hope of influencing the public to support the political party hosting the convention and its Candidate for President, in this case, the Republican Party and Senator Robert Dole.

Aside from overseeing television production, Nash was also responsible for the improvements to and entertainment at the Sail Area. The Sail Area was an area outside of the main convention hall but within the San Diego Convention Center. According to a Host Committee official, "[b]ecause the main hall was too small to accommodate all guests and attendees, SDHC provided additional space in the Sail Area. Nash was hired by SDHC to improve the Sail Area so that convention attendees could watch convention proceedings on large television screens. In addition, Nash arranged for the entertainment which was provided in the Sail Area." According to Nash, "[t]he Sail

Area is an outside open air patio on top of the convention center. Food and drink was also available in the sail area. The cost of the stage, sound, lights and labor associated with the equipment installation made up these expenditures." Nash also stated that the entertainment used in the Sail Area were local San Diego groups and that some of these groups were also used before the Convention in the convention hall.

The amount spent by Nash for improving the Sail Area was \$145,299 and the amount spent for entertainment was \$18,935 for a total of \$164,234. The expenditures for setting up the stage, sound, and lighting equipment related to the Sail Area were not related to the television production and are an allowable expenditure under 11 CFR §9008.52(c). The Exit Conference Memorandum also concluded that the entertainment featuring San Diego groups could be considered promoting the City of San Diego. Thus, of the \$2,245,520 net paid to Nash, the Exit Conference Memorandum concluded that \$164,234 represented allowable Host Committee disbursements and the remaining \$2,081,286 should have been paid by the Committee On Arrangements and resulted in an in-kind contribution by the Host Committee.

Given the information available at the time, in the Exit Conference Memoranda the Audit staff recommended the committees provide documentation to demonstrate that the payments to Nash were allowable Host Committee expenses pursuant to 11 CFR §9008.52(c) and did not result in prohibited in-kind contributions to the Committee On Arrangements for the 1996 Republican National Convention. This documentation was to include copies of any checks issued by Nash related to the Republican Convention, along with copies of the invoices from the vendors which the Host Committee believed were specifically covered by 11 CFR §9008.52(c). Also, for these specific items, the committees were to address whether these disbursements would have been necessary for the convention hall if not for the television production requirements. Finally, the committees were to provide information and documentation which showed the disposition of the footage for the film shoot which occurred in Russell, KS.

As noted above, the permissibility of the Host Committee's payments to Nash were addressed in the Exit Conference Memoranda resulting from the audits of both the Host Committee and the Committee On Arrangements. Although both responses reach the same conclusion, they are different in approach. In the interest of a full discussion of the issue, the responses are addressed individually.

1. The San Diego Host Committee Response

In response to its Exit Conference Memorandum, the Host Committee noted that approximately 30,000 people came to San Diego during the Republican National Convention and that inside the convention hall there were approximately 15,000 members of the news media compared to only 3,980 delegates and alternates. The Host Committee further noted that this is not surprising since modern conventions are media-intensive presentations. The Host Committee then explained that

a facility's level of broadcast readiness or the willingness of the city or host committee to make it broadcast ready are important factors in the site selection process. It was also stated that because of the shape and small size of the San Diego facility it was necessary to provide closed circuit television inside the facility even if no external broadcast had been contemplated and that the Audit staff made no distinction between the two.

In its response the Host Committee goes on to say:

The regulations specifically provide that host committees may expend monies for preparation of the auditorium or convention center in a wide variety of ways, including, but not limited to, construction of camera platforms and the provision of lighting, electrical and loudspeaker systems (11 C.F.R. § 9008.52(c)(1)(v)). As previously stated, the regulations also provide that "other similar convention-related facilities and services" are permissible host committee expenditures (11 C.F.R. § 9008.52(c)(1)(xi)). In light of the fact that the host committee regulations were rewritten, effective in 1994, and that the National Nominating Conventions have become increasingly media intensive, it is difficult to conclude that the host committee regulations, absent language to the contrary, prohibit all expenses directly or indirectly connected with television infrastructure, closed circuit or otherwise.

It seems clear that the regulations specifically contemplate such expenditures. Had the Commission wished to prohibit host committees from paying for television infrastructure, it could have, and presumably would have, so provided. Had the Commission intended to specifically prohibit entire classes of expenditures by host committees, it might have included a provision similar to that found in the Convention Committee regulations listing specific prohibitions (11 C.F.R. § 9008.7(b) "Prohibited Uses"). Such a provision does not exist, presumably, because no federal money is spent by host committees and host committees are to be afforded a broad spectrum of permissible activities [text of footnote omitted].

The Host Committee then contended that the Nash contract was the result of the Committee On Arrangements requiring a broadcast ready facility and was analogous to a production studio providing a facility and a motion picture company providing the script and actors. The Host Committee argues that if it can pay for the "build out" of the shell that was the convention center, then it can pay for the "...costs associated with the facilitation of broadcasting." The response stated that "[t]o conclude otherwise is to deny the realities of modern conventions."

There can be no dispute that modern Presidential Nominating Conventions have become major media events. In most cases it is a near certainty who the nominee will be before the convention starts. As a result, media coverage is the best way to project a favorable image of the Party and the Candidate. The issue here is whether or not the expenses related to that media coverage should be paid by the host committee or the convention committee. As previously noted, the regulations for host committees were written with the primary purpose of allowing such committees to promote the city's commerce and image, and to pay for certain convention-related expenses, primarily infrastructure related to preparing the convention hall to host the convention. The cost of producing the television broadcast of the convention proceedings.

9
0
5
2
7

including setting up the producer's equipment, is an expense of conducting the convention and should have been paid for by the convention committee. The preparations related to television are not associated with promoting a city's commerce and image, nor are they expenses to prepare the convention hall to host the convention. The staff agrees that media coverage is intensive and that in this case the Republican Party required that the convention hall be made ready for television so that a favorable image of the Party and its nominee could be broadcast around the country. However, the staff does not agree that a host committee should be allowed to make these payments under 11 CFR §9008.52(c). The Host Committee also notes that the political parties will only select a site that can be adequately prepared for television broadcast. Once again the staff does not dispute that this is the case, but we concluded that it is an expense of conducting the Convention and should have been paid for by the Committee On Arrangements. To borrow the Host Committee's analogy, the situation is like a production company preparing a site selected by the movie company for filming and then arguing that the cost is not part of the cost of producing the movie.

The Host Committee once again states that the Commission regulations are permissive and if the Commission had wished to bar host committees from paying for expenses related to the media, then it would have done so. The Audit staff notes that the host committee regulations were created with the intention of providing a "very narrow exception" to the limitation on convention expenses.

The Host Committee also provided a declaration from the production accountant for Nash for the 1996 Republican National Convention which takes exception with a number of statements made in the Exit Conference Memorandum as presented above. They are as follows:

- The Exit Conference Memorandum noted that one category of expense was \$540,345 for rigging and staging labor including labor costs for stage hands electricians, riggers for installation and operation during the Convention. It was noted that the category appears to cover electricians who rigged cameras and lighting and that some of the costs of camera rigging were reimbursed by the television networks. Nash states that all camera labor in this category was for rigging network cameras and it was all reimbursed by the television networks. No documentation was submitted but there is no effect on the conclusions reached by the Audit staff.
- The declaration makes note of the Audit staff's conclusion that the expenses paid by Nash for rigging cameras and lighting were not Host Committee expenses, and the related recommendation in the Exit Conference Memorandum that invites the Host Committee to demonstrate otherwise and requests detailed documentation for specific expenses that the Host Committee believes are allowable under 11 CFR §9008.52(c). As part of that documentation the Host Committee was to demonstrate that the expenses would have been necessary in the absence of television. It is again pointed out

that it was necessary to provide closed circuit television in various parts of the facility because of obstructed views or locations outside the main hall where the proceedings could not otherwise be seen. It is then concluded that all lighting would have been needed even if broadcast of the proceedings had not occurred. The Audit staff does not doubt that closed circuit television was used within the convention hall, as it probably has been in past conventions. However, we do not believe that the use of closed circuit television within the convention hall over shadows the overall purpose of the Nash expenditure. As stated previously, Nash's primary function was to "present and enhance the Republican message for presentation to the television networks and the media in general" and to produce the "picture" or "show" that was seen by the Convention attendees and television viewers. Expenses associated with this function are related to conducting the Convention and not the preparation of the convention hall.

- The declaration makes note of the concern raised by certain invoices that suggested that some expenses had been paid by the "RNC" which the Exit Conference Memorandum assumed meant the Republican National Committee. Nash explains that vendors used those initials to refer to the "Republican National Convention" and states that "Nash has made no payments to the RNC nor has any of its vendors been paid partially or fully by the RNC for Nash work."
- Finally the declaration references the statement in the Exit Conference Memorandum that "it appears television production services for the 1992 Republican Convention were paid by the COA rather than by the Houston Host Committee." It states that in 1992 equipment and labor for lighting was paid for by the Houston Host Committee.

Disclosure reports for the 1992 Houston Host Committee were reviewed and three payments to Nash totaling \$46,000 were identified. Two of these payments were described as consulting and one was for a reimbursement of production insurance. If the labor and equipment for television lighting was paid by the Houston Host Committee, the payments were apparently made to vendors other than Nash. A review of the production budget for the Committee On Arrangements for the 1992 Republican National Convention shows a total of \$892,566 including music, producer and director expenses, TV transmission, TV production facility, TelePrompTer, closed caption, and balloon drops. This amount was paid by the 1992 Committee On Arrangements. Further, work papers from that audit indicate that there were two change orders to this production budget and the 1992 Committee On Arrangements paid a total of \$1,125,000 as of September 30, 1992 to Nash for work done on the 1992 Republican National Convention held in Houston.

The Host Committee also objects to the Exit Conference Memorandum's reliance on a June 19, 1996 memorandum from the Committee On Arrangements to the Host Committee which states that Nash had been "engaged by the COA to produce the television event and staging of the Convention proceeding. David Nash and a staff of professional television production and technical associates will present and enhance the Republican message for presentation to the television networks and the media in general." The Host Committee argued that this memorandum is irrelevant because the same language does not appear in the contract between it and Nash. That contract was signed some weeks later. Rather, the Host Committee characterizes that language as written by a Committee On Arrangements' representative and probably expressed the "...hopes and aspirations of the COA at that time". The Host Committee goes on to note that the parties agreed that Host Committee funds would be spent only for permissible expenses as evidenced by the Committee On Arrangements' separate contract with Nash and the Host Committee's unwillingness to pay expenses related to GOP TV.

With respect to the June 19, 1996 memorandum, there is no question that it does not constitute a contract of any sort. Rather, as suggested in the Exit Conference Memorandum, it makes clear what the Committee On Arrangements expected Nash to do. This, taken together with the contract provision that requires the Committee On Arrangements to approve significant expenses incurred by Nash, and another that requires Nash to do its work according to Committee On Arrangements' requirements, clearly establishes Nash's function. In addition to the language previously cited, the June 19, 1996 memorandum states that "David J. Nash Associates is a television/theatrical company that produces major television events and theatrical productions. You should also have their contract." Thus, although the contract was not signed for another month, it appears that the Host Committee already had a copy. A memo dated June 21, 1996 from the Host Committee controller to a representative of the Committee On Arrangements appears to confirm this. Finally, although the contract with the Host Committee was not signed until late July, the term of the contract with the Committee On Arrangements began on March 1, 1996 and the term of the contract with the Host Committee began on May 1, 1996. As a result, it would appear that Nash had already been performing services for both entities at the time of the June 19, 1996 memorandum. The goal of the Nash contract was well established when the June 19, 1996 memorandum was written. Further evidence of Nash's role in enhancing and presenting the Republican message can be seen in some of the expense categories that the records document. These include:

- payments for directors who, in part, "...directed the video mix of the program material that was displayed on the giant projection screens in the Main Venue and the sail area."
- payments for the script supervisor who "[f]ormats the television script after assembling all the written materials and technical information."

- expenses associated with producing video clips highlighting profiles of delegates participating in the process.”
- expenses for a tape coordinator who “[o]rganized and edited all master tape footage for use on the big screens during the convention.”
- expenses for a continuity writer who was a “[s]peech coach and transition writer. He helped to reword speeches to help them flow better, added jokes, and in general punched up the speeches.”

The staff concluded that the cost of presenting and enhancing the Republican message to the media, and “implementing the ‘picture’ or ‘show’” that was seen by Convention attendees as well as television viewers, and all of the associated costs, including the vendor’s equipment setup, are convention expenses that are not permissibly paid by the Host Committee.

The memorandum discussed above also states that Nash needs to receive payment “...in order for the producer to provide initial payments and deposits to vendors and contracted creative talent to be engaged for this project. Currently, TV production equipment, services and creative talent are in high demand due to the Olympic Games in Atlanta.” This statement supports the Audit staff’s contention that Nash’s services and the installation of its equipment were, for the most part, directly related to television production rather than site preparation.

The Host Committee also contends that it was clear to all parties that its money was only to be used for permissible purposes, thus implying that the money Nash spent must have been permissible. A contract stating that the money spent can only be spent for permissible purposes does not mean that it was.

With respect to its separate contract with Nash, the Committee On Arrangements paid only \$117,500 as compared to the \$2,245,520 paid by the Host Committee. The payments by the Committee On Arrangements were \$100,000 for David Nash as Executive Producer, \$12,500 for producer expenses, and an additional \$5,000 for accounting. Thus, it appears that there was no attempt to divide the payment of the actual costs of television production services between the Committee On Arrangements and the Host Committee. The Committee On Arrangements paid the individual who was responsible for overseeing the whole project. If the whole project was a legitimate Host Committee expense, it would seem that the Host Committee could have paid the fees for the person overseeing it. However, in the opinion of the staff, if the Committee On Arrangements felt that the services of the person overseeing the project were not host committee expenses, then it would seem that most of the costs of the project were not host committee expenses and thus should have been paid by the Committee On Arrangements.

The Host Committee further contends that:

The Nash Contract can be divided into different categories and during the audit process, the Committee, working with the Audit Staff, made some progress in doing this for analytical purposes². The Committee believes that its expenditures in connection with the Nash contract were permissible under sections 9008.52(c)(1)(ii), (v) and (xi). By letter dated April 23, 1997, the Committee provided the Audit Staff with copies of invoices for approximately \$876,000 related to items which it believes are specifically permissible expenses under 11 C.F.R. § 9008.52(c)(1)(v). Since that time, the committee has received a detailed analysis of the Nash contract which indicates the true number is almost twice that amount [text of footnote omitted].

Using the analysis of expenditures provided by the production accountant for Nash, the Host Committee further notes that:

It is the Committee's position that lighting/rigging, decorations/music, all labor and equipment for the convention closed circuit TV, the Sail Area (not at issue here) and general overhead are authorized expenditures under regulation 11 C.F.R. § 9008.52(c)(1)(ii) and (v). Such expenses are also permissible under 11 C.F.R. § 9008.52(c)(1)(xi). This accounts for \$1,644,505.

It is the position of the Committee that the expenditures listed under 'Miscellaneous' which deal specifically with television broadcast infrastructure expenses in the amount of \$512,560 are authorized by 11 C.F.R. § 9008.52(c)(1)(xi). This is consistent with the intent of the host committee regulations which are clearly written to be permissive and not prohibitive. Any doubt about this intent is dispelled by the language of 11 C.F.R. 9008.52(c)(1)(xi), a catchall provision which allows host committees "to provide other similar convention-related facilities and services." The Host Committee is expressly authorized to provide for infrastructure costs under 11 C.F.R. § 9008.52(c)(v) and "other similar convention-related facilities and services." The fact that a class of expenditures is not specifically listed does not mean it is prohibited.

The Committee asked the COA to review all of the expenditures under the Nash Contract in light of the COA's role in supervising such expenditures. The Committee has been advised by the COA that the \$70,000 expended in connection with the 'Russell Shoot' may have been an oversight and outside the scope of its contract with Nash. On July 29, 1997, the Committee asked the COA to reimburse it for the costs associated with the Russell Shoot. The Committee notes that the film, a documentary about small-town America, was never shown at the convention and understands that the ownership of the film rests with New Century Media Group which produced it. The Committee believes that the film was never released to or used by anyone.

Finally, it is the Committee's understanding that Nash is holding about \$88,000 (less certain audit expenses) of unexpended Committee funds which the Committee has asked Nash to refund.

The Host Committee provided an analysis prepared by Nash's production accountant to identify the payments it included in the totals for the categories noted above. The Audit staff reviewed the Host Committee's classifications and noted that included in the \$1,644,505 are items such as a Graphic Package (\$26,684), Co-Producer (\$40,000), TV Producer (\$18,750), Directors (\$39,016), Moving Light Operator (\$11,735), Video Crew Labor (\$56,781), Screen Control Mobile (\$90,511), and

TelePrompTer (\$56,651). Smaller items in the total include Stage Manager, Script Supervisor, Tape Coordinator, and a Makeup Supervisor. Line items included in the "Miscellaneous" total are Satellite costs (\$73,748), Remote Productions for the live television transmissions (\$138,442), Film/Video Segments (\$174,749), Russell Film Shoot (\$70,000), and a Continuity Writer (\$10,000). Smaller items included Editing, Stand Ins, Announcer, and Video Crew Labor.

As thoroughly discussed previously, the staff does not believe that the categorization of expenses is at issue in this case. In our opinion, all of these expenses are primarily related to, and for the purpose of, presenting the television image of the Convention to the attendees and to the American public. They, as well as the associated equipment set up, are expenses of Nash's work to present and enhance the Republican message at the Convention. The staff concluded that contrary to the suggestion of the Host Committee, these expenses are not costs of welcoming the attendees to the city, convention hall construction costs, or things similar thereto but instead are partisan in nature and expenses of conducting the Convention.

With respect to the disposition of the film footage, the Host Committee provided a copy of the contract with the media company that produced the Russell shoot. According to that contract, the "...entire right, title and interest throughout the world, including the copyright, in and to the film 'Tour of Russell, Kansas'" would remain with the media company. The Host Committee stated that it believes that the film was never released to anyone. No documentation was provided from the media company which states whether or not these rights were ever subsequently sold or given to another entity. Thus, the final distribution of this film still cannot be verified.

2. Response of the Committee On Arrangements

The Committee On Arrangements begins its response on this matter with a general discussion of the Nash expenses and then addresses a number of specific expense categories. These categories are not as presented in the Exit Conference Memoranda because Nash's production accountant has provided a more detailed analysis than was available at the time of the Exit Conference Memoranda, and has allocated parts of the various miscellaneous and overhead categories to the direct cost categories. Each of these categories will be discussed below.

In its general comments, the Committee On Arrangements again states that Nash provided similar services to the 1992 convention and those expenses were not challenged. As noted above, the 1992 Committee On Arrangements paid Nash \$1,125,000 while the host committee paid only \$46,000 for consulting and insurance. Unless the 1992 host committee's payments were made to subcontractors, the 1992 Committee On Arrangements paid for most of the services Nash provided. No documentation was submitted to demonstrate otherwise.

The Committee On Arrangements also observes that there is nothing in the statute or regulations that states that a host committee may not pay costs associated with television broadcast of the convention or preparing their sites for television broadcasts. Conversely, there is nothing that says it may pay those costs. As noted above, the list of expenses that a host committee may pay was meant to be a "very narrow exception" to the limitation on convention expenses. Paying for the television broadcast of the Convention to the American public is, in the staff's opinion, a convention expense not provided for at 11 CFR §9008.52(c). An overly broad reading of the provision that allows the host committee to pay some convention expenses has the effect of negating the limitation on such expenses, and the limitations and prohibitions on contributions contained in the Act. Given the way the host committee regulations were formulated, it appears that the Commission did not intend that they be open-ended. The regulations include what expenses may be defrayed by a host committee, and television is not included.

The Committee On Arrangements also notes that the selection of a convention site relies heavily on the "telegenicity" of the site and that it is important in promoting the suitability of a city as a convention site. An affidavit from the convention manager is provided that states in part:

Like any other national nominating convention, the 1996 Republican National Convention used its convention site as an arena in which the Republican Party would adopt a platform, choose nominees for the office of President and Vice-President of the United States, and articulate its common principles, ideas, and positions. The Convention also used its site as an arena from which the proceedings could be broadcast to the American public.

An important component of the Convention's purpose is to provide a setting that allows the Republican Party to generate enthusiasm and support for the Party's candidates and platform. This is done, in part, by encouraging party activists to participate in the Convention. The Convention also seeks to generate enthusiasm and support among Americans in general. In modern American politics, television coverage of conventions is the primary, if not exclusive, filter through which Americans receive the information that determines success or failure in generating such enthusiasm and support.

This affidavit recognizes that one of the primary purposes of television coverage is to generate enthusiasm and support for the Republican Party's candidates and platform. Expenses that are necessary for the Republican Party to use its convention site as "an arena from which its proceedings could be broadcast to the American public" is, in our opinion, clearly a convention expense for the purpose of obtaining political advantage and should have been paid by the Committee On Arrangements.

The final general comment concerning payments to Nash notes that some expenses would be necessary even without the proceedings being broadcast outside of the hall. The need for closed circuit television and the analysis of that argument was discussed above (see pages 19-20). The Committee On Arrangements response adds that

the closed circuit television signal was also made available to the networks, GOP-TV, and other media entities.

The first specific category of expenses addressed is related to the Sail Area which was considered an allowable category in the Exit Conference Memorandum. The Committee On Arrangements notes that the updated total is \$196,032 as opposed to the \$164,234 noted in the Memoranda. The updated analysis was reviewed and the revised figure was accepted as the total related to the Sail Area. However, based on our review of information provided in the responses, we believe that the \$18,935 spent for entertainment in the Sail Area and the \$3,481 spent for an entertainment coordinator should have been paid for by the Committee On Arrangements. The host committee regulations at 11 CFR §9008.52(c) do not contain a provision that allows for host committees to pay for entertainment. Thus, the revised amount for permissible Sail Area expenditures is \$173,616 (\$196,032 - \$18,935 - \$3,481).

The next category addressed is Lighting and Rigging, totaling \$689,535. The Committee On Arrangements notes that modern convention centers such as the United Center in Chicago have state-of-the-art lighting that can accommodate live network television broadcasts and that even so, the Chicago host committee reported spending an additional \$458,848 to enhance the United Center's lighting. The response further notes that the San Diego Convention Center's lighting was far from state-of-the-art and that as an inducement for the convention to come to San Diego, the Host Committee committed to bring the lighting up to the standard necessary.

Three specific arguments related to the lighting and rigging are presented. First, the response notes that all parties to the Site City Agreement recognized that the lighting in the convention center was inadequate. Thus, because the lighting equipment and labor costs would have been lower if the RNC had selected another site, these costs were incurred by the Host Committee "for the purpose of promoting the suitability of the city as a convention site." Second, lighting is specified as one of the "construction and construction related services" that host committees may provide pursuant to 11 CFR §9008.52(c)(1)(v), and over \$1 million that the Host Committee spent on lighting equipment with vendors other than Nash is not questioned, while the installation cost paid to Nash is disallowed. Third, the Houston Host Committee paid the labor costs of upgrading lighting at the Astrodome for the 1992 convention with no challenge by the Commission.

The response includes an affidavit from David Nash which discusses his responsibilities during the Convention. He notes that they included the installation and operation of a lighting system, but that he did not provide the actual equipment. Rather, the equipment was provided by Bash Lighting (Bash). A review of Host Committee expenditures indicated that it paid Bash approximately \$906,000 which included a \$60,000 payment for 20% of the rigging contract, a \$147,500 payment described as rigging, and a \$272,000 payment for lighting and rigging. Given the substantial payments to Bash and other vendors for lighting equipment, design and

installation. the costs that are questioned appear to be those Nash incurred as the television Executive Producer, rather than the general lighting improvements to the hall. The costs of general lighting improvements were not questioned by the Audit staff since they are specifically permitted host committee expenses.

The question of payments to Nash in connection with the 1992 convention was discussed at page 20 above.

The Committee On Arrangements next discusses expenses classified as closed circuit television totaling \$423,762. The response states that since Nash's work on the Sail Area was allowed, the Exit Conference Memorandum implicitly conceded the appropriateness of the Host Committee paying for closed circuit television. The Committee On Arrangements argues that without closed circuit television, persons in the Sail Area, and in numerous other areas with restricted lines of sight, would have been unable to observe the Convention proceedings. Also, since the networks did not provide gavel to gavel coverage, providing network coverage to the Sail Area would have provided the attendees with the same coverage they could have seen at home. Further, the response states that the Exit Conference Memorandum did not directly question the costs of installing the closed circuit television system but suggested that the portion attributable to labor, such as producers and directors, was an inappropriate Host Committee expense. The Committee On Arrangements states that the closed circuit television system was essential to make the convention center usable and the video feed was clearly an integral part of that system. The response also states that the Exit Conference Memorandum statement that the closed circuit television production was "clearly convention related"

...provides more, not less, justification for the costs being permissible SDHC expenses. After all, 11 C.F.R. § 9008.52(c)(xi) expressly permits host committee to pay the costs of 'convention-related facilities and services' that are 'similar' to lighting and other enhancements that allow effective presentation of the convention. Thus, the expenditures were payable by SDHC pursuant to § 9008.52(c)(1)(i) ('promoting the suitability of the city'), 9008.52(c)(1)(v) ('construction and convention-related services' for 'convention center'), and 9008.52(c)(1)(xi) ('similar ... convention-related facilities and services').

The Committee On Arrangements is incorrect in stating that because improvements to the Sail Area were permitted the costs of the closed circuit television system are conceded. Based on the information available from the Host Committee when the Exit Conference Memoranda were drafted, Nash's work in the Sail Area was for improvements in the Sail Area and was not related to television production. The conclusions reached in the memoranda state, in part, that "the expenditures related to the Sail Area were not related to the television production and are an allowable expenditure." If that conclusion regarding the Sail Area is incorrect and these expenditures were actually related to the television production, then the costs associated with the Sail Area should be added to the in-kind contribution from the Host Committee to the Committee On Arrangements.

The Committee On Arrangements also believes that the Exit Conference Memoranda did not directly challenge the costs of the closed circuit television system but instead questioned labor costs such as producers and directors. The Exit Conference Memoranda drew no such distinction. The memoranda did note that the television production was clearly a convention related expense that was not considered an allowable host committee expense.

The response also misinterprets and misstates the language of 11 CFR §9008.52(c)(1)(xi). That portion of the regulations says that a host committee may "...provide for other similar convention-related facilities and services," referring back to the categories in sections (i) through (x). While lighting related to the use of an auditorium is one of those categories, the regulation never mentions "other enhancements that allow effective presentation of the convention." As noted before, reading the allowances at 11 CFR §9008.52 as broadly as the Committee On Arrangements suggests has the effect of negating the spending limitations. Television production is not similar to the categories of expenditures allowed for host committees but is a cost of presenting the Republican Party's message and candidates to the viewing public.

The response discusses \$156,399, which is categorized as "Decorations/Music." The Committee On Arrangements states that the \$104,279 spent for balloons, confetti, fireworks and video graphics were allowable host committee expenditures for "decorations" and "similar convention-related facilities and services." Further, \$49,032 was incurred for a musical director and orchestra and the remaining \$3,088 was for transportation and hotel expenses for the orchestra. The response also says that the orchestra welcomed and entertained the delegates and attendees as they gathered in the convention hall prior to each session of the Convention and that providing music in the convention hall was a convention-related service "similar" to the provision of decorations.

The regulatory allowance for decorations is provided relative to convention-related services for the use of an auditorium or convention center. The use of balloons, confetti, fireworks and video graphics by Nash are related to his presentation of the "picture" or "show" to the Convention attendees and television viewers. These items are for the conduct of the Convention, not decorations related to the use of an auditorium. With respect to music and the orchestra, the Nash affidavit states that the orchestra was used to entertain the attendees when the Convention ran ahead of schedule or if a speaker was not quite ready. The payment for an orchestra to entertain the delegates is part of the Convention proceedings and is not a decoration. The regulations allow for a host committee to pay costs of welcoming Convention attendees to the city, such as the use of information booths, receptions, and tours, and to promote commerce by providing shopping and entertainment guides. Welcoming attendees to the Convention proceedings and providing entertainment during lulls in the proceedings is part of those proceedings and is a convention expense which should have been paid by the Committee On Arrangements. With respect to the hotel and transportation costs, no documentation was provided to show that the requirements of 11 CFR §§9008.52(c)(1)(vi) (local

transportation services) and 9008.52(c)(1)(ix) (hotel rooms) had been complied with and accordingly, no adjustment has been made to the total contribution with respect to these costs.

Nash's analysis categorizes \$512,560 as Miscellaneous. Included in that amount is \$217,511 spent on video crew labor, satellite time, and remote productions. These costs were for the production and transmission of interviews and broadcasts from remote locations such as Miami, Sacramento, San Diego, and Russell, Kansas. The response states that these productions were shown on large television monitors throughout the convention hall as part of the overall imagery for the Convention. According to the Committee On Arrangements, each remote production served the same purpose as decorating the convention hall with standard political paraphernalia. For the Kansas remote production, the response says that the convention center's ceilings were too low for the traditional fireworks display when the Kansas delegation cast its votes to secure Senator Dole's nomination, and as a result, a fireworks display was held in Russell and transmitted to the convention hall via satellite. The San Diego production was apparently used to transmit Senator Dole's live video image onto the screens in the convention hall during Elizabeth Dole's speech. The Committee On Arrangements argues that this is no different than the Host Committee paying for one or more large photographs of Senator Dole and hanging them in the convention hall as decorations. The response also argues that it can not be reasonably disputed that the Host Committee could pay for video graphics used as decorations. The Committee On Arrangements submits that these expenses are "similar" to standard decorations, and are allowable host committee expenses. The response also states that the remote broadcasts featuring Steve Young interviewing students in Sacramento and Jason Poblete interviewing an elderly woman in Miami were to entertain the attendees during lulls in the proceedings and served to make the Convention more interactive and inclusive.

The staff concluded that these productions were part of the Convention proceedings. The Nash affidavit, in part, notes that "the live remotes and video segments were necessary to create a convention signal for broadcast on the Convention's closed circuit television that would hold the attention of viewers." Later Nash writes with respect to satellite time, the expenses were to transmit the remote shots and "so that the Convention could make the closed circuit television signal available to television media across the country who chose not to send their own production personnel to the Convention and who did not want to rely completely on the major television networks for coverage." The live video of Senator Dole watching his wife's speech is not the same as a poster showing his image. This live shot was provided to the television networks for use during the speech and showed Senator Dole's reactions to different parts of his wife's speech. This feed was part of the Convention's content on that evening and is not a decoration. The Russell feed of fireworks was used to show the excitement of the people of Russell at the moment Senator Dole secured the nomination. This was also used as a part of the Convention's proceedings, not as a decoration. Similarly, the other remote productions are not decorations, even if the television networks did not show

them. As Nash stated, these productions were used to hold the attention of the viewers — not decorate the convention hall. In the Audit staff's opinion, these expenses are political in nature. They are for the conduct of the Convention and to create enthusiasm and support for the Republican Party and its candidates, not to decorate the hall. In the opinion of the staff, they are convention expenses not permissibly paid by the Host Committee.

The Committee On Arrangements also states that the host committee in Chicago reported a payment for satellite time, presumably to demonstrate that the Democratic host committee also believed that expenditures for satellite time were a legitimate host committee expense. However, that committee's records show that the payment was made to the City of Chicago. The City of Chicago had initially made this payment for satellite time. The Assistant Treasurer for the Democratic host committee informed the Audit staff that the City of Chicago and the host committee determined that this was not an appropriate host committee or city expense and consequently requested a refund from the vendor. The vendor then refunded the payment to the host committee instead of the city. The host committee made a refund payment to the city which apparently is the item on the disclosure report noted by the Committee On Arrangements. Thus, neither the host committee or the city paid for satellite time.

Another part of the Miscellaneous category is \$180,414 for Film/video Segments and Editing. The Committee On Arrangements believes that these were permissible Host Committee expenses for a number of reasons. First, some of the segments consisted of interviews with delegates and celebrities that were complimentary to the City of San Diego and, according to the response, served the purpose of promoting the City as a convention site or welcoming the Convention attendees to the City. The Committee On Arrangements argues other video segments served the purpose of welcoming or introducing speakers to the podium or welcoming and acknowledging other attendees and are permissible as welcoming or similar expenses. The response goes on to say that other video segments had already been produced and were provided to Nash for formatting for use with the equipment in the convention center. The Committee On Arrangements believes that since the Host Committee could provide a sound and video presentation system, it could calibrate taped video segments for presentation on that system. Finally, the response states that all the segments were used as entertainment for the audience present at the convention center and since there was no expectation that the networks would air the segments, they were "similar" to welcoming and entertainment expenses. The affidavit of the Convention Manager notes that "[t]he video segments were taped presentations displayed during lulls in the Convention proceedings or, sometimes, during a speaker's presentation. Many of the segments were profiles of delegates or interviews with Americans about important issues...The primary purpose of the video segments was to entertain the delegates and other attendees."

The staff concluded that the Committee On Arrangements had again applied an overly broad reading of the regulatory allowances. Allowable expenses

include welcoming attendees to the city by providing information booths, receptions and tours; allowable expenses include the costs of promoting the suitability of the city as a convention site; and, allowable expenses include the cost of facilitating commerce by providing shopping and entertainment guides, samples, and promotional materials. These video segments are not expenses for welcoming the delegates to the City or promoting the suitability of the City as a convention site. The segments were used during lulls in the proceedings to hold the attention of the delegates and thus became a part of the Convention proceedings. The response notes in several places that many of the items paid by Nash were used as entertainment and are somehow a permissible host committee expense. As noted, entertainment of attendees is not included as an allowable expense.

Two minor items included in the Miscellaneous category are approximately \$1,200 for an Entertainer and Announcer and \$1,220 for the Convention Manager Shoot. For the entertainer and announcer, the Committee On Arrangements states that "[t]hese insignificant costs are justifiable as promotional expenditures, welcoming expenditures, administrative expenditures, or convention center expenditures" and "[t]he convention manager shoot was a short video segment welcoming the delegates to San Diego and showing the modifications being made to the Convention Center. Without question, it was payable by the host committee as a promotional, welcoming, or 'similar' expense."¹² The response seems to indicate that the entertainer and announcer expenses must fall into one of those categories which a host committee may pay. Once again, it is the staff's opinion, that these expenditures are for items that are part of the Convention proceedings and not covered by one of the expense categories that the Host Committee may pay. Nash stated that the announcer, "quite literally, welcomed speakers to the Convention podium." This is not welcoming the Convention attendees to the City of San Diego. The same can be said of the convention manager shoot. This shoot apparently showed all the modifications made to the convention center prior to the actual Convention and welcomed the attendees to the Convention. The staff concluded that this is not the same as expenditures for welcoming attendees to the city "such as information booths, receptions, and tours."

The Miscellaneous category also includes \$70,000 for the Russell Film Shoot and notes that New Century Media Group, Inc. was paid this amount "to design, create and produce" a filmed walking tour of Russell, Kansas which was hosted by Senator Nancy Kassebaum. Although considerable effort was expended on this film, it was ultimately decided not to be usable at the Convention. The purpose of this film was to entertain the delegates during a planned lull in the Convention proceedings. The Committee On Arrangements believes that this expenditure was an allowable Host Committee expense because it was intended as entertainment for the delegates and was permissible under 11 CFR §§9008.52(c)(1)(ii) and (xi).

¹² The Committee on Arrangements' response adds that similar payments were made by the Houston Host Committee in 1992 and were not challenged. No further details were included.

The regulations cited by the Committee On Arrangements deal with "...those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours" and "[t]o provide other similar convention-related facilities and services." For the same reasons the staff concluded that the video segments discussed above are not allowable Host Committee expenses, this film is not an allowable Host Committee expense. The Host Committee's response states that it has requested that it be reimbursed by the Committee On Arrangements acknowledging that it should not have paid this expense.

The final items classified as Miscellaneous include a \$10,000 payment for a Continuity Writer, \$2,691 for Stand-ins, and \$29,524 for "Allocated Items". According to the Committee On Arrangements, the stand-ins were used during rehearsals in order to calibrate lights and sound systems and the continuity writer was charged with reading and editing the various convention speeches and "punching them up" without altering their substance or content. The Committee On Arrangements feels that these expenses were necessary components of producing the Convention's closed circuit television signal and were therefore appropriate Host Committee expenses for reasons previously stated. Although the continuity writer may not have made any substantive content changes in the speeches, the work was related to the speeches that are part of the Convention proceedings and part of presenting the Republican message. The speeches were also part of both the closed circuit broadcast and the feed seen by the viewing public. As noted earlier, Nash states that the closed circuit feed was also available to the media. The staff concluded that these are convention expenses that are not permissible for host committees to pay pursuant to 11 CFR §9008.52(c).

The allocated items represent expenses such as travel, hotel, vehicle rental, mileage, parking, transportation, motels, catering, and per diem for Nash employees many of whom worked on more than one project. The Committee On Arrangements contends that they should be distributed proportionately to the identified projects. The Audit staff agrees. However, since the staff concluded that the various categories discussed above were convention expenses, no allocation was required.

The final major expense category addressed is Overhead of approximately \$185,000. The Committee On Arrangements feels that to the degree that all categories of expenses were properly payable by the Host Committee, these overhead expenses were allowable Host Committee expenses. However, the response notes that to whatever degree the Commission ultimately decides that one or more of the project categories was not properly paid by the Host Committee, then only those costs which are attributable to those categories would be repayable. As explained above, the staff concluded that none of the expenses associated with the Nash contract were allowable Host Committee expenses.

Finally, the Committee On Arrangements believes that even if the Commission rejects the argument that each of the general categories of Nash expenses were permissible Host Committee expenditures, the Commission should not challenge

expenses such as those for hotels and local transportation, which are expressly denominated as allowable host committee expenses pursuant to 11 CFR §§9008.52(c)(1)(vi) and (ix). The regulatory provision for local transportation concerns defraying "...the costs of various local transportation services, including the provision of buses and automobiles" and the hotel provision concerns providing "...hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention." To the extent that Nash's employees took advantage of services provided by the Host Committee or the City under these provisions, Nash's cost savings were presumably passed along to the Host Committee. The remaining expenses are business expenses of a vendor hired to perform a specific convention-related task, and those expenses are not permissible pursuant to 11 CFR §9008.52(c).

As stated several times in this discussion, the staff concluded that the payments to Nash, with the exception of the Sail Area, do not represent legitimate host committee expenses pursuant to 11 CFR §9008.52(c) and thus should have been paid by the Committee On Arrangements. In the Exit Conference Memoranda, it was determined that the Committee On Arrangements should have paid a total of \$2,081,286 that was paid to Nash by the Host Committee. In the documentation provided by Nash's production accountant, it appeared that \$31,798 in expenditures related to the Sail Area were not excluded from the Committee On Arrangements total in the Exit Conference Memorandum. However, entertainment costs of \$22,416 associated with the Sail Area were mistakenly excluded from that total. In addition, on July 31, 1997, Nash refunded the \$82,436 that had not been spent. Thus, the staff calculated the amount in question to be \$1,989,468 (\$2,081,286 - \$31,798 + \$22,416 - \$82,436). Also, if the Host Committee receives a \$70,000 reimbursement from the Committee On Arrangements for the Russell shoot, the amount will be reduced accordingly.

In a series of meetings between December 4, 1997 and April 23, 1998, the Commission considered the staff recommendation with respect to the Nash contract, along with the Committee On Arrangements' and Host Committee's responses to the Exit Conference Memoranda. The Commission's deliberations were in relation to the audit reports of both the Host Committee and the Committee On Arrangements. A motion to approve the staff's recommendation that \$1,989,468 be considered a Host Committee contribution to the Committee On Arrangements failed by a 3-2 vote. See Attachment 1, page 2, item 2.

In Exhibit A to the Committee On Arrangements' response to the Exit Conference Memorandum, all of the Nash expenses were grouped into six categories: Lighting and Rigging - \$689,535; Decorations and Music - \$156,399; Labor and Equipment for Convention Closed Circuit TV - \$423,762; Sail Area - \$196,032; Overhead - \$184,796; and, Miscellaneous - \$512,560. Using these categories as a basis, the Commission discussed and voted on individual expense categories and line items¹³. Not included in the Commission's determinations were a number of indirect

¹³ Attachment 1, page 3, items 3 and 4, and pages 6 through 8, items 1 through 6, contain the

expense line items, primarily travel and living expenses and overhead items. These expenses were left to be distributed based on the votes on the direct cost line items. Using the guidance provided, the Audit staff distributed the indirect costs in a two step process. First, using information in the general ledger printout provided by Nash, the Committee On Arrangements' response to the Exit Conference Memorandum, and the Commission's determinations, some costs were specifically associated with persons and expense categories that were covered by Commission votes. These were primarily travel and living expenses that could be associated with particular persons¹⁴. Second, the remaining indirect costs, those that could not be associated with particular persons or functions, were divided into three groups: Travel and Living Expenses-Producers and Directors (\$9,702); Travel and Living Expenses-Others (\$32,886), and, Overhead (\$93,491). The two travel and living expense groups were allocated between the Committee On Arrangements and the Host Committee based on the distribution of associated direct costs. The overhead expenses were allocated based on the distribution of all non-overhead expenses.

Following the above procedure, \$892,489 is attributable to the Committee On Arrangements and \$1,270,595 is attributable to the Host Committee. Attachment 2 is a chart that presents the amounts by category and line item. On Attachment 2 all line items that include indirect costs that require allocation, in whole or in part, are shown in the "Indirect Cost" category. The Committee On Arrangement's response to the Exit Conference Memorandum showed these expense items distributed to the various other categories.

The Commission therefore determined that the Host Committee made contributions to the Committee On Arrangements related to the Nash contract in the amount of \$892,489.

III. CITY OF SAN DIEGO EVENTS FUND

Section 9008.53(b) of Title 11 of the Code of Federal Regulations states that local businesses (excluding banks), local labor organizations, and other local organizations or individuals may donate funds or make in-kind donations to a separate fund or account of a government agency or municipality to pay for expenses listed in 11 CFR §9008.52(c), provided that: (i) The fund or account is not restricted to use in connection with any particular convention; and (ii) Donations to the fund or account are unrestricted and are not solicited or designated for use in connection with any particular convention, event or activity.

Certifications of the Commission's votes on these matters.

¹⁴ For example, Directors were determined to be attributable to the Committee On Arrangements. If travel and living expenses for a person identified as a Director were noted, those expenses would be attributed to the Committee On Arrangements.

A. BACKGROUND

During our review of the Host Committee's receipts, we identified a total of \$9,237,812 that was transferred to the Host Committee from the City of San Diego (City). According to Host Committee records, of this amount, \$2,539,636 was transferred from general City funds and appears to have been designated for specific expenditures made by the Host Committee. These funds represented a portion of the proceeds of the Transit Occupancy Tax that is imposed by the City. The remaining \$6,698,176 was transferred from the City Civic Events Fund - Account No. 90501 (Events Fund).

The Events Fund was created as a separate trust fund pursuant to a resolution by the San Diego City Council. This fund was required by a Memorandum of Agreement between the City of San Diego and the Host Committee. This agreement was part of the overall plan by the City to meet the obligations imposed on it by the Host Committee and the Committee On Arrangements in the Site City Agreement executed to secure the Republican National Convention. The memorandum stated:

The City agrees to modify if necessary on or before June 6, 1995, the San Diego Festival Fund so that it is similar in all material ways to the Convention Fund created by the City of San Francisco prior to the 1984 Democratic Nominating Convention and so that it is in form and substance reasonably acceptable to the SDHC [San Diego Host Committee] and the SDCCC [San Diego Convention Center Corporation]. This Fund shall be a separate fund or account as referred to in 11 C.F.R. § 9008.53(b). On the first business day of each week after the execution of this agreement, through and including September 30, 1996, the City may transfer to the SDHC, to such account as the SDHC shall direct, all funds deposited in the City Fund as of the opening of business on such day. The SDHC shall expend the funds received from the City Fund solely in connection with the performance of obligations under the Site City Agreement and for those purposes reasonably related thereto.

The City authorized the Events Fund to be established on January 9, 1995 instead of modifying the San Diego Festival Fund.¹⁵ As of December 30, 1996, all moneys deposited and interest earned by the Events Fund were forwarded to the Host Committee. Thus, rather than using a fund already in existence, the City established a new fund which appeared to have been set up and used exclusively in connection with the 1996 Republican National Convention.

The documentation that was available indicated that both the City of San Diego and the Host Committee raised the money deposited in the Events Fund. The contract between the City and the Host Committee states that "SDHC shall solicit funds for and other donations to the City Fund. All fundraising shall be conducted in

¹⁵ According to an attorney for the City, the Festival Fund was a dormant fund of the City that had previously been used in connection with an event held in the City. Subsequent correspondence establishes that the fund was created in 1988 to host the San Diego Arts Festival: Treasures of the Soviet Union.

compliance with the Federal Election Campaign Act and all Federal Election Commission regulations. The City agrees to actively assist and cooperate with the SDHC in this task in all ways permitted under applicable law.”

Three individuals had primary responsibility for the Host Committee’s fundraising. According to Host Committee officials, potential business donors were informed that they could contribute to the Host Committee or the Events Fund but that they must have a business presence in San Diego County to contribute to either entity. With respect to the Events Fund, Host Committee officials stated that individual donors were informed that donations would qualify as charitable contributions but were also informed that they could not earmark those donations for the Republican National Convention and that the donations could be used for any convention. However, as noted earlier, the Events Fund was apparently created for the Republican National Convention and all proceeds were transferred to the Host Committee.

During a review of the Host Committee’s disbursement files, the Audit staff viewed a copy of a solicitation that was apparently used by the Host Committee. This solicitation states, in part, that “Contributions to the City of San Diego are deductible as charitable contributions under Section 170(c)(1) of the Internal Revenue Code. Appropriate written confirmation will be provided to all donors of such charitable contributions. The City of San Diego has established the City Convention Fund to defray City expenses incurred in connection with attracting conventions to the City. If you would like to contribute to the City of San Diego, you should make your check payable to the ‘City of San Diego.’ Mail to the San Diego Host Committee ... and the Committee will forward it to City Hall.” The solicitation also included response cards for both the Host Committee and the City. Host Committee officials stated that this solicitation was generated early in the process and were unsure if it had ever been used. However, it does appear that at least \$3,507,450 that was deposited in the Events Fund was received by the Host Committee and then forwarded to the City.

The City Attorney’s Office was afforded an opportunity to respond to the relevant facts contained in this Audit Report since 11 CFR §9008.53 deals with municipalities and government agencies. This response to the Exit Conference Memorandum is separate from the Host Committee’s which is discussed later in this report and deals with the Host Committee’s responsibility with respect to the Events Fund. The City’s response begins with the following statement:

We are happy to clarify the City of San Diego’s procedures and methodology which we believe strictly conform to all relevant restrictions on host cities contained in 11 C.F.R. 9008.53. We do so, however, with the express notation and reservation that the Commission has no audit authority or jurisdiction over the City of San Diego, because the City fully complied by filing its post-convention statement of expenditures (11 C.F.R. 9008.51(c)). The post-convention audit is expressly authorized only for ‘each host committee registered under 11 C.F.R. 9008.51.’ 11 C.F.R. 9008.54. Whether the Commission has any authority to issue regulations which attempt to regulate the financing of a municipality’s activities as permitted by the State of California is subject

FOIA b 7 - D

to serious question. The City of San Diego is not a political committee or a host committee as described in the Commission's regulations. This response is not an acceptance of the validity of the Commission's regulation of the City of San Diego's financial or fund raising activities.

Although it is correct that the Commission's regulations contain no specific requirement for the audit of a municipal fund, they also do not limit the Commission's authority to do so. The relevant section of the regulations requires municipalities and government agencies that have spent money pursuant to 11 CFR §9008.53 to file a report with the Commission. The Act grants the Commission a broad audit authority to conduct audits with respect to reports that are filed with it. As noted previously, the Commission decided that, in order to complete a thorough review of the activities of the Host Committee, a review of records associated with the Events Fund should be conducted. The review was intended to verify that the money received by the Host Committee and raised by the City met the requirements of 11 CFR §9008.53. During the course of this review, it was preliminarily determined that the requirements of 11 CFR §9008.53 had not been adhered to and thus the City, through the City Attorney's Office, was provided an opportunity to respond to the preliminary conclusions that were reached.

The City also provided a declaration from the Deputy City Manager that attempts to clarify some of the facts regarding the creation of the Events Fund. This declaration notes that City Council Resolution Number R-285176, adopted on January 9, 1995, authorized the Site City Agreement with the Republican National Committee. The resolution also authorized the City Manager "...to negotiate and execute an agreement with the San Diego Host Committee under which the Committee agrees to assist the City in defraying the monetary costs of hosting the 1996 Republican National Convention and providing certain 'in-kind' services...". He also notes that the Memorandum of Agreement of June 1995 was entered into to allocate responsibilities of the various San Diego entities. He further states that "[t]he 'San Diego Festival Fund' referenced in the Memorandum of Agreement was created in 1988 to host the San Diego Arts Festival: Treasures of the Soviet Union., ... In hosting the Arts Festival, the City created 'San Diego Festivals, Inc. with the City as the sole member of the corporation and the City obtained an IRS Exempt Organization letter as a 501(c)(3) corporation. This facilitated raising private donations to defray the expenses of the Soviet Arts Festival and contributed to the overall success of the festival."

The Deputy City Manager also notes that the same plan was contemplated to assist the City with expenses for the 1996 Republican National Convention and as a result,

...the City Council amended the Articles of Incorporation of 'San Diego Festivals, Inc.' to change the name of the corporation to 'San Diego Civic Events Fund' and to expand the purposes of the corporation to include the hosting of civic events that enrich the quality of life in the City of San Diego. This resolution also directed the City Auditor to create a special account to receive and disburse contributions for the purposes specified

in the new Articles of the San Diego Civic Events Fund. However, Special Tax Counsel for the City had reservations that a similar IRS Exempt Organization letter could be obtained for the Amended Articles of Incorporation within sufficient time to receive private donations and have them qualify as a charitable contribution.

B. DONATIONS FROM OUTSIDE THE SAN DIEGO METROPOLITAN AREA

Donations to a separate fund or account of a government agency or municipality to be used to defray expenses related to a national convention are required to be from donors within the Metropolitan Area of the Convention City. During our review of the receipts of the Events Fund, we identified \$1,827,350 in donations that did not appear to be from donors in the San Diego Metropolitan Area. This included \$252,500 from apparent corporate sources and \$1,574,850 from individuals and other entities.

Well after the Convention, in a memo dated October 3, 1996, to the Deputy City Manager concerning contributions from non-local individuals, an attorney for the City wrote that, with respect to the contributions from individuals from outside of the local area, 11 CFR §9008.53(b)

...provides that each donor listed, except for 'individuals,' is preceded by the word 'local,' leading to the interpretation that all organizational donors must be 'local,' while individuals need not, since this adjective does not qualify individuals. 'Local' is further defined in subsection (2) but only in the context of any business, labor organization, or other organizations. This definition of 'local' only in this context lends further support to the analysis that 'local' does not apply to individuals.

This distinction between organizational donors and individuals is not without confusion. The February 1996 Record of the Federal Election Commission noted 'any individual' could make donations to defray convention-related expenses and then in the same publication in September 1996 issued a correction asserting 'any local individual.'

The federal regulation quoted above, however, does not include the adjective 'local' for individual donors. Thus a fair reading of 11 CFR 9008.53(b)(1) does not restrict individual contributions to only those from local individuals. Given the ambiguity of the section and the 'correction' of the Federal Election Commission, acceptance of donations from non-local individuals is not without the risk of subsequent audit and disallowment of the contribution. However, this office believes a fair reading of 11 CFR 9008.53(b)(1) does not restrict individual contributions to only those from local individuals. In light of this, the checks from individuals may be accepted with the risk noted above while organizational contributions must be local as defined in subsection 9008.53(b)(2).

Contrary to the opinion expressed above, no confusion should have existed about whether individual donors needed to be "local." The Commission specifically addressed contributions to host committees by individuals in Advisory Opinion 1995-32 issued to Chicago's Committee for '96 on September 22, 1995. That Opinion stated, in part, that "Commission regulations at 11 CFR §9008.52(c) permit local individuals to donate funds and make in-kind donations to a host committee to be used for a variety of

purposes such as promoting the city, facilitating commerce, defraying construction costs in the convention center, and defraying the city's additional costs for transportation or law enforcement. Local individuals are individuals who reside in the Metropolitan Area of the convention city."

With the exception of one \$250,000 contribution made on July 31, 1995, all contributions from non-local individuals were deposited in the Events Fund in 1996. Thus, even if the perceived ambiguity caused the City to originally accept contributions from non-local individuals, it accepted \$1,324,850 from such individuals well after Advisory Opinion 1995-32 clarified the issue. Further, given the plain meaning of 11 CFR §§9008.52 and 9008.53 as well as the Commission's prior determinations, it is clear that all contributions must be local, whether individual or corporate, and that the entire \$1,574,850 from non-local individuals and other entities should not have been accepted.

In the Exit Conference Memorandum, the Audit staff recommended that the City of San Diego provide a written description of the solicitation procedures used for contributions raised directly by the City. In addition, the City was to provide any documentation and relevant comments that it felt demonstrated that the moneys raised and deposited were from local businesses, local labor organizations, local individuals, or other local organizations.

With respect to the \$252,500 in donations that were questioned as not being from local corporations, the City's response to the Exit Conference Memorandum states that documentation establishing that the businesses were local has been submitted for all but one. Information was expected from the remaining company and was to be submitted as soon as it was provided. The \$252,500 is comprised of donations from four corporations. However, the information received from the City contained documentation for only one, and that documentation does not establish that the corporation is "local." The City provided a letter from the corporation's Associate General Counsel that states, in part, that its chemical segment supplies raw materials to a plant in San Diego for one of its customers. The fact that a corporation makes sales to one customer in the Metropolitan Area neither establishes that it has offices or facilities located within the Metropolitan Area, nor establishes that the volume of business or activity in an area lying outside the Metropolitan Area was directly affected by the presence of the Convention.

With respect to the \$1,547,350 in donations from individuals and non-corporate entities, the City states that documentation has been submitted for all of the non-individuals. Included in this amount are donations from two partnerships and from two foundations. The City provided documentation for only one of the partnerships. A letter from the partnership's Managing Director of the Municipal Finance Department states, in part, that the partnership's business in California would be directly affected by the convention being in San Diego. It further states that it has offices in Los Angeles and San Francisco and conducts business throughout the State of California including several major clients in San Diego. Finally, the letter states that the partnership was asked to make the donations by the Chairman of the Host Committee who was also the Chairman

of a potential client of the firm. However, as stated above with respect to corporations, having clients in a Metropolitan Area does not meet the definition of local and thus the donations from this partnership are still considered to be non-local.

With regard to donations from non-local individuals, the City's response notes that:

...the City's February 6, 1997, letter to the staff made clear that the express language of 11 C.F.R. 9008.53(b)(1) simply does not restrict individual donations to only those that are 'local.' First, the regulation itself has no restrictions on individuals since it has no qualifying adjective preceding the noun 'individual.' Second, the FEC's own publication, Record, February 1996, advised: "Any individual ... may donate funds or make in-kind contributions to a host committee...." While the September 1996 Record asserts this was a mistake, all the individual contributions in question were dated before receipt of the September 1996 publication. Audit staff's list of 32 individual donors with non-San Diego addresses shows check dates ranging from 7/1/95 to 9/9/96, with the majority being received and accepted in July 1996 -- well before any 'correction.' Third, the receipt of unrestricted individual contributions was sanctioned by two legal opinions: the opinion of the San Diego City Attorney to the City Manager and the opinion of private legal counsel Covington & Burling to the Host Committee. Both opinions point out, *inter alia*, that the absence of a qualifying adjective preceding 'individual' and the absence of any reference to individuals in defining what qualifies as local are meaningful in arriving at this distinction.

Curiously, staff quotes from the City Attorney's opinion but makes absolutely no mention of why the above two distinctions are in error. Rather, the staff flatly states that 'no confusion exists' without even mentioning the FEC Record statement of February 1996. Moreover, the staff relies solely on AO 1995-32 - an opinion dealing with the propriety of contributions from financial entities controlled by a federally chartered bank and contributions 'by individuals who are officers, directors, or employees of a state or federally chartered bank.' AO 1995-32, Federal Election Campaign Financing Guide, ¶6166. Given the nature of the question and corresponding analysis, AO 1995-32 does not analyze the distinction between local businesses, local labor organizations, local organizations, and individuals. Rather, it simply answers the question asked about individuals who were presidents of the donor companies who resided in the metropolitan area of Chicago. Hence AO 1995-32 simply does not contain any analysis of the distinction between organizations and individuals which is in the regulation itself. Moreover the staff completely fails to mention the February 1996 Record, with a contrary statement permitting 'any individual' contribution that post-dates and hence arguably supersedes AO 1995-32.

Thus given 11 C.F.R. 9008.53(b)(1)'s absence of a restriction on individual contributions, the concurring statement in the February 1996 Record, the September 12, 1996, opinion of Covington & Burling, and the October 3, 1996, opinion of the San Diego City Attorney's office, the Civic Events Fund quite properly accepted unrestricted individual contributions.

First, with respect to the record articles that the City references, the Exit Conference Memorandum did acknowledge them by quoting from the City Attorney's opinion that clearly states what the two articles say. The Commission's newsletter does not supersede the actions of the Commission in its regulations or Advisory Opinions.

Further, donations to the Events Fund that were forwarded by the Host Committee had a memorandum to the City attached that stated, in part, that the enclosed checks were "...for deposit to the City Convention Fund for 'public' purposes in furtherance of the City's efforts to attract visitors by providing appropriate facility and support services to fulfill the City's obligation as 1996 RNC Host City. Please ensure that these funds are properly deposited and accounted for to facilitate transfer to the San Diego Host Committee."

In addition, in a letter accompanying a check sent from the Host Committee to an official of the City, the Executive Assistant to the Chairman of the Host Committee wrote, in part, "Pursuant to our telephone conversation this morning, I am herewith enclosing the ... check in the amount of \$100,000 for deposit to the 'Convention Fund Account.' I understand that these funds will be transferred to our San Diego Host Committee account. Please let us know when the transfer has been completed."

Also, as noted previously, the contract between the Host Committee and the City required the City to establish the Events Fund and to transfer moneys from that fund from time to time as the Host Committee directed. Given this contract, the memorandum from the Host Committee asking for contributions sent to the City to be transferred back, and the fact that all activity to date with respect to the Events Fund has been solely to support the 1996 Republican National Convention, it appears that this fund was in fact set up and restricted to use for the Republican National Convention.

In the Exit Conference Memorandum, the Audit staff recommended that the City provide any documentation and relevant comments which it felt demonstrated that the Events Fund was not restricted to use for the 1996 Republican National Convention and that the funds received were not restricted.

In response, the City states, in part, that:

"[w]hile the audit staff accurately assesses that the Civic Events Fund was set up in connection with the 1996 Republican National convention, this statement is also accurate in regard to every single city convention fund set up by a city hosting a con-vention[sic] pursuant to the original 1982-27 and 1983-20 Advisory Opinions of the Commission. Under these advisory opinions, it was recognized by the Commission that convention cities were permitted to establish a municipal fund to receive donations and make disbursements in connection with a nominating convention."

Advisory Opinion 1982-27 was an answer to the City of Dallas, Texas with respect to the 1984 Republican National Convention. The issue was whether the City of Dallas, in light of the method by which it traditionally raised governmental revenue for promotional, cultural, and commercial activities of the City, was barred from using the same method to establish a permanent, city-controlled Convention Fund, which would make payments for facilities and services with respect to a Presidential Nominating Convention and other kinds of conventions. The Commission concluded that

there was nothing in the Act or Commission regulations that would preclude the City of Dallas from creating and utilizing such a fund. However, 11 CFR §9008.53 was promulgated after that Advisory Opinion. Although there is still nothing to preclude a municipality from creating a similar type of fund, the regulations are specific on how the money to be used in connection with a Presidential Nominating Convention is to be raised and how the fund is to be operated.

The City also makes reference to AO 1983-20. That opinion dealt with Independent Expenditures which advocated the defeat of a presidential candidate. We assume that the City meant to make reference to AO 1983-29 that dealt with the use of the San Francisco Convention Promotion and Services Fund to provide facilities and services for the 1984 Democratic National Convention. The Commission concluded in this instance that the facts were indistinguishable from AO 1982-27 and thus would be allowed.

Further, the response notes that while the Audit staff quotes the Memorandum of Agreement between the City and the Host Committee,

...it fails to include key elements of this provision when it surmises the fund 'appears' to be restricted. Directly rebutting this 'appearance' are the provisions of its creation. First, the express language mandates 'This Fund shall be a separate fund or account as referred to in 11 C.F.R. 9008.53(b).' Both the City and the Host Committee recognized and agreed to the account being created and administered within the restrictions of 11 C.F.R. 9008.53 which mandates an unrestricted account. Second, the City expressly provided that the City 'may transfer' to the Host Committee funds 'solely in connection with the performance of obligations under the Site City Agreement ...' The words 'may transfer' reserve all authority to the City and directly contradict the staff's assertion, without substantiation, that the City was 'required' to transfer all funds. [emphasis in original]

The Audit staff is fully aware of the wording contained in the Memorandum of Agreement between the City and the Host Committee and quoted it in the Exit Conference Memorandum. Our conclusions regarding the Events Fund and the fact that it appears to have been restricted to the Republican National Convention are based on the information referred to previously in this report. We do not dispute that the agreement refers to 11 CFR §9008.53 or that it says the City "may transfer" funds, but the inclusion of this wording in the agreement does not establish that the fund was unrestricted.

The City further believes "[t]hat an unrestricted account as expressly provided for in the Memorandum of Agreement and as observed in practice by the City could 'appear' to be restricted from the letters of third parties is just not credible. ... [t]he City of San Diego sent each donor a confirming letter that expressly acknowledged the donation and expressly provided 'your funds will help the City of San Diego defray its financial obligations as the Host City for national conventions.'"

The Audit staff does not believe that a letter sent to a donor after the fact alters the donor's designation of how funds were to be used. The City states that the notion that an unrestricted account as expressly provided for could appear to be restricted from the letters of third parties is just not credible. Rather, the City appears to suggest that the Audit staff should rely solely on the language of the thank you letters and the Memorandum. The Audit staff notes that the *Government Auditing Standards* state in part that [e]vidence obtained from a credible third party is more competent than that secured from the auditee." The donors' designations accompanying the donations are a credible source. The Commission's regulations place great importance on contributor designations of contributions to specific elections.

The City also states that:

To the extent third party donors believed their contributions would be used for the Republican National Convention, they were logical but mistaken, as shown by the sample acknowledgment letter. The critical element is the activity of the City of San Diego and not the belief of donors. 11 C.F.R. 9008.53(b)(1)(i) mandates that the separate account be "not restricted," but this limitation can only be assessed by the activities of the City, which are clear from both paper and practice.

As will be discussed below, many of the donations were accompanied by correspondence that contained not just an indication of the donors belief that the funds would be used for the 1996 Republican National Convention, but a designation of the funds for that purpose. Further, the facts suggest that the City in fact carried out their belief or instruction in that all moneys of the Events Fund were transferred to the Host Committee for use in connection with Convention.

The City also argues that:

The staff makes much of the fact that all funds in the account were transferred to the Host Committee and that a list of 235 donors has a column head of 'RNC Donors' and notations of 'RNC contributions.' Significantly, this list is dated October 22, 1996, long after the August 12-15, 1996, convention, and as the declaration of the Deputy City Manager confirms, it is simply a list generated by staff and does nothing to diminish the complete control the City retained over the Civic Events Fund and the funds it contained.

In our opinion, a list dated approximately two months after the Convention is an indication that these contributions were intended for and were in fact used for the Republican National Convention. That the list was titled "RNC Donors" and "RNC contributions" suggests that the staff person(s) who prepared this list was aware that the fund had been used for the benefit of the Convention.

The City also attempts to downplay the letter from the Executive Assistant to the Chairman of the Host Committee to a City official by saying that it

...expresses his understanding of transfers, again, does nothing to diminish the City's control over the account. 11 C.F.R. 9008.53(b)(1) does not in any way limit transfers to

a Host Committee, rather it mandates that control be maintained by the City. Hence the staff's conclusion that the Host Committee could 'direct' a transfer is simply erroneous. Indeed, the contract calling for such transfers was purposefully framed in the permissive ('may transfer') and the transfers were withheld when questions arose over use of the expenditure or legality of the contribution. All documentation confirms that the City maintained unrestricted control over the account, as acknowledged in Memorandum of Agreement Section 4, confirmed by the August 9, 1995, letter of the City Manager to the Executive Director of the Host Committee. In practice the City would hold up certain transfers pending clarification of purpose or advise from counsel on the legality of the donation.

The Audit staff does not argue that the City controlled the moneys deposited in the Events Fund. Control is not a factor in the regulation. Rather the regulation simply states that the fund cannot be restricted to use in connection with any particular convention. However, we do believe that the documentation available demonstrates that the parties involved, as well as the donors, were aware that the moneys being deposited in the Events Fund were to be used in connection with the 1996 Republican National Convention. We also acknowledge that in two instances, the City delayed transferring donations to the Host Committee. As noted by the City, one of the delays was due to uncertainty about the acceptability of the donations. There is no indication of the City ever withholding moneys from the Host Committee because some use of the funds other than the 1996 Republican National Convention was being contemplated.

The letter to the Host Committee which is referenced states, in relevant part, that "As you are aware, the funds transferred to the San Diego Host Committee in accordance with Section 4 of the Memorandum are to be used exclusively for the public purpose of defraying costs for public facilities and related support services necessary for the conduct of the 1996 Republican National Convention. They are not to be expended on budget items that are not for exclusively public purposes, such as a contribution to or expenditures for any candidate or political committee." Although this does not establish that all funds in the Events Fund were required to be transferred to the Host Committee, it does make it clear that funds that were transferred were to be used exclusively for the Convention. This, in conjunction with the fact that all funds collected were so transferred, leaves little doubt that the Events Fund was, in fact, restricted for use in the Convention.

The declaration from the Deputy City Manager also addresses the issue of whether the Events Fund was restricted to the 1996 Republican National Convention. He addresses many of the same issues that are discussed above and adds that:

The Civic Events Fund, Account No. 90501, is still an active account and the City Manager plans to use it for receipts and disbursements necessary to host the 1998 Super Bowl, which is another civic event for which the City of San Diego has specified obligations-

The fact that the Events Fund exists today, albeit dormant, fails to establish that it was not restricted for use in connection with the 1996 Republican National Convention during the period before, during and some time after the Convention. This clearly does not outweigh the substantial evidence presented above. The Events Fund was established for the Convention, all funds received by the Events Fund were dedicated to the Convention, and as will be explained below, funds were solicited for and many of the donations were designated by the donor for the Convention. The staff concludes that, taken together, these facts establish that the Civic Events Fund Account 90501 was in practice restricted to use in connection with the 1996 Republican National Convention.

**D. DONATIONS SOLICITED AND DESIGNATED FOR USE
IN CONNECTION TO A PARTICULAR CONVENTION**

With respect to solicitations associated with the receipt of donations to the Events Fund, it seemed clear that the Host Committee performed some solicitation and representatives of the City performed some. Other than the written solicitation mentioned in the background discussion, there was no documentation provided to establish what potential donors were told concerning their donations to the Events Fund. It does appear that they were told that the donations could qualify as a charitable deduction if made to the Events Fund rather than to the Host Committee¹⁶. Further, the Audit staff assumed that if a donor was approached by the Host Committee for the 1996 Republican National Convention, the donor would reasonably believe that any donation made, whether to the City or the Host Committee, would be related to the Convention.

Although the Audit staff has no record of the solicitation methods used by officials of the City, some documentation was available which established that these donors also expected their funds to be used for the 1996 Republican National Convention. For example, the letter accompanying one check stated, "[a]s we discussed, enclosed is our check in the amount of \$10,000 payable to the City of San Diego Host Committee Fund to assist in meeting the city's obligation to the Republican National Convention. As I understand the situation, we will also receive two tickets for the City of San Diego Gala in July. I am in receipt of the letter, signed by you and others, relative to the July 2 meeting in the Mayor's office. In that we have made this contribution, I see no need to attend the meeting. Please use our invitation for another likely prospect." Thus, this individual appears to have been solicited by the City for a donation to aid with the Convention.

There were also two letters addressed to the Mayor which indicated that the donor was aware that, or instructed that, the donation be used to benefit the Convention. One stated, in part, "[c]ongratulations on your successful efforts to have the 1996 Republican National Convention held in San Diego. As promised, enclosed is my

¹⁶ The tax consequences of donations to the Events Fund are not within the Commission's jurisdiction.

personal check, made payable to the San Diego City's Municipal Fund in the amount of \$500,000. It is to be used for improvements to the convention Center in connection with the 1996 Republican National Convention." The other stated, in part. "[a]ttached is a check for San Diego and the Host Committee for the Republican convention. It is a pleasure for us to be of assistance to you in your efforts to produce a great convention."

One piece of correspondence accompanying a check stated that "I am pleased to enclose a check for \$100,000 indicating support for the August 1996 Republican National Convention to be held in San Diego. We look forward to an interesting convention this year." Another letter stated "[e]nclosed please find a check in the amount of \$75,000 as a contribution to City of San Diego Convention fund to offset partially the City's expenses in hosting the 1996 Republican National Convention." Still another piece of correspondence stated "[e]nclosed is a ... check in the amount of \$100,000 payable to the City of San Diego to help support the Host Committee Fund ... for the 1996 Republican National Convention." Finally, one letter stated that "[a]s a sponsor of the 1996 Republican National Convention, I am pleased to forward to you the enclosed check ... for fifty thousand dollars."

Correspondence or notations on donor checks accompanied donations totaling \$2,601,000 to the Events Fund which designated the donation for the benefit of the 1996 Republican National Convention. As stated previously, although there was no record of what donors were told, the correspondence described above indicated that the Host Committee was involved in raising funds for the Events Fund, and that the money was solicited for, and donations were designated for, the 1996 Republican National Convention.

As noted earlier, for all donations deposited in the Events Fund, the donor was sent a form letter which stated, in part, "[t]hank you for your check ... payable to the City of San Diego. Although no goods or services were (or will be) provided in consideration for your payment to the City, your funds will help the City of San Diego defray its financial obligations as the Host City for national conventions." An official of the City told the Audit staff that regardless of what a donor believed the donation to be for, this letter was sent to the donors to make it clear to them that the funds were not restricted and could be used for any convention. In response to a conference with a member of the Audit staff, an attorney for the City wrote that "...to ensure that each donor understood that each donation to the City's fund was unrestricted, the City sent each donor an acknowledgment letter. This letter expressly confirms that the funds are unrestricted and will be used to defray financial obligations for 'national conventions.' While the Republican National Convention had contracted for certain public services under the Site City Agreement, to the extent that public facilities and services were provided in an efficient and attractive manner, such provisions clearly benefit the City in attracting other national conventions. Moreover, the City fund remains open and viable for use in providing other public events."

However, this after the fact letter did not expressly confirm that the funds were not designated by the donor and did not alter what appeared to have been the donor's clear understanding and intent at the time of the donation. Further, regardless of the representation in the acknowledgment letter, the record indicated that the Events Fund was dedicated to the Republican National Convention.

In the Exit Conference Memorandum, the Audit staff recommended that the City provide any documentation and relevant comments which it felt demonstrated that the funds received were not solicited or designated for use in connection with the 1996 Republican National Convention.

In response to this section of the Exit Conference Memorandum, the City begins by stating that:

The staff candidly concedes there is no documentation to establish what contributors were told concerning their contributions, yet from the statements of the donors, not the City or the Host Committee, the staff speculates from the mere impressions of donors that the 'contributions were restricted to the 1996 Republican National Convention.' Such a statement is incomplete at best and misleading at worst. First, there clearly is documentation on what all contributors to the Civic Events Fund were told. Each received the same letter... The letter expressly states that the contributions would go to fulfill obligations incurred for 'national conventions.'

The City's response places great emphasis on the letter that each donor received which informed them that their donations would be used to help defray the City's obligations "for national conventions". However, as explained above, the notations on many of the donations make clear the donors' intent, and the City later in its response acknowledges that "[o]f course, given the fact that San Diego is the Host City and the fact that there is only one national convention being hosted, it is naive to think that contributors would not assume that their contributions to the Civic Events Fund would not indirectly benefit the Republican National Convention. [emphasis in original]" As established above, 100% of the funds raised for the Events Fund were for the direct benefit of the Convention effort. Further, this letter does not contain language that would dispel any confusion that a donor may have experienced, and does not negate the specific designations that accompanied many of the donations.

With regard to how funds were solicited for the Events Fund and what contributors were told, the City notes:

While the bulk of the contributions were raised through the activities of the Host Committee, the solicitations that the City of San Diego participated in were directed at its role as host city and not any particular convention. Attached as Exhibit D is a form letter used to solicit participation for a luncheon in the Mayor's Office. The letter states the basic fact of San Diego being the Host City but solicits participation "to showcase our great city" and not to channel contributions to a particular convention.

The letter referenced by the City was on the Host Committee's letterhead and was from the Mayor, the Chair of the Host Committee, and four members of Congress. The solicitation states, in part, that:

As a distinguished member of San Diego's business and community leadership, we want you to join all of us for a luncheon in the Mayor's office on Tuesday, July 2, 1996.

As you know, San Diego has the honor of being the host city for the 1996 Republican National Convention this August. Three U.S. cities will shine in the glow of the national and international spotlight this summer - Atlanta, hosting the Olympics; Chicago, hosting the Democratic convention, and our home town of San Diego, serving as host to the 1996 Republican National Convention.

We want you to be a part of this rare opportunity to showcase our great city. Our goal is to involve San Diego's key leaders at the highest level in this effort. The Host Committee is already 75% toward its goal of raising \$12 million dollars to host this spectacular event. Your participation, as a leading member of the San Diego community, is vital to our overall success.

The letter was from the Mayor of San Diego, but the solicitation was on behalf of the Host Committee. The text leaves no doubt for which convention effort funds are being solicited. The City did not provide any response devices or other pages accompanying the letter, if any. Therefore, we do not know what donors were told concerning donations to the City of San Diego. However, the record does show that donations to the Events Fund were received as a result of this solicitation. It is safe to assume that, absent other materials, if a person made a donation to the Events Fund in response to such a solicitation, there would be little doubt that the funds would be used to support the City's role in the 1996 Republican National Convention.

There are two requirements placed on a municipal fund at 11 CFR §9008.53(b)(1). First, that the fund may not be restricted to use with any particular convention, and second, donations to the fund may not be solicited or designated for use in connection with any particular convention, event or activity. The first of the requirements is discussed in the previous section, the second here. As for solicitation, only two written solicitations were made available. The letter discussed above clearly solicits funds to be used in connection with the Convention. The other is a Host Committee package that is submitted with two sheets that explain that individuals may be able to take a charitable donation tax deduction if their donation is made to the City's Events Fund. Again, this package leaves no doubt that funds are being solicited for use in connection with the 1996 Republican National Convention. To the extent that these solicitations were used to solicit donations for the Events Fund, the donations were solicited for use in connection with the Convention.

The donor, not the Events Fund, makes the designation of donations for use in connection with a particular convention, event, or activity. As noted in the Exit Conference Memorandum, donations to the Events Fund totaling \$2.6 million include

some notation from the donor designating the funds for use in connection the 1996 Republican National Convention.

Given the above, the staff concludes that donations were both solicited specifically for use in connection with the Convention and donations were received that the donor designated for that purpose. The vague wording in the Events Fund's acknowledgment letter does not alter either of these facts.

In a final comment the City contends that:

While the Civic Events Fund remains unrestricted, the allowances and restrictions of 11 C.F.R. 9008.53 are internally inconsistent. At Subsection (b)(1) of the regulation, a city is expressly allowed to create a separate fund to pay for all 'expenses listed in 11 C.F.R. 9008.52(c),' which includes providing 'the national committee use of an auditorium' (emphasis in original). Obviously this means only one national committee unless the host city were the host city of all nominating conventions. Section 9008.53(b)(1)(ii) then prohibits the fund's use to 'any particular convention.' Hence the regulation authorizes both a fund and expenditures for hosting a 'national committee' conducting a nominating convention while at the same time it prohibits expenditures for a 'particular convention.' This ignores the reality that a 'national committee' conducting a convention and a 'particular convention' are one and the same in the eyes of both host cities and donors who wish to showcase their city.

The February 1996 issue of the Record which the City referred to earlier notes that if such a fund is established, then it "...must be intended to promote the city and attract political and nonpolitical conventions to the city generally, and not established solely to provide services to the nominating convention. In addition, donations to the municipal fund cannot be earmarked in any way or intended for any particular convention, event, or activity." In addition, the Explanation and Justification for 11 CFR §9008.53 explains that "[f]irst, the fund must have been created to attract conventions and events to the locality on a broad scale, and cannot have been established for the sole purpose of providing services and facilities to the nominating convention. Second, donations to the fund must be unrestricted and may not be designated for any particular use, including the nominating convention." These two publications make clear that any participation of a municipal fund in financing convention expenses must be part of a specific effort that the city makes to attract events and functions of various types; not as was done in the instant case, an effort to raise funds for a particular convention. The event specific activities of the community are to be handled by the host committee which insures that those activities, and donations to support them, will be disclosed. Using a non-reporting municipal fund to solicit convention specific donations thwarts the disclosure of the source of convention funding. When the requirements of 11 CFR §9008.53 are viewed as described above, they are limiting, but not contradictory.

E. HOST COMMITTEE RELATIONSHIP

The Regulations at 11 CFR §9008.53(b) regarding donations to municipalities and government agencies do not directly apply to host committees. The

primary requirement for host committees regarding the receipt of donations is that the donors must be from the Metropolitan Area of the Host City. As discussed above, the Audit staff believes that donations received by the Events Fund did not comply with 11 CFR §9008.53(b). The Host Committee believes that it had no responsibility to insure that funds forwarded by the Events Fund complied with these regulations and it was the City's obligation to screen those donations, and all the Host Committee needed to be concerned with was that the City was local.

However, given the Host Committee's involvement in raising donations for the Events Fund, the Audit staff does not believe it can insulate itself from the Events Fund's activity. The documentation available for the Events Fund shows that the Host Committee originally received at least \$3,507,450 in donations for the Events Fund that it then forwarded to the City for deposit. As noted above, as of December 30, 1996 all funds deposited by the Events Fund were transferred to the Host Committee. Of this amount, \$343,600 appeared to be from outside of the San Diego Metropolitan Area. The Host Committee should have been aware that at least this amount was not from local sources.

Further, there is little doubt that the Host Committee was aware that all funds deposited in the Events Fund were to be sent to it. For all the donations received by the Host Committee and sent to the City, a memorandum was sent which asked that the amount be transferred back as soon as possible. It appears that the City was using the Events Fund as a depository for donations that were routed through the City of San Diego. Therefore, the Host Committee was aware that the Events Fund was being restricted for use in connection with the 1996 Republican National Convention.

The Host Committee stated that with respect to the donations it solicited, its chief fundraiser was careful to inform donors that although they could donate to the City, the donations could not be earmarked for the Republican National Convention. Although the Audit staff was unable to verify what donors were told at the time of the solicitation, a total of \$1,606,100 of the donations forwarded by the Host Committee were accompanied by correspondence or notations indicating that the donation was for the benefit of the 1996 Republican National Convention.

Therefore, although 11 CFR §9008.53(b) applies to municipalities and government agencies, it appears that the Host Committee was involved with officials of the City in raising money for the Events Fund, was aware of how money was raised for the account, and was aware of the donor designations. The Audit staff believes that for the above reasons, the Host Committee was, or should have been, aware that funds forwarded to it from the Events Fund were not raised in accordance with the regulation and should not have been accepted.

In the Exit Conference Memorandum, the Audit staff recommended that the Host Committee provide any relevant comments and documentation that it feels

demonstrated that the it had no accountability for the donations deposited in the Events Fund and later transferred.

In response, the Host Committee states that it received about \$24,000,000 from all sources and that the Audit staff was unable to find any instances where it received any contributions deemed to be impermissible under the host committee regulations. Instead, it states that our focus is on certain contributions received by the City and that the Host Committee is being held "...vicariously responsible for some of the funds that are alleged to have been improperly raised, collected and accounted for by the City." The Host Committee states that:

For the reasons stated below, the Committee assumes no responsibility for the activities of the City. ... For the record, however, the Committee does not believe that the City violated FEC rules applicable to municipalities (see 11 C.F.R. § 9008.53). ... The Committee strongly disagrees with the Audit Staff's theory of vicarious responsibility. First, the Committee, the City and the COA all retained separate legal counsel and accountants. The City of San Diego was represented by the San Diego City Attorney's office and outside Washington, D.C. election law counsel at a very early stage. While it is true that all three entities were engaged in a common enterprise -- the financing of the 1996 Republican National Convention in San Diego -- the three groups were independent and at arm's lengths as is evidenced by the lengthy negotiations of the Site City Agreement, the Memorandum Agreement between the Committee and the City, and the often touchy negotiations with respect to responsibility for raising and spending funds. Moreover, since the City answered directly to the San Diego City Council, it was virtually impossible for the Committee to use the City's Events Fund as a Committee depository.

A contributor's decision as to whether or not to contribute to the Committee or the City was primarily based on tax considerations. Individuals tended to contribute to the City while businesses tended to contribute to the Committee. Some contributors, moreover, chose to contribute to the City as a matter of civic pride. Checks naming the City as payee, but received by the Committee, were sent to the City for handling. The fact that the Committee forwarded checks to their proper destination does not make the Committee responsible for them. Only checks deposited in the Committee's account were fully screened by the Committee.

The issue of donations from non-local individuals has already been addressed and the legally distinct nature of the three entities involved is not at issue. According to the Host Committee, the primary consideration for most of the donors when deciding which entity to donate to was whether or not the donation would be tax deductible. Solicitation material states that donations from individuals would only be tax deductible if made to the City of San Diego. If this were an accurate statement, it would suggest that the two entities, although legally distinct, were two sides of the same coin. It has already been shown that some donations to each organization were generated by the same solicitations, and that many of the donations to the Events Fund were routed through the Host Committee, some containing distinct donor designations for the Convention, before being deposited by the Events Fund and transferred back to the Host Committee. In such a situation it is apparent that the Host Committee was aware of the source of the donations it was receiving from the Events Fund. Therefore, the Host

Committee should be responsible for accepting those donations that do not meet the regulatory standards.

The Host Committee further states that:

The Audit Staff alludes to solicitation materials which instructed contributors to the City to send their contributions to the Committee. However, the Committee's understanding is that those materials were early drafts and were never used. The Committee's final solicitation materials that were used are attached as Exhibit 5 hereto.

The additional solicitation material provided by the Host Committee is different from that obtained during audit fieldwork. The solicitation material provided contains seven pages of information about the San Diego area and its role in hosting the 1996 Republican National Convention. There is an additional page entitled "Tax Exempt Status" which deals with contributions to the Host Committee and states that those contributions are not tax deductible as charitable contributions. The final page is titled "Charitable Contributions" and states, in part, that "Charitable contributions may be made to the City of San Diego with respect to its role as host to the 1996 Republican National Convention. Contributions to the City of San Diego for this exclusive public purpose are deductible as charitable contributions... The checks or separate transmittal, should designate that the gift to the city is for the 'Host Committee Fund', Account No. 90501." Unlike the earlier version, the mailing address for the City is then provided. Although the instruction on this example is different, it is still clear that many of the donations to the Events Fund were routed through the Host Committee.

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
San Diego Host Committee/Sail) Agenda Document #97-83
to Victory San Diego '96.)

CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on Thursday, January 22, 1998, do hereby certify that the Commission decided by a vote of 5-0 to take the following action on the above-captioned matter:

Allow the amount of \$44,067, under the category of II. B. AT&T, as set forth on pages 9 and 10 of Agenda Document #97-83, as an expense of the San Diego Host Committee/Sail to Victory San Diego '96.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

Attest:

January 23, 1998
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

W-1-FIN-10-98

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) Agenda Documents No. 97-84
Committee on Arrangements for) and No. 97-84-A
the 1996 Republican National)
Convention.)

AMENDED CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on Thursday, April 16, 1998, do hereby certify that the Commission took the following actions on the above-captioned matter:

1. Decided by a vote of 4-1 to allow the amount of \$133,225 for security access badges and that this amount be deducted from the total repayment to the United States Treasury by the Committee on Arrangements, as set forth in Recommendation #1 of Agenda Document No. 97-84.

Commissioners Aikens, Elliott, McDonald, and McGarry voted affirmatively for the decision; Commissioner Thomas dissented.

2. Failed in a vote of 3-2 to pass a motion to approve Recommendation #1, as set forth in Agenda Document No. 97-84, as amended.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

(continued)

Federal Election Commission
Certification for Committee on
Arrangements for the 1996
Republican National Convention
Thursday, April 16, 1998

Page 2

3. Decided by a vote of 5-0 to determine that the amount of \$70,000 for the Russell Film Shoot was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

4. Decided by a vote of 5-0 to determine that the amount of \$138,442 for remote shoots was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision:

5. Decided by a vote of 5-0 to reject Recommendation #2, as set forth in Agenda Document No. 97-84.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

(continued)

11-1-98 11:58 AM

Federal Election Commission
Certification for Committee on
Arrangements for the 1996
Republican National Convention
Thursday, April 16, 1998

Page 3

6. Failed in a vote of 3-2 to pass a motion to approve Recommendation #3, as set forth in Agenda Document No. 97-84, as amended to reflect the amount of \$1,154,464 is repayable to the United States Treasury.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

7. Failed in a vote of 3-2 to pass a motion to determine that \$424,470 (amount for "Basic Feed" Paid by the RNC) is repayable to the United States Treasury, and that the Committee should file an amended disclosure report to itemize this as an in-kind contribution.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for this motion; Commissioners Aikens and Elliott dissented.

8. Decided by a vote of 4-1 to pass a motion to approve a repayment determination by the Committee on Arrangements of \$729,994, based on a 74% cost ratio, for production costs.

Commissioners Elliott, McDonald, McGarry, and Thomas voted affirmatively for this decision; Commissioner Aikens dissented.

(continued)

Federal Election Commission
Certification for Committee on
Arrangements for the 1996
Republican National Convention
Thursday, April 16, 1998

Page 4

9. Decided by a vote of 5-0 to pass a motion to approve Recommendation #4, as set forth in Agenda Document No. 97-84.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for this decision.

Attest:

April 30, 1998
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

11-EN-UNIS-98

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	Agenda Documents No. 97-84,
Committee on Arrangements for)	No. 97-84-A, No. 97-84-C,
the 1996 Republican National)	and No. 97-84-D.
Convention.)	

AMENDED CERTIFICATION

I, Mary W. Dove, recording secretary for the Federal Election Commission open meeting on Thursday, April 23, 1998 do hereby certify that the Commission took the following actions on the above-captioned matter:

1. Decided by a vote of 5-0 to determine that the amount of \$156,399, categorized as "Decorations/Music", was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, Elliott, McDonald, McGarry, and Thomas voted affirmatively for the decision.

2. Failed by a vote of 3-2 to pass a motion to determine that the amount of \$528,610 for lighting and rigging was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens and Elliott dissented.

(continued)

99-14-100

Federal Election Commission
Certification for Committee on
Arrangements for the 1996
Republican National Convention
Thursday, April 23, 1998

Page 2

3. Decided by a vote of 4-1 to determine that the amount of \$141,907 for closed circuit television expenses was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

4. Decided by a vote of 4-1 to determine that the amount of \$22,416 relating to entertainment expenses in the Sail Area was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

5. Decided by a vote of 4-1 to determine that the amount of \$177,732 representing payments to producers, directors, and production staff was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

(continued)

04-23-98 10:51 AM

Federal Election Commission
Certification for Committee on
Arrangements for the 1996
Republican National Convention
Thursday, April 23, 1998

Page 3

6. Decided by a vote of 4-1 to determine that the amount of \$87,638 for miscellaneous expenses associated with television production was an in-kind contribution by the Host Committee to the Committee on Arrangements and is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize this in-kind contribution.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

7. Decided by a vote of 4-1 to approve Recommendation #5, as set forth on Page 47 of Agenda Document No. 97-84.

Commissioners Aikens, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Elliott dissented.

Attest:

April 30, 1998
Date

Mary W. Dove
Mary W. Dove
Administrative Assistant

ALLOCATION OF NASH CONTRACT
Based On Commission Votes of April 16 and 23, 1998

Acct. No.	Nash Line Item Descriptions	Nash Total	Lighting/Rigging		Decorations/Music		Labor/Equipment Closed Circuit TV		Sail Area		Overhead		Miscellaneous		Indirect Cost	
			Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA		
2002	Co-Producer	\$60,000						\$40,000 7/	\$20,000							
2003	TV Producer	\$50,000						\$18,750 7/			\$25,000 /		\$6,250 7/			
2100	Directors	\$39,016						\$39,016 7/								
2300	Travel And Living	\$34,966													\$5,112	\$29,854
	Production Staff															
3001	Prod. Coord.	\$5,570									\$5,570 /					
3002	Prod. Acct.	\$15,000									\$15,000 /					
3003	Stage Mngr	\$8,438						\$8,438 7/								
3004	Staging Super.	\$38,500	\$38,500													
3005	Prod. Mngr	\$22,790	\$22,790													
3006	Script Super.	\$6,442						\$6,442 7/								
3007	Prod. Assist.	\$6,163						\$6,163 7/								
3100	Music/Orchestra	\$49,032			\$49,032 /											
3200	Rigging/Staging Labor	\$540,345	\$528,610 /					\$11,735 5/								
3600	Special Effects	\$77,595			\$77,595 /											
4000	Makeup/Hairdressing	\$3,000						\$3,000 5/								
4201	Video Crew Labor	\$62,102						\$56,781 5/					\$5,321			
4208	Tape Stock	\$200						\$200 5/								
4209	Scrn. Cont. Mbl.	\$90,511					\$90,511									
4210	Satellite	\$73,748												\$73,748 8/		
4211	Remote Prod.*	\$138,442												\$138,442 2/		
4215	Teleprompter	\$56,651						\$56,651								
4300	Sound Operations	\$5,250						\$5,250 5/								
4400	Transportation	\$10,644													\$5,084	\$5,560
	Location															
4501	Trans. Fares	\$21,788													\$6,858	\$14,930
4502	Hotels/Motels	\$73,864													\$39,204	\$34,660
4503	Catering	\$23,610													\$14,174	\$9,436
4506	Office Exp.	\$8,819													\$4,504	\$4,315
4507	Tele./Telegraph	\$2,241													\$902	\$1,339
4521	Per Diems	\$61,055													\$31,633	\$29,422
4800	Video Segment	\$174,749											\$174,749			
4900	Editing	\$5,665											\$5,665			
5300	Main & End Titles	\$26,684			\$26,684 /											
7500	Fees	\$3,709														
8001	Entertainer Exp.	\$213													\$2,163	\$1,544
													\$213 8/			

Page 63

ALLOCATION OF NASH CONTRACT
Based On Commission Votes of April 16 and 23, 1998

Acct. No.	Nash Line Item Descriptions	Nash Total	Lighting/Rigging		Decorations/Music		Labor/Equipment Closed Circuit TV		Sail Area		Overhead		Miscellaneous		Indirect Cost		
			Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	Host	COA	
8002	Operations	\$56,354														\$42,773	\$13,581
8003	Runners	\$8,667														\$5,054	\$3,613
8004	Sail Area	\$145,299							\$145,299								
8009	Sail Entertainment	\$18,935								\$18,935	/						
8010	Entertain. Coord.	\$3,481								\$3,481	/						
8011	Continuity Writer	\$10,000												\$10,000	8/		
8005	Announcer	\$986												\$986	8/		
8006	Conv. Mngr. Shoot	\$1,220											\$1,220				
8007	Russel Shoot	\$70,000												\$70,000	1/		
8008	Tape Coordinator	\$7,806						\$7,806	5/								
8012	Stand Ins	\$2,691												\$2,691	8/		
8999	WindDown & Audit	\$40,842														\$23,817	\$17,025
Total		\$2,163,064	\$589,900	\$0	\$0	\$153,311	\$147,162	\$203,581	\$165,299	\$22,416	\$0	\$45,570	\$186,955	\$302,330	\$181,278	\$165,281	
Total COA		\$892,489															
Total Host		\$1,270,595															
Grand Total		\$2,163,064															

Page 64

* Also Includes #9000-Russel, #10000-Sacramento, #11000-San Diego, #12000-Dole Live, #13000-Fon Du Lac, and #14000-Miami.

- 1/ April 16, 1998 Vote Item 3 on the Vote Certification
- 2/ April 16, 1998 Vote Item 4 on the Vote Certification
- 3/ April 23, 1998 Vote The sum of these amounts (\$153,311) plus \$3,088 in the Indirect Cost column (\$2,795 Trans. Fares, and \$293 Hotels/Motels) equal \$156,399. Item 1. on the Vote Certification
- 4/ April 23, 1998 Vote Item 2 on the Vote Certification
- 5/ April 23, 1998 Vote The sum of these amounts (\$84,772) plus \$57,136 in the Indirect Cost column (\$2,652 in Transportation, \$7,989 in Trans. Fares, \$29,644 in Hotels/Motels, and \$16,851 in Per D equal \$141,908 Item 3 on the Vote Certification
- 6/ April 23, 1998 Vote The sum of these amounts is \$22,416 Item 4 on the Vote Certification
- 7/ April 23, 1998 Vote The sum of these figures is \$170,629 This amount is \$177,732 less a correction documented by the Committee after the Commission's vote This vote is item 5 on the Vote Certification
- 8/ April 23, 1998 Vote The sum of these amounts is \$87,638 Item 6 on the Vote Certification.



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION
Nov 19 10 57 AM '97

November 19, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim L. Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

J. Duane Pugh Jr.
Attorney

SUBJECT: Proposed Audit Report of the San Diego Host Committee/Sail to Victory
San Diego '96 (LRA 504)

The Office of General Counsel has reviewed the proposed Audit Report on the San Diego Host Committee/Sail to Victory San Diego '96 (the "Host Committee"), which was submitted to this Office on September 30, 1997 for review on an expedited basis.¹ This memorandum presents our comments on the proposed Audit Report.² Some of the issues discussed in the proposed Audit Report and herein overlap with issues in the proposed Audit Report for the 1996 Committee on Arrangements for the Republican

¹ The proposed Audit Report provided is an unreferenced report. As the Audit Division noted, changes may be made as the proposed Audit Report is referenced.

² Because the proposed Audit Report concerns the audit of a host committee, we recommend that the Commission consider this document in open session in accordance with 11 C.F.R. §§ 9008.54, 9007.1(e)(1) and 9038.1(e)(1).

UNRECORDED COPY

National Convention (the "Committee on Arrangements").³ To the extent our comments impact the proposed Audit Report on the Committee on Arrangements, that report should be changed accordingly.⁴

We concur with the findings in the proposed Audit Report that are not addressed in this memorandum. If you have any questions concerning our comments, please contact Duane Pugh, the attorney assigned to this review.

I. HOST COMMITTEE PAYMENT TO DAVID J. NASH ASSOCIATES, INC. FOR VARIOUS SERVICES (II, C)⁵

The proposed Audit Report raises the issue of whether host certain Host Committee expenditures constitute in-kind contributions to the Committee on Arrangements that are subject to the convention expenditure limitation. The regulations promulgated under the Presidential Election Campaign Fund Act (the "Fund Act") provide that expenditures made by a host committee shall not be considered expenditures by a publicly financed national committee conducting the related convention and shall not count against the convention's expenditure limitation "provided the funds are spent in accordance with 11 C.F.R. § 9008.52" 11 C.F.R. § 9008.8(b)(1) (emphasis added). Thus, the paramount issue in evaluating a host committee expenditure is determining if the expenditure is in accordance with 11 C.F.R. § 9008.52(c).

Generally, host committee expenditures are aimed at two purposes: promoting the city (hosting the convention) and its commerce and defraying convention expenses. 44 Fed. Reg. 63,038 (Nov. 1, 1979). For example, the host committee can incur expenses to promote the suitability of the city as a convention site and it can incur expenses for construction at the convention location. 11 C.F.R. § 9008.5(c)(1)(i) and (v). However, since the national committee receives public funds for convention expenses and, therefore, is limited in the amount it can expend for the convention, the "[d]efrayal of convention expenses by a host committee is intended to be a *very narrow* exception to the statutory limitation on convention expenses." 44 Fed. Reg. 63,038 (Nov. 1, 1979)(emphasis added). Therefore, the list of permitted host committee expenses in 11 C.F.R. § 9008.52(c)(1) must be interpreted narrowly.

Although not stated explicitly in the regulations, the *Explanation and Justification* for the convention rules distinguishes between expenditures by a host committee and those by a convention committee. 44 Fed. Reg. 63,038 (Nov. 1, 1979). In its 1994

³ The proposed Audit Report for the Committee on Arrangements was submitted to this Office on October 17, 1997 and is also being reviewed on an expedited basis.

⁴ Because the resolution of some of the issues in the audit of the Host Committee may result in repayments from Committee on Arrangements pursuant to 11 C.F.R. § 9008.12, the response of both Committees are considered herein.

⁵ Parenthetical references are to the relevant section of the proposed Audit Report.

revisions, the Commission intended to continue this distinction. See 59 Fed. Reg. 33,614 (June 29, 1994). This Office concurs in the proposed Audit Report's approach of interpreting the exception permitted for host committee expenditures narrowly.

The Host Committee paid \$2,163,084⁶ to David J. Nash Associates, Inc. ("Nash") pursuant to a contract between the Host Committee and Nash for television production and related services. The proposed Audit Report permits only one category of expenditures, the construction of the Convention Center's Sail Area, an outdoor patio on the roof of the Convention Center designed to accommodate Convention attendees who could not be accommodated within the Convention Center due to its limited space. The Sail Area expenditures total \$196,032.⁷

A. Payments for Sail Area Entertainment

Among the Sail Area expenditures permitted by the proposed Audit Report are expenditures related to entertainment for the Sail Area. With regard to the entertainment provided in the Sail Area, the Committee on Arrangements explains that the entertainment was designed to fill in periods of inactivity during the convention proceedings. The Host Committee's response maintains that all of the Sail Area expenditures are permitted by 11 C.F.R. § 9008.52(c)(1)(ii), (v) and (xi).

The Office of General Counsel believes that entertainment expenses are permitted only under 11 C.F.R. § 9008.52(c)(1)(ii) and only to the extent the entertainment is part of a reception to welcome convention attendees to the city. See 11 C.F.R. § 9008.52(c)(1)(ii). Because the expenses for the entertainment at the Sail Area were part of the convention proceedings designed to fill in the "lulls" in activity at the podium and were not part of receptions to welcome convention attendees to San Diego, the expenses are not host committee expenditures permitted under 11 C.F.R. § 9008.52(c)(1). Consequently, this Office recommends that the proposed Audit Report be revised to deem the \$18,935 expended for Sail Area entertainment plus the \$3,481 for an entertainment coordinator for the Sail Area entertainment to be a \$22,416 contribution to the Committee on Arrangements.⁸

⁶ This figure is from an affidavit submitted by David J. Nash with the Committee on Arrangement's response.

⁷ The Office of General Counsel agrees with the proposed Audit Report that 11 C.F.R. § 9008.52(c)(1)(v) permits the Host Committee expenditures that were related to the construction of the Sail Area and the various audio-visual systems necessary to broadcast the convention proceedings to those attendees in the Sail Area. These expenditures constitute the provision of full use of the Convention Center and the provision of construction for that location, as expressly permitted by 11 C.F.R. § 9008.52(c)(1)(v).

⁸ The Exit Conference Memorandum did not conclude that the entertainment expenditures related to the Sail Area were impermissible under 11 C.F.R. § 9008.52(c)(1). However, the Audit Report may include issues not raised in the Exit Conference Memorandum. 11 C.F.R. §§ 9008.11, 9007.1(d)(1) and 9038.1(d)(1). The Committee on Arrangements will be provided with an opportunity to address this issue if it is disputed in the repayment process. 11 C.F.R. §§ 9008.12(c) and 9007.2(f).

B. Payments for "Decorations/Music"

The Committee on Arrangements identifies \$3,088 of the expenditures attributed to decorations/music as specifically related to the hotel and transportation costs for the orchestra. However, the Committees have made no showing that these costs comply with the requirements in 11 C.F.R. § 9008.52(c)(1)(vi) (local transportation services) and 11 C.F.R. § 9008.52(c)(1)(ix) (hotel rooms). Thus, this Office concurs with the proposed Audit Report's conclusion with respect to this category of expenditures. However, with respect to \$3,088 for hotel and transportation costs, we recommend that the proposed Audit Report be revised to incorporate the relevant regulations.

II. RECEIPTS AND DISBURSEMENTS OF CITY OF SAN DIEGO EVENTS FUND (III, C and D)

The proposed Audit Report concludes that the City of San Diego's City Civic Events Fund (the "Events Fund")⁹ was "in practice restricted to use in connection with the 1996 Republican National Convention," contrary to 11 C.F.R. § 9008.53(b)(1)(i) because: (1) the Events Fund was established for the 1996 Republican National Convention; (2) there was no indication that the Events Fund had been used for any other purpose or that any donations had been solicited or received for any other event; (3) Events Fund documents that suggest it was restricted to the 1996 Republican National Convention; (4) designations from donors to the Events Fund that their donations were to be used in connection with the 1996 Republican National Convention; and (5) the contractual arrangement between the Host Committee and the Events Fund pursuant to which all donations forwarded to the Events Fund by the Host Committee were in turn donated to the Host Committee.

The City's response states that "the audit staff accurately assesses that the Civic Events Funds was set up in connection with the 1996 Republican National Convention," but it argues that such an approach is permitted by Advisory Opinions 1982-27 and 1983-29. With respect to the Events Fund donations forwarded to it by the Host Committee, the City contends that the contract between it and the host committee was permissive in allowing the transfer of donations to the Host Committee. Finally, the City states that it sent each of the Events Fund donors a letter stating that the Events Fund would be used in connection with "national conventions."

This Office concurs with the proposed Audit Report's conclusion that the Events Fund was not operated in compliance with 11 C.F.R. § 9008.53. The joint fundraising appeals signed by the Mayor of the City of San Diego and the Chair of the Host

⁹ The Commission's January 7, 1997 decision with regard to Agenda Document No. X97-03 authorized the Audit Division to examine records that demonstrated the original sources of the Events Fund's moneys. The proposed Audit Report identifies \$6,698,176 that the Host Committee received from the Events Fund.

Committee constitute solicitations designated for use in connection with the 1996 Republican National Convention contrary to 11 C.F.R. § 9008.53(b)(1)(ii). The June 1, 1996 form solicitation letter that is Exhibit D to the City's response asks recipients "to be a part of this rare opportunity to showcase our great city." Two previous references to the 1996 Republican National Convention make clear that "this rare opportunity" is that particular convention, and not efforts to attract any convention, event or activity to San Diego.

This Office also concurs with the proposed Audit Report's conclusion that the Events Fund operated contrary to 11 C.F.R. § 9008.53(b)(1)(ii) by accepting restricted donations. The proposed Audit Report states that Events Fund donations totaling \$2,601,000 were accompanied by correspondence from the donors or notations made by the donors on their checks that designated the donation for use in connection with the 1996 Republican National Convention. The City's response argues that it cured this apparent noncompliance with its acknowledgment letters sent to all donors that stated "your funds will help the City of San Diego defray its financial obligations as the Host City for national conventions." The City states that plural "conventions" was intended to signify that the funds were not restricted to the 1996 Republican National Convention.

The Events Fund could have requested written redesignations from the donors that specify their donations are not restricted to a particular convention, event or activity. Nonetheless, this Office believes that the City's letters are not sufficiently clear to inform the donors that the City did not accept any restrictions the donors had placed on their donations. Consequently, this Office believes that the City's letters failed to cure any noncompliance related to any restricted donations.

Finally, there is some question whether the Events Fund was restricted for use in connection with 1996 Republican National Convention and therefore not in compliance with 11 C.F.R. § 9008.53(b)(1)(i). On the one hand, the document record before us supports the City's position that the Events Fund was not restricted as that term is used in 11 C.F.R. § 9008.53(b)(1)(i),¹⁰ despite the City's statement that the Events Fund was "set up" in connection with the 1996 Republican National Convention.¹¹ However, on the

¹⁰ The Resolution attached to the City's response establishes that the name of a corporation known as San Diego Festivals, Inc. was changed to the San Diego Civic Events Fund, and its Articles of Incorporation were also amended to expand the Events Fund's purpose to include supporting a broad array of community events that enrich the quality of life in the City of San Diego. Additionally, the Events Fund previously supported an art exhibition when it was known as San Diego Festivals, Inc., and the Deputy City Manager states in his affidavit that the Events Fund will be used again in connection with the 1998 Super Bowl. The City is correct when it emphasizes that the permissive language in its contract with the Host Committee permitted, but did not require, the Events Fund to transfer the funds forwarded by the Host Committee back to the Host Committee. Because the Events Fund was under no contractual obligation to provide all of the funds to the Host Committee, the contract does not impose a restriction on the Events Fund.

¹¹ The City's response does not correctly characterize the requirement in 11 C.F.R. § 9008.53(b)(1) that the municipal fund be a separate fund. That provision requires that the monies in a municipal fund be

other hand, the Events Fund's actions in the election year were apparently devoted exclusively to the 1996 Republican National Convention and therefore support the conclusion that the Events Fund was improperly restricted to the 1996 Republican National Convention.¹² Thus, although the Events Fund can point to long past events it supported and to future events that it may support, it appears that the only event it supported in 1996 was the Republican National Convention. The Commission's regulations are unclear as to the duration of the period that should be examined to determine if a municipal fund's activity were restricted to a particular convention contrary to 11 C.F.R. § 9008.53(b)(1)(i). Nonetheless, the Events Fund's practices support a conclusion that the Events Fund was improperly restricted contrary to 11 C.F.R. § 9008.53(b)(1)(i).

This Office recommends that the proposed Audit Report be revised to include an additional discussion of the consequences of the Events Fund's actions.¹³ A municipal fund's expenditures in compliance with 11 C.F.R. § 9008.53 do not count toward the convention committee's expenditure limit. 11 C.F.R. § 9008.8(b)(2). However, pursuant to 11 C.F.R. § 9008.12(b)(7), if the municipal fund failed to comply with 11 C.F.R. § 9008.53 in its expenditures or its acceptance of contributions, and if the convention committee knowingly helped, assisted or participated in the municipal fund's actions, then the Commission may seek a repayment from the convention committee of the municipal fund's expenditures.

We recommend that the Audit Division review the current information to determine if the Committee on Arrangements knowingly participated in this activity. If the Audit Division believes that the Committee on Arrangements must make a repayments as a result of this activity, then the proposed Audit Report on the Committee on Arrangements should be revised accordingly.

kept separate from the sponsoring municipality's general funds. The City's apparent misunderstanding is that the requirement in 11 C.F.R. § 9008.53(b)(1) requires municipal funds to segregate monies related to political conventions from other municipal fund monies.

¹² In addition to its solicitations designated for this convention and its receipt of designated contributions, the Events Fund apparently provided all of its funds to the Host Committee as they were raised.

¹³ Because of the Events Fund's actions contrary to the requirements applicable to a municipal fund pursuant to 11 C.F.R. § 9008.53, it may be determined to have been a host committee under 11 C.F.R. § 9008.52. Although the definition of a host committee found in 11 C.F.R. § 9008.52 is not entirely distinct from the definition of a municipal fund in 11 C.F.R. § 9008.51(c), the reporting requirements for a host committee are more detailed than those for a municipal fund. Compare 11 C.F.R. § 9008.51(b) (host committee) with 11 C.F.R. § 9008.51(c) (municipal fund). However, the Events Fund does receive tax funds and it existed prior and subsequent to the 1996 convention; both are characteristics that are closer to a municipal fund than a host committee. See 11 C.F.R. § 9008.53(b)(1). Under these facts, we believe the better approach is to consider Events Fund to be a municipal fund.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 27, 1998

Mr. Patrick Shea, Treasurer
San Diego Host Committee/
Sail to Victory '96
750 B Street
Suite 1400
San Diego, CA 92102

Dear Mr. Shea:

Attached please find the Audit Report on San Diego Host Committee/Sail to Victory '96. The Commission approved this report on April 23, 1998. As noted in the Background section of the report, the Commission may pursue any of the matters discussed in an enforcement action.

The Commission approved Audit Report will be placed on the public record on July 31, 1998. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Joe Stoltz of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Costa".

Robert J. Costa
Assistant Staff Director
Audit Division

cc: Frederick K. Lowell, Esquire
Ted Broomfield, Esquire
Attachment as stated

CHRONOLOGY

SAN DIEGO HOST COMMITTEE/SAIL TO VICTORY '96

Audit Fieldwork January 6, 1997 to January 22, 1997

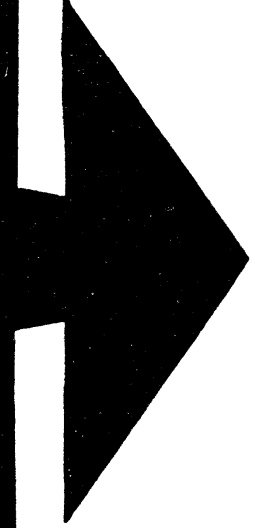
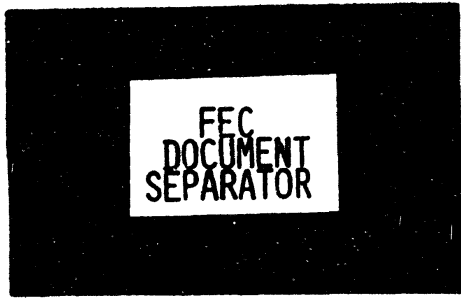
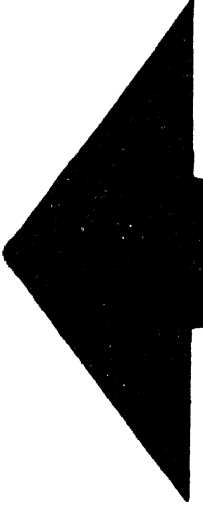
**Exit Conference Memorandum to
the Committee** May 20, 1997

**Response to the Exit Conference
Memorandum Received** August 8, 1997

Audit Report Approved April 23, 1998

NUMEROUS VIOLENCE

UNLLENJ UNIB NIS 900



FEC
DOCUMENT
SEPARATOR