FEDERAL ELECTION COMMISSION

RECORD

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AUDITS

NEW PROCEDURES FOR PRESIDENTIAL AUDITS

The FEC is required by law to audit Presidential and convention committees that receive public funds. These audits have often taken two to four years to complete owing to the complexity of the process and extensions of time granted to committees.

Three factors should substantially reduce the time needed to complete the audits of the 1992 Presidential campaigns:

- o New regulations that simplify the process of allocating primary expenses to the state spending limits;
- o Increased audit staffing; and
- o A smaller field of candidates with a lower volume of financial activity in comparison with the 1988 Presidential cycle.

Notwithstanding the above, the Commission has revised its audit procedures to streamline the process and thereby overcome problems that have delayed audits in past election cycles. The new procedures are summarized below.

Full Disclosure of All Findings in Final Audit Report

This new procedure will result in fuller and more timely public disclosure of audit findings. Under the past procedure, if an audit revealed possible substantial violations of the law, the final audit report was issued only after the violations underwent legal review and the Commission decided whether to open an enforcement case (Matter Under Review or MUR) against the committee. Furthermore, if any violations were pursued in a MUR, all mention of the related audit findings was purged from the public audit report.

This policy not only considerably delayed the public release of audit reports but also withheld disclosure of serious violations. Furthermore, the public perceived that the audit process was not complete until the related MUR was closed, which could take several additional years.

Under the new procedure, the final audit report will be placed on the public record in its entirety. It will disclose all findings, including those that may later be referred for enforcement (MUR) action after legal review. The audit reports will not make determinations as to whether the committee appeared to have violated the law; the Commission makes those decisions in MURs.

Records Inventory Before Fieldwork

Another new procedure adopted to speed the audit process is the pre-fieldwork inventory of committee records by FEC Audit staff. When fieldwork was begun in past election cycles, Audit Division staff

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sometimes found committee records to be incomplete or disorganized. In some cases, missing records were not available until the audit was nearly complete. These deficiencies made the audit task more difficult and time consuming.

Under the new procedures, Audit staff will conduct a thorough inventory of committee records before starting fieldwork. The inventory will, for example, determine whether banking documents, contribution records and committee workpapers are properly organized and complete. If the records are not satisfactory, Audit staff will postpone the start of fieldwork and notify the committee, in writing, that it has 30 days to correct listed deficiencies or the Commission will subpoena[1] the records from the committee and, if necessary, from banks and other entities holding relevant records.

This procedure will also apply to the computerized records submitted before fieldwork. If a committee fails to submit usable computerized files, the Commission will postpone fieldwork and issue subpoenas.

The new procedure offers several advantages. It will focus audit resources on committees with satisfactory records. While that work is going on, committees with deficient records will be compelled to produce required records. Furthermore, the agency will have a clear record as to why some audits were not completed as quickly as others.

Pre-Audit Use of Matching Fund Submissions and Computerized Records

As an efficiency measure, the FEC's Audit Division will use committees' matching fund submissions and computerized records--both submitted before audit fieldwork begins--to assist in identifying possible prohibited and excessive contributions. Because the files contain bank statements and related documents, auditors can also begin the bank reconciliation process before fieldwork.

Requests for Records During Fieldwork

Even with more complete records at the onset of fieldwork, the need for specific records is likely to arise during the fieldwork itself. In the past, this has been problematic. Some committees produced missing records piecemeal or only after repeated requests and the passage of substantial time.

Under the new procedures, if a committee does not respond to an informal request for records within a few days, auditors will make a written request with a specific due date. This formal request will warn the committee that the Commission will subpoena the records if the committee fails to produce them by the due date.

This procedure should encourage the timely production of materials and thus shorten the audit process.[2]

Extensions of Time to Respond to Audit Reports

Under the public funding rules, a committee has 30 days from its receipt of the interim audit report to submit comments on audit findings. During the 1988 Presidential audits, however, some committees received up to three extensions of time, which delayed their responses by several months.

Under the new procedures, each committee will be given only one 45-day extension of time to the 30-day response date. Because it generally takes 90 days from the exit conference, when committees are fully briefed on all findings, until the

[1] Recent amendments to the public funding regulations inform candidates that the Commission may issue subpoenas if a committee fails to produce requested materials. 11 CFR 9007.1(b)(1)(v) and 9038.1(b)(1)(v).

[2] This procedure was used informally in the 1988 Presidential cycle.

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committee receives the interim audit report, committees will effectively have 165 days to submit their responses. Audit staff will encourage committees to use the intervening time to prepare their responses and to discuss questions and problems with the auditors.

The Commission has also limited extensions of time for responses to the final audit report; committees will be given only one 45-day extension.

FINAL AUDIT REPORT ON 1988 BUSH PRIMARY CAMPAIGN

On February 24, the Commission released the final audit report on George Bush for President, Inc., President Bush's 1988 primary campaign committee. The Committee had received a total of $8.393 million in matching funds. Based on the initial repayment determinations described below, the Committee must repay $79,235 in matching funds to the U.S. Treasury. The Committee made a partial repayment in response to the interim audit report and completed repayment in March.

The final audit report found that the Committee had exceeded the national spending limit by $214,220 and the state spending limits for Iowa and New Hampshire by a total of $260,460. The Commission decided to base the repayment on the larger of these amounts—the $260,460 spent in excess of the state limits. Applying the formula used to calculate what portion of that amount was paid with public funds (as opposed to private contributions), the Commission made an initial determination that the Committee repay $69,351.

The Commission also made an initial determination that the Committee repay $9,884, the total of stale-dated Committee checks that had never been cashed by the payees.

PUBLIC FUNDING

LAROUCHE DENIED MATCHING FUNDS: FINAL DETERMINATION

In a final determination made February 27, the Commission denied matching funds to Lyndon H. LaRouche, Jr., for his 1992 Presidential campaign. This decision was based on Mr. LaRouche's past record:

- His 1988 criminal conviction and current imprisonment for fraudulent fundraising practices, including those related to a previous publicly financed campaign;
- His 15-year pattern of abuse of the matching fund program, including submitting false information, fraudulently inducing individuals to contribute and submitting contributions that lacked the requisite donor intent to make a campaign contribution;
- His past repudiation of promises made in letters of candidate agreements and certifications;[1] and

This Commission also considered Mr. LaRouche's 1988 criminal conviction for conspiring to defraud another federal agency, the Internal Revenue Service.

In making its determination, the Commission applied the statute, regulations and case law to the unique facts of Mr. LaRouche's situation—his past egregious abuse of the public funding law and his criminal convictions. Given these facts, the Commission concluded that it could not rely on his current promises to comply with the law submitted in his candidate letter for 1992 matching funds. Therefore, in order to protect public money, the agency denied him matching funds.

Although the Commission considered Mr. LaRouche's arguments against the initial determination to deny him matching funds, made December 19, 1991, the agency found little in his response to refute his past record of violations.

On March 3, Mr. LaRouche challenged the Commission's final decision in a suit filed in the U.S. Court of Appeals pursuant to 26 U.S.C §9041 (see page 8).

(Public Funding continued)

[1] Candidates seeking to qualify for matching funds must sign a letter of agreements and certifications in which they promise to comply with the law.

MARCH MATCHING FUND PAYMENTS

On February 27, the Commission certified $3.3 million in matching fund payments to eight candidates. The U.S. Treasury made the payments early in March. As of the March payment, 1992 Presidential primary candidates have received $12.6 million in matching funds, as shown in the table. Candidates have requested $4.3 million for the April payment.

Matching Fund Payments

	March Payment	Cumulative Total
Republicans		
Patrick Buchanan	$ 947,730	$ 1,047,730
George Bush	593,330	4,234,220
Democrats		
Jerry Brown	157,660	550,708
Bill Clinton	656,265	2,056,864
*Tom Harkin	221,566	1,548,686
*Bob Kerrey	433,279	1,266,642
*Paul Tsongas	189,297	745,742
*Douglas Wilder	0	289,027
New Alliance Party		
Lenora Fulani	125,473	889,401
Totals	$3,324,600	$12,629,020

*These candidates have withdrawn from the Presidential race. Governor Wilder withdrew on January 8, Senator Kerrey on March 6, Senator Harkin on March 9 and former Senator Tsongas on March 19.

COST-OF-LIVING ADJUSTMENT CERTIFIED

The coordinated party and Presidential expenditure limits that appeared in the March 1992 Record were based on a 1991 cost-of-living adjustment of 2.762. That figure, which was unofficial at the time of the March publication, has now been certified by the Secretary of Labor. Therefore, the spending limits in the March issue are correct.

DOLE COMMITTEE: FINAL REPAYMENT AMOUNT

On February 6, the Commission made a final determination that the Dole for President Committee, Inc., repay $235,822 in matching funds to the U.S. Treasury. The Committee was Senator Robert Dole's 1988 Presidential primary campaign committee, which had received a total of $7.6 million in matching funds. The Committee made the full repayment in March.

The final determination consisted of three separate repayments:

- **$3,757:** The pro rata portion[1] of $13,470 in undocumented disbursements by delegate committees affiliated with the Dole campaign;
- **$164,039:** The pro rata portion[1] of amounts spent in excess of the Iowa and New Hampshire expenditure limits;
- **$68,025:** The total of stale-dated Committee checks never cashed by the payees.

The Commission had made an initial determination that the Committee repay $245,534. The final determination reduced that amount by $9,712, based on three adjustments.

First, the Commission reconsidered its initial determination that the Committee's Manchester office functioned solely as a New Hampshire office. To reflect the office's dual nature as both a state and regional office, the Commission reduced the amount of office-related expenditures allocated to the New Hampshire limit.

The agency also reconsidered the allocation of commissions paid to a media firm. Concluding that the payments were production costs, which are not allocable to a particular state, the Commission accordingly reduced the amounts allocated to the Iowa and New Hampshire limits.

Finally, based on new documentation submitted by the Committee, the Commission decreased the repayment for stale dated-checks by $3,708.

[1] A formula is used to determine what portion of an undocumented expense or an excessive expenditure was paid with public funds (rather than private contributions); only the portion paid with public funds is subject to repayment. See 11 CFR 9038.2(b)(2)(iii).

STATISTICS

PRESIDENTIAL CAMPAIGN ACTIVITY THROUGH JANUARY 1992

The table below compares the financial activity of selected 1992 Presidential candidates with that of past Presidential campaigns through January 31 of the election year. The table is taken from a March 3 press release, which provides additional data on Presidential campaign activity through January 1992 as well as detailed comparisons with past election cycles. To order a copy, call 800/424-9530 and ask for Public Records or call the office directly, 202/219-4140.

Presidential Activity Through January of Election Year

	Receipts	Disbursements	Number of Candidates
1992	$ 32.8	$ 23.3	13
1988	$149.4	$120.3	18
1984	$ 40.0	$ 36.3	10

1991 ACTIVITY OF NATIONAL PARTY COMMITTEES

The Commission has released statistics on national party activity for 1991 and previous nonelection years. The information appears in a March 6 press release, which also presents data on the nonfederal and building fund accounts of the national-level party committees.

The table below is based on the press release. To order a copy, call 800/424-9530 and ask for Public Records or call the office directly, 202/219-4140.

1991 National Party Activity1/
(millions of dollars)

	Receipts	Disbursements
Federal Activity		
Democratic	$22.9	$22.4
Republican	$75.1	$69.1
Nonfederal Activity		
Democratic	$ 7.9	$ 7.6
Republican	$18.4	$15.8

1/Table lists aggregate activity of the three national-level committees of each party (the national committee and the House and Senate campaign committees).

LEGISLATION

FEC TESTIFIES ON FISCAL YEAR 1993 BUDGET REQUEST

In February and March appearances before House subcommittees, Vice Chairman Scott E. Thomas urged approval of the FEC's $21.031 million budget request for FY 1993. The FEC's request, the same as the President's appropriation request for the agency, represents a $2.223 million increase over the FEC's funding for FY 1992, which was $18.808 million.

Testifying in his capacity as Chairman of the FEC's Budget Committee, Vice Chairman Thomas said that the requested funding would enable the FEC to complete the workload for the 1992 elections. The request would fund a staffing level of 276 full-time positions. It would also provide $345,000 to replace outmoded microfilm equipment and $500,000 to purchase enhanced automated data processing technology for the Audit and Reports Analysis Divisions.

Mr. Thomas pointed out that the budget request focuses on several areas: enforcement actions involving "ever more complex and controversial violations"; additional workloads generated by new regulations and reporting requirements and by increased financial activity in federal elections; and the timely release of audits on 1992 Presidential campaigns receiving public funds.

Citing recent studies that show public misgiving about the political process, he stated that "it is imperative" for the FEC to receive adequate funding to meet its enforcement and disclosure responsibilities, "which should in turn help to increase public confidence in the political system."

REGULATIONS

REVISIONS TO ALLOCATION REGULATIONS

On March 9, 1992, the Commission sent to Congress revised regulations on the allocation of federal and nonfederal expenses. The revisions and their explanation and justification appear in the March 13 Federal Register (57 FR 8990). The Commission will announce the effective date of the new rules following the 30-day legislative review period required by 2 U.S.C. §438(d).

(continued)

The revised rules are summarized below. While the ballot ratio section applies only to state and local party committees, the other sections apply to all committees subject to the allocation rules, including separate segregated funds and nonconnected committees.

Ballot Composition Ratio

The revised rule at 11 CFR 106.5(d)(1)(ii) gives state and local party committees an additional nonfederal point in their ballot composition ratios. This ratio determines the allocation of administrative and generic voter drive expenses over a two-year congressional election cycle.

The rule was also amended, consistent with AO 1991-25, to allow nonfederal points for partisan local offices in states that hold statewide elections in even years and local elections only in odd years. Under the revised language, committees may include nonfederal point(s)[1] in their ballot ratios if partisan local candidates are expected on the ballot "in any regularly scheduled election during the two-year congressional election cycle."

When revised 11 CFR 106.5(d)(1)(ii) becomes effective, state and local party committees will have the opportunity to adjust their ballot composition ratios for the current cycle, which began January 1, 1991. Committees who choose this option will have 30 days from the rule's effective date to reallocate expenses according to the adjusted ratio and make the necessary transfers from their nonfederal accounts to their federal accounts.

Window for Transfers from Nonfederal Account: 70 Days

The revised rules expand from 40 to 70 days the time during which the nonfederal account may transfer its share of an allocable expense to the federal account. Under the new rules, the 70-day window begins 10 days before the federal account makes the payment to the vendor and ends 60 days after the payment. The current rules allow only 30 days after payment. This change, which appears in revised 11 CFR 106.5(g)(2)(ii)(B) and 106.6(e)(2)(ii)(B), applies to all committees that must allocate expenses between their federal and nonfederal accounts.

[1] State committees may add one nonfederal point for local offices on the ballot, and local committees may add a maximum of two points.

Adjustments to Fundraising Ratio

Current rules at 11 CFR 106.5(f) and 106.6(d) do not specify when a committee must adjust the estimated ratio initially used to allocate the costs of a fundraising program or event that collects both federal and nonfederal funds for the committee. The ratio is based on the amount of federal funds raised to total receipts for the program or event. (This formula is used by all committees subject to the allocation rules.)

Under the revised rules, committees are still required to allocate their program or event disbursements based on the estimated ratio. However, they are given additional time—up to 60 days after the date of a fundraising program or event—to adjust the ratio, based on actual funds received, and to make transfers between their federal and nonfederal accounts to reflect the revised allocation. (This does not, however, rule out the possibility of further adjustments and subsequent transfers from the federal to the nonfederal account should additional federal receipts come in.) When reporting adjustment transfers, committees must enter the date of the event, a new requirement. For purposes of the new rule, the date of a telemarketing campaign is the last day of the program; the date of a direct mail program is the last day solicitations are mailed.

NEW BANK LOAN REGULATIONS AND FORMS NOW EFFECTIVE

Political committees must now comply with the new regulations on bank loans and lines of credit, which became effective in early April 1992. The new rules apply to all lines of credit established on or after the effective date and to all loans whose proceeds were disbursed by the bank on or after that date. These loans and lines of credit must be reported on the new loan forms: Schedule C-1 and, for Presidential committees, Schedule C-P-1. A schedule must be filed with the next due report for each bank loan obtained or line of credit established during the reporting period. The new forms may be ordered from the FEC (800/424-9530 or 202/219-3420).

The new regulations were published in the December 27, 1991, Federal Register (56 FR 67118) and summarized in the February 1992 Record.

FEC TO INITIATE RULEMAKING ON "SPECIAL PROJECTS" USING CANDIDATE NAMES

On February 13, the Commission voted to develop new regulations for "special projects" whose names include candidate names. Party committees, PACs and other unauthorized committees (i.e., committees not authorized by a candidate) are prohibited from using a candidate's name in their committee names.1/ They may, however, use candidates' names in special project names. These projects are generally organized to raise funds for the unauthorized committee. Use of a candidate's name in a special project name does not have to be authorized by the candidate.

Concerned that the public may be confused or misled by the use of candidates' names in special project names, the Commission decided to draft new rules that would specify disclaimer language for special projects and provide other mechanisms to protect the public, such as a requirement that contribution checks be made payable to the committee rather than to the special project. The agency therefore directed the Office of General Counsel to prepare a draft Notice of Proposed Rulemaking in these areas.

CONFERENCES

ORLANDO AND WASHINGTON, DC, CONFERENCES

The FEC is planning to hold a Florida Regional Conference in Orlando on April 30-May 1. The FEC has also scheduled a Washington, DC, conference on May 21-22 for corporations, trade associations, labor organizations and their PACs.

Call the FEC to place your name on a mailing list to receive an invitation to either of these conferences (800/424-9530 or 202/219-3420). Invitations provide registration forms and schedules of workshops. Those planning to attend the Orlando conference should call right away.

Each of the conferences lasts one and one-half days. The conference fees listed below include materials, breakfasts, lunch and refreshments.

Florida Conference, April 30-May 1

This conference will be held at the Clarion Plaza Hotel, 9700 International Drive, Orlando; 407/352-9700. Reserve your room by April 8 to receive the group rate of $75 per night; notify the hotel that you will be attending the FEC conference.

The $80 conference fee must be postmarked by April 16 to avoid a $10 late fee.

The conference will offer assistance to House and Senate candidates, political party organizations, and corporations and labor organizations and their PACs. It will feature an introduction to the campaign finance law and workshops on fundraising, candidate support, reporting, and allocation of federal and nonfederal activity. The Florida State Division of Elections and the Florida Elections Commission will give a workshop on state campaign finance law. Additionally, a representative from the Internal Revenue Service will be available to answer federal tax questions.

Washington, DC, Corporate/Labor Conference, May 21-22

This conference will focus on the campaign finance law's requirements for corporations, trade associations, labor organizations and their PACs.

The conference will be held at the Washington Court on Capitol Hill, 525 New Jersey Avenue, NW, Washington, DC 20001-1527; 202/628-2100. Reserve your room by April 22 to receive the group rate of $149 per night; notify the hotel that you will be attending the FEC conference.

The $105 conference fee must be postmarked by May 7 to avoid a $10 late fee.

FEC ALERTS CANDIDATES TO COMMON REPORTING PROBLEMS

FEC Chairman Joan D. Aikens recently wrote to all registered candidates advising them of several reporting problems common to candidate committees. To help these committees avoid compliance problems, she set out the specific rules in three areas:

- o Redesignations and reattributions;
- o Candidate loans and contributions; and
- o 48-hour reporting of last-minute contributions.

The Chairman sent another letter to treasurers of candidate committees alerting them to the candidate letter and enclosing a Record supplement on redesignations and reattributions.

1/ See 2 U.S.C. §432(e)(4) and 11 CFR 102.14(a). This prohibition does not apply to delegate committees and draft committees. 11 CFR 102.14(b)(1) and (2).

COURT CASES

NATIONAL RIFLE ASSOCIATION OF AMERICA (NRA) v. FEC (89-3011)

On February 27, 1992, the U.S. District Court for the District of Columbia rejected NRA's challenge to the FEC's dismissal of an administrative complaint. The court ruled that the statutory time bar removed its jurisdiction to review the FEC's decision, since the same issues were considered and dismissed in a previous complaint and NRA failed to challenge that decision within the 60 days allowed by law.

NRA had filed several administrative complaints against Handgun Control, Inc. (HCI), an incorporated membership organization. The first complaint challenged HCI's status as a membership organization, alleging that it illegally solicited nonmembers for contributions to its separate segregated fund. This first complaint resulted in a conciliation agreement in which HCI paid a civil penalty and amended its bylaws to qualify as a membership organization with solicitable members.

NRA's second complaint, MUR 1891, alleged that HCI's membership still did not have sufficient rights to qualify as members. The Commission dismissed the complaint, concluding that HCI's amended bylaws satisfactorily established the rights of members by allowing them to participate in annual meetings and to elect a board director. NRA did not seek judicial review of the Commission's dismissal of MUR 1891.

The Commission also dismissed NRA's third complaint against HCI, MUR 2115, because the allegations were "virtually identical" to those raised in the second complaint. This time, NRA sought judicial review of the dismissal. Ruling on this suit, the district court held that NRA's petition constituted an untimely challenge to the FEC's dismissal of MUR 1891, since the issues in both MURs were substantially similar. A court of appeals affirmed that decision. National Rifle Association of America v. FEC, 854 F.2d 1330 (D.C. Cir. 1988).

NRA's most recent administrative complaint, the subject of the present suit, again challenged the status of HCI members. The FEC dismissed this fourth complaint, MUR 2836, because the issues had already been resolved in MUR 1891.

In this court case, NRA argued that the two MURs raised different issues, MUR 1891 dealing with member participation, and MUR 2836 focusing on member control. The court, however, found that "[d]espite the change in language, there remains no material variance between NRA's allegations in MUR 1891 and MUR 2836." The court therefore ruled that, because NRA did not appeal the FEC's decision in MUR 1891 within the 60 days allowed by law, it was barred from doing so in the present case.

The court also rejected NRA's argument that the FEC's dismissal of MUR 2836 qualified for judicial review because the FEC had considered the substantive merits of the complaint. The court found that the FEC did not consider the merits but simply stated that the issues had been resolved in MUR 1891.

The court ruled that it lacked jurisdiction by virtue of the 60-day time bar and accordingly granted the FEC's motion to dismiss the suit. The NRA has appealed the decision.

NEW LITIGATION

LaRouche v. FEC

Lyndon H. LaRouche and his Presidential campaign committee, Democrats for Economic Recovery-LaRouche 92, ask the court to review[1] the Commission's decision to deny Mr. LaRouche matching funds for the 1992 primary election (see page 3). Petitioners claim that the FEC's reliance on Mr. LaRouche's past actions in denying him matching funds is contrary to the statute.

U.S. Court of Appeals for the District of Columbia Circuit, Civil Action No. 92-1100, March 3, 1992.

[1] On March 17, the court denied the petitioners' motion for an expedited schedule.

ADVISORY OPINIONS

ADVISORY OPINION REQUESTS

Recent requests for advisory opinions (AORs) are listed below. The full text of each AOR is available for review and comment in the FEC's Public Records Office.

[Editor's Note: Beginning with this issue, the Record will name requesters.]

AOR 1992-8
Tax seminars given by candidate as fundraising event. (Requested by Congressman William H. Orton; Date Made Public: February 28, 1992; Length: 2 pages)

AOR 1992-9
Use of raffle for twice-yearly solicitation; solicitable personnel of cooperative. (Requested by KAMO Power; Date Made Public: February 28, 1992; Length: 8 pages plus attachments)

AOR 1992-10
Multicandidate committee's donation to pay legal expenses of nonprofit organization. (Requested on behalf of The Committee for a Democratic Consensus; Date Made Public: March 5, 1992; Length: 2 pages)

AOR 1992-11
Computer-produced Form 3X Summary and Detailed Summary Pages. (Requested by Coopers & Lybrand; Date Made Public: March 10, 1992; Length: 4 pages)

ADVISORY OPINION SUMMARIES

AO 1991-39: Contributions Suspected of Being Made in Names of Others

Because Friends of Senator D'Amato, Senator Alfonse M. D'Amato's campaign committee, cannot now determine the original donors or donor of contributions suspected of being made in the names of others, the committee should disburse the funds for a lawful purpose unrelated to federal elections.

The Committee received a November 5, 1991, letter from the Department of Justice indicating that several contributions received by the Committee between 1986 and 1988 were actually from one individual making contributions in the names of others, a violation of 2 U.S.C. §441f and 11 CFR 110.4(b). The individual has been indicted for causing the Committee to file false statements with the FEC. The Committee immediately deposited the questionable contributions in a separate account and held them there pending advice from the FEC.

If a committee discovers that a contribution was made by one person in the name of another "based on new evidence not available to the political committee at the time of receipt," the treasurer must refund the contribution to the original contributor within 30 days. 11 CFR 103.3(b)(2); see also AOs 1989-5 and 1984-52.

In this case, the criminal indictment and the Department of Justice letter provide sufficient basis for the D'Amato Committee to question the lawfulness of the contributions under 103.3(b). However, since the criminal proceeding is still pending, the Committee cannot determine who should receive the contribution refunds. In these unusual circumstances, the funds should be disbursed for a purpose unrelated to federal elections (e.g., to the federal government, to a state or local government, or to a charity described under 26 U.S.C. §170(c).) The disbursement should be made within 10 days after the Committee receives the advisory opinion and should be itemized as an offset to the questionable contributions. (Date Issued: February 7, 1992; Length: 4 pages)

AO 1992-1: Campaign Salary Paid to Candidate; Reimbursements to Candidate for Campaign Expenses

Roger Faulkner, a 1992 Senate candidate, proposed receiving a salary from his campaign committee to pay for his personal living expenses during the campaign. The Commission, however, failed to reach a majority decision on whether the payment would fall within the committee's wide discretion in making expenditures or whether it would constitute the candidate's personal use of excess campaign funds, which is prohibited under 2 U.S.C. §439a. With respect to a second issue, the wide discretion principle would allow the committee to reimburse Mr. Faulkner for travel, subsistence and other campaign-related expenses he pays from his personal funds. See AO 1984-8.

Mr. Faulkner's payments for campaign-related expenses are considered contributions to the committee, even though he will be reimbursed.1/ 11 CFR 116.1(b). There

(continued)

[1]Note that candidates may make unlimited contributions from personal funds to their own campaigns. See 11 CFR 110.10(a).

is one exception: payments for his own travel expenses are not considered reportable contributions if the committee reimburses him within the time limits specified in 11 CFR 116.5(b)(2).

Other than that one exception, campaign expenses paid by Mr. Faulkner are reportable in-kind contributions (or in-kind advances), which must be itemized when his aggregate contributions for the year (minus any reimbursements he receives) exceed $200. His committee should itemize such an in-kind advance as a memo entry on Schedule A. The reimbursement should be reported as an operating expenditure on Schedule B and should reference the related memo entry on Schedule A. An advance that is not reimbursed during the same reporting period is also reportable as a debt on Schedule D if it exceeds $500 or has been outstanding more than 60 days. 11 CFR 104.11.

As Mr. Faulkner is the candidate and thus a campaign agent, he should provide the committee with the necessary documentation when he pays for campaign expenses. 2 U.S.C. §432(e)(2); 11 CFR 102.9(b)(1) and (2); AO 1984-8.

The Commission did not address possible state law or tax ramifications in this opinion, since they are outside its jurisdiction. (Date Issued: March 6, 1992; Length: 4 pages)

AO 1992-2: Party Reallocation of Staff Salaries as Fundraising Expenses

The Democratic National Committee (DNC) treated all of its 1991 salary expenses as administrative expenses for purposes of allocating them between its federal and nonfederal accounts. The DNC may now reallocate, as fundraising expenses, the staff salaries and benefits of employees who worked full time on fundraising activities. This retroactive reallocation must be made within 30 days from the date of this opinion. Special reporting is required.

Retroactive Reallocation

Recognizing that the new allocation regulations require a brief period for committees to adjust, the Commission has permitted retroactive changes to allocation formulas due to a mistake or intervening event. AOs 1991-25 and 1991-15. In a similar vein, the DNC may retroactively reallocate the salaries and benefits of staff members who spent 100 percent of their time on fundraising. These costs, previously allocated according to the fixed percentage method that applies to a national party committee's administrative expenses, may now be reallocated as direct fundraising costs according to the ratio of federal funds received to total receipts for each fundraising program or event. (Each program or event has its own ratio.) 11 CFR 106.5(b)(2) and 106.5(f). However, the DNC may reallocate only salary and benefit costs that are directly attributable to time spent on a particular fundraising program or event. Furthermore, the DNC may not allocate the salary/benefit costs of a program or event that raised funds for the federal account only, since those costs must be paid entirely from the federal account. The DNC must reallocate salary and benefit costs within 30 days from the date of the opinion.

Reporting Adjustments

In the next report due after that date, the DNC should include a letter explaining the adjustments to past transfers from the nonfederal account (i.e., Schedule H3 transfers). For each former transfer that included payment of administrative expenses, the letter should provide the following:

- The amount recategorized as a fundraising cost;
- The revised administrative total; and
- The revised fundraising total broken down by the amount for each program and event.

The DNC should also include in the letter the total amount the nonfederal account has underpaid (assuming that is the case). The transfer of that amount must be reported on line 18 of the Detailed Summary Page.

Additionally, the DNC should attach a revised Schedule H4 to show new amounts allocated as fundraising salaries by program or event. Additional and changed entries should be marked with an asterisk.

(Date Issued: March 6, 1992; Length: 11 pages, including sample forms)

AO 1992-4: Campaign's Payment of Candidate's Living Expenses and Spouse's Salary

John Michael Cortese, a 1992 Senate candidate, proposed using campaign contributions to pay his own living expenses and those of his wife, who would assist in the campaign. The Commission, however, failed to reach a majority decision on whether the payments would fall within the campaign's wide discretion in making expenditures or whether they would constitute the candidate's personal use of excess campaign funds, which is prohibited under 2 U.S.C. §439a. A committee's wide discretion does, however,

extend to the choice of campaign staff. Therefore, the campaign may pay Mrs. Cortese a salary for her campaign services.

Because Mr. Cortese's unemployment benefits are considered his personal funds, he may use them to make contributions or loans, without limit, to his campaign. 11 CFR 110.10.

The Commission did not address possible state law or tax ramifications, since they are outside its jurisdiction. (Date Issued: March 6, 1992; Length: 3 pages)

AO 1992-6: Honorarium Paid to Candidate for Speech on Campaign Issues Not Considered a Contribution

Vanderbilt University's payment of an honorarium and travel expenses to David Duke for a speech is not considered a contribution to his Presidential campaign, based on the particular circumstances in this situation.

The University invited Mr. Duke to make a speech at an event hosted by IMPACT Symposium, a student group that hosts a lecture series each February. Mr. Duke has chosen to speak on affirmative action.

Numerous advisory opinions have concluded that an activity involving or referring to a candidate is "campaign related"--and thus results in a contribution or expenditure by the person financing the activity--if it includes either of two elements: (1) solicitation or acceptance of contributions to the candidate's campaign; or (2) express advocacy of the election or defeat of any candidate.

However, several advisory opinions have stated that, even in the absence of these two elements, an activity may nevertheless be considered campaign related. AOs 1990-5, 1988-27, 1986-37, 1986-26, 1984-13 and 1983-12.

Of particular relevance is AO 1988-27, which concerned a corporation's honorarium payment to a candidate for a speech given at a fundraising event for the corporation's PAC. The opinion concluded that the honorarium was not a contribution, relying on the particular facts of the situation. The situation presented by Mr. Duke is similar in several material respects:

- He will receive the payment as personal income (rather than as a campaign contribution);
- The staging of the speech will not afford him an opportunity to solicit or collect contributions from attendees;
- He will not mention his own or anyone else's candidacy;
- Neither he nor his campaign staff will solicit contributions or campaign support;
- The University and IMPACT, and not Mr. Duke, will control the event and who is admitted;
- Neither he nor his campaign staff will coordinate or encourage the display of campaign decorations or the distribution of campaign materials;
- Neither he nor his staff will conduct or participate in collateral campaign events (e.g., rallies, press conferences, luncheons); and
- Vanderbilt's invitation and Mr. Duke's appearance are not based entirely on his status as Presidential candidate but may partly reflect his career as a recent state legislator and as a college and university speaker who has discussed laws and legislation.

Based on the facts and representations in the advisory opinion request, Vanderbilt's payment of honorarium and travel expenses will not constitute a contribution or expenditure to Mr. Duke's campaign. However, his appearance will be considered election related if he refers to his campaign or to the campaign or qualifications of another Presidential candidate, either during his speech or during the question and answer period. The Commission pointed out the significance of the question and answer period given that the speech would take place just before the Tennessee Presidential primary and that questions about the Presidential campaign were therefore a foreseeable development. (The University is located in Nashville, Tennessee.)

Chairman Joan D. Aikens and Commissioner Trevor Potter filed concurring opinions. (Date Issued: February 14, 1992; Length: 12 pages, including concurring opinions)

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