



FEDERAL ELECTION COMMISSION

AK004384

November 29, 1993

MEMORANDUM

TO: FRED EILAND  
CHIEF, PRESS OFFICE

FROM: ROBERT J. COSTA *RJC*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON  
NEW YORK '92 HOST COMMITTEE, INC.

Attached please find a copy of the final audit report and related documents on New York '92 Host Committee, Inc. which was approved by the Commission on November 10, 1993.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel  
Office of Public Disclosure  
Reports Analysis Division  
FEC Library

REPORT OF THE AUDIT DIVISION  
ON

**New York '92 Host Committee, Inc.**

November 10, 1993

0507012110



FEDERAL ELECTION COMMISSION  
999 E STREET, N.W.

Washington, D.C. 20543

REPORT OF THE AUDIT DIVISION  
ON

**New York '92 Host Committee, Inc.**

November 10, 1993



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

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FINAL AUDIT REPORT  
ON  
NEW YORK '92 HOST COMMITTEE, INC.

EXECUTIVE SUMMARY

The New York '92 Host Committee, Inc. (the Committee) registered with the Federal Election Commission on July 20, 1992. The Committee's primary objective was the encouragement of commerce in New York City in relation to the 1992 Democratic National Convention, as well as to project a favorable image of the city to convention attendees.\*/

The audit was conducted pursuant to 11 C.F.R. §9008.9 which requires an examination and audit of each host committee.

The findings of the audit were presented to the Committee at an exit conference held at the conclusion of the audit fieldwork (10/9/92) and in an interim audit report approved by the Commission on May 25, 1993. The Committee was given an opportunity to respond to the findings both after the exit conference and after receipt of the interim audit report. Comments and information received have been included in the findings.

The following is an overview of the findings contained in the final audit report.

Apparent Prohibited Contributions - 11 CFR 9008.7(d) 2) (i) and (iv). Local businesses may make donations to the Committee provided they are located within the Consolidated Metropolitan Statistical Area (CMSA) of the convention city. The report questions whether two business entities/organizations, that made donations, were located within the CMSA of the convention city. The Committee responded by refunding two donations, totaling \$35,500.

Convention Related Expenditures - Commingling of Funds - 11 CFR 9008.7(d) 3) and 4). If a host committee expends funds for both activities defined as "convention expenses" and

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\*/ The Host Committee is distinguished from the party convention committee which is funded by a public grant and also subject to audit.

activities defined as "host expenses," separate bank accounts must be maintained for the two types of expenses. Permissible sources for funds deposited into these accounts differ; funds deposited into the "convention account" are more restricted. The report questions the permissibility of transferring funds from the less restricted to the more restricted account. The Committee's response to this finding demonstrates that although the transfers were made as described in the report, the transferring account contained adequate acceptable funds at the time of the transfer. This demonstration resolves the question.

Disclosure - 11 CFR 104.13(a)(1), 2 USC 434(b)(3)(G). The report requires the Committee to amend its reports to disclose the actual value for certain in-kind contributions received and to complete the public record by itemizing the source of interest income.

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REPORT OF THE AUDIT DIVISION  
ON THE  
NEW YORK '92 HOST COMMITTEE, INC.

I. Background

A. Audit Authority

This report is based on an audit of the New York '92 Host Committee, Inc. (the Committee) 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 C.F.R. §9008.9 which states that the Commission shall conduct an examination and audit of each host committee registered under 11 C.F.R. 9008.12(a)(1).

The audit seeks to determine if the campaign has materially complied with the limitations, prohibitions and disclosure requirements of the Federal Election Campaign Act of 1971, as amended.

B. Audit Coverage

The audit covered the period from January 1, 1990 through August 31, 1992. During this period, the Committee report reflects an opening cash balance of \$-0-, total receipts of \$6,747,507 total disbursements of \$6,667,222, and a closing cash balance of \$80,286.1/

C. Campaign Organization

The Committee registered with the Federal Election Commission on July 20, 1990. The Treasurers of the Committee during the audit period were Robert E. Rubin from July 20, 1990 through November 20, 1991, and Henry Miller from November 21, 1991 through August 31, 1992. The current Treasurer is Henry Miller.

During the period audited, the Committee established its headquarters in New York City. The Committee's current office is also in New York City.

1/ Does not foot due to a mathematical error; figures included in this report are rounded to the nearest dollar.

The Committee used six bank accounts to handle its financial activity. From these accounts the Committee made approximately 1,550 disbursements. The Committee received approximately 350 contributions from individuals and local businesses totaling \$2,741,000. In addition, the Committee reported receiving in-kind contributions totaling \$3,993,777 (see Finding II.C.).

#### D. Audit Scope and Procedures

The audit included a review of the following general categories:

1. The receipt of contributions from prohibited sources (See Finding II.A.);
2. the itemization and proper disclosure of contributions from individuals, local businesses, local municipal corporations and government agencies, and local labor organizations when required, as well as the completeness and accuracy of the information disclosed (See Findings II. C. and D.);
3. the itemization and proper disclosure of disbursements when required, as well as the completeness and accuracy of the information disclosed;
4. proper disclosure of Committee's debts and obligations;
5. the accuracy of total reported receipts, disbursements and cash balances as compared to the Committee's bank records;
6. adequate recordkeeping for the Committee's transactions;
7. the Committee's compliance with the regulations concerning contributions and expenditures to promote the convention city and its commerce;
8. the Committee's compliance with the regulations concerning contributions and expenditures to defray convention expenses. See Finding II. B. ; and
9. other audit procedures that were deemed necessary in the situation.



Unless specifically discussed below, no material discrepancies were detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

## II. Findings and Recommendations - Non-repayment Matters

### A. Apparent Prohibited Contributions

Section 9008.7(d)(2)(i) of Title 11 of the Code of Federal Regulations states, in part, that local businesses, excluding banks, local municipal corporations and government agencies, local labor organizations and individuals may donate funds or make in-kind contributions to a host committee for purposes set forth at 11 CFR 9008.7(d)(2)(iii).

Section 9008.7(d)(2)(iv) of Title 11 of the Code of Federal Regulations states that any business, municipal corporation, agency or labor organization within the Metropolitan Statistical Area (MSA)<sup>2/</sup> of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MSA is not local. This presumption may be rebutted by showing that the volume of business in an area lying outside the MSA would be directly affected by the presence of the convention.

The Audit staff's review identified 2 contributions, totaling \$35,500, that appear to have been received from business entities/organizations outside of the CMSA.

- The Committee received a \$35,000 contribution from the Foundation of Jewish Philanthropics of Greater Miami (the Foundation).

The Foundation is based in Miami, Florida. No evidence was provided to demonstrate that it has offices within the CMSA. Accordingly, it is the opinion of the Audit staff that the contribution is prohibited pursuant to 11 C.F.R. §9008.7(d)(2)(i).

The Committee stated that it had solicited a contribution from an individual who subsequently made a contribution by check drawn on the above mentioned Foundation.

<sup>2/</sup> In metropolitan complexes with a population greater than one million people, the MSA is comprised of a Primary Metropolitan Statistical Area (PMSA) and a Consolidated Metropolitan Statistical Area (CMSA). For the purposes of this review, the Audit staff used the CMSA to determine whether a business was local or not. The CMSA of New York City includes the surrounding counties (e.g., Bronx County, Queens County, etc.) along with certain areas in Connecticut and New Jersey.

Further, the Committee provided documentation that it had refunded \$35,000 to the Foundation on November 12, 1992.

- The Committee received a \$500 contribution from Steptoe & Johnson, a law firm located in Washington, DC. It has no offices located within the CMSA of the convention city.

The Committee stated that the contribution came from 88 partners of Steptoe & Johnson. Further, the Committee provided documentation from Steptoe & Johnson that states the contribution "was made from regular partnership funds, of which no individual partner's share exceeded \$100. There are no professional corporations among the partners."

It should be noted that 11 C.F.R. 100.1(e) states that a contribution by a partnership shall be attributed to the partnership and each partner.

It is our opinion that the Regulations with respect to contributions from partnerships are clear. As a result, since Steptoe & Johnson is not located within the CMSA and does not maintain offices within the CMSA, it cannot make a contribution to the Committee.

In the Interim Audit Report the Audit staff recommended that the Committee demonstrate that the contributions are permissible or refund the \$500 to the contributor and provide evidence of such refunds within 30 days of service of the report.

In response, the Committee provided the Audit staff with a copy of the refund check issued to Steptoe & Johnson.

**B. Convention-Related Expenditures**

Sections 9008.7(d)(3)(i), (ii) and (iii) of Title 11 of the Code of Federal Regulations state, in part, that local retail businesses, excluding banks, as well as local municipal corporations and government agencies may donate funds to a host committee for use by that committee in defraying convention expenses. The amount of the donation under 11 CFR 9008.7(d)(3)(i) must be proportionate to the commercial return reasonably expected by the business, corporation or agency during the life of the convention. The host committee must maintain funds donated under 11 CFR 9008.7(d)(3)(i) in a separate account.

Section 9008.7(d)(3)(ii) of Title 11 of the Code of Federal Regulations states that for purposes of 11 CFR 9008.7(d)(3)(i), the life of the convention shall begin seven days before the opening of the convention and end three days after the close of the convention.

Section 9008.7(d)(4) of Title 11 of the Code of Federal Regulations states the funds used by the host committee in accordance with 9008.7(d)(3) shall not be considered expenditures

and shall not count against the expenditure limitation under 11 C.F.R. 9008.7(a).

#### Commingling of Funds

The Committee maintained four checking accounts designated as convention accounts. Three accounts were used as escrow accounts for specific housing rentals. The remaining account was used to make convention-related expenditures. The Committee deposited \$343,565.80 into this account.

As stated, 11 C.F.R. §9008.7(d)(3)(i) provides that only contributions from local retail businesses, excluding banks, local municipal corporations and government agencies may donate funds to the host committee for use by that committee in defraying convention expenses.

The Audit staff noted that during the period February 21, 1992 through August 25, 1992, the Committee transferred \$135,500 from its money market account (an account used for host-related expenses) to the convention account.<sup>3/</sup> Approximately 16.5 percent<sup>4/</sup> of the funds deposited into the money market account could not be deposited directly into the convention account and used to defray convention-related expenses. Further, a portion of the remaining contributions in the money market account were from local retail businesses and could have been used to defray convention-related expenses. However, since these funds were not initially intended to be used for convention-related expenses, the Committee did not require contributors to document that donations were proportionate to the commercial return reasonably expected (by the local retail businesses) over the life of the convention.

The Committee stated that it first deposited specific contributions from contributors, permitted to make contributions for use in defraying convention-related expenses (local retail businesses), into its money market account to earn interest and then transferred the funds to the convention account on an as needed basis. Further, the Committee provided the Audit staff with a schedule that identified specific contributions it had deposited into the money market account and subsequently transferred to its convention account.

With respect to the Committee's schedule of contributions deposited into the money market account and subsequently transferred, the Audit staff offers the following:

- 3/ Subsequent to the close of the audit period (8/31/92), the Committee transferred an additional \$12,300 (9/14/92).
- 4/ Contributions from individuals, PACs, and labor organizations.

- ° The Committee transferred \$15,000 on July 16, 1992. According to its worksheet, the Committee transferred three contributions from local businesses that were received in April 1991 (\$13,000) and November 1991 (\$2,000). The Committee's convention account was not opened until September 1991, with an initial deposit being made October 16, 1991.
- ° The funds deposited into the host account in April 1991 (\$13,000) were spent on a first in, first out basis long before the July 1992 transfer to the convention account occurred.
- ° According to the Committee's schedule, two other transfers, \$20,000 on August 4, 1992 and \$11,000 on August 24, 1992, contained contributions received in November, 1991.
- ° A transfer of \$64,500 on July 8, 1992, contained contributions received during the period March 1992 through June 1992.
- ° The initial transfer of \$25,000 on February 21, 1992, represented a contribution received January 7, 1992.

For the reasons stated above, it is the opinion of the Audit staff that the Committee's worksheet of contributions supporting its transfers is not representative of the funds actually transferred.

However, the Audit staff performed an analysis of cash on hand as of the close of business the day preceding the transfer. We identified contributors, contributions that could have been viewed as having been used to defray convention-related expenses, provided the Committee obtain and submit documentation that demonstrates certain contributors were local retail businesses and their donations were proportionate to the commercial return reasonably expected by the contributor during the life of the convention. See 11 C.F.R. §9008.7(d)(3)(ii). With respect to funds transferred subsequent to August 31, 1992, the Committee should perform an analysis similar to that performed by the Audit Division.

In the Interim Audit Report the Audit staff recommended that the Committee demonstrate that the source of the \$135,500 transferred (plus any additional funds transferred subsequent to August 31, 1992) were local retail businesses, whose donations were proportional to its commercial return reasonably expected during the life of the convention. Further, the Audit staff stated that absent documentation to the contrary, expenditures totaling \$135,500 would be charged to the limitation at 11 C.F.R. §9008.7(a).

In its response to the Interim Audit Report the Committee submitted documentation received from the contributors, which demonstrates that permissible funds were available in the account when the transfers were made. In addition, the Committee provided similar documentation for a transfer on 9/14/92 of \$12,300.00.

Accordingly the \$135,500 and the subsequent transfer of \$12,300 is not chargeable to the limitation at 11 C.F.R. §9008.7(a).

### C. Disclosure of In-Kind Contributions

Section 434(b)(2) of Title 2 of the United States code states, in relevant part, that each report shall disclose the total amount of all receipts received during the reporting period and the calendar year.

Section 100.7(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the term contribution includes a gift, subscription, loan, advance or deposit of money, or anything of value made by any person for the purpose of influencing any election for Federal office. For the purposes of 11 CFR 100.7(a)(1) the term "anything of value" includes all in-kind contributions.

Section 104.13(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the amount of an in-kind contribution shall be equal to the usual and normal value on the date received.

The Audit staff's review of receipts identified 89 instances in which the reported dollar values of in-kind contributions were estimated by the Committee. Letters were sent to contributors requesting the actual value of each in-kind contribution. Subsequent to the filing of its disclosure report, containing the estimates, the Committee received documentation that provided the actual values for 39 of the in-kind contributions. Our review indicated that the Committee understated the values of those contributions by \$87,025. Prior to the completion of the fieldwork, the Committee had not received documentation concerning the actual values of the remaining 50 in-kind contributions.

The Committee stated that at the time its disclosure report was prepared, documentation concerning the actual values had not been received from the contributors; thus, estimates were used. Further, the Committee expressed their intentions to file amended reports.

In the Interim Audit Report the Audit staff recommended that the Committee file an amended report to disclose the actual value of the 39 in-kind contributions discussed above and continue

to file amendments as documentation was received from the contributors for the remaining in-kind contributions.

In response to the Interim Audit Report the Committee filed an amendment to its post-convention report which materially disclosed the actual values of the in-kind contributions discussed above.

D. Itemization of Interest Income

Section 434(b)(3)(g) of Title 2 of the United States Code states that each report shall disclose the identification of each person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipt.

Our review identified \$13,628 in interest income not itemized on the disclosure report filed by the Committee.

The Committee representative stated that the amount of interest was reported as unitemized (other income on Line 19b) of the post-convention report. The Committee acknowledged the error and expressed a willingness to file an amended report.

In the Interim Audit Report the Audit staff recommended that the Committee file an amended report to correct the public record.

In response, the Committee filed the requested amendment.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C.

September 10, 1993

*Received in  
Audit 11/17*

**MEMORANDUM**

**TO:** Robert J. Costa  
Assistant Staff Director  
Audit Division

**THROUGH:** John C. Surina  
Staff Director

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

Kim Bright-Coleman  
Associate General Counsel

Lorenzo Holloway  
Acting Assistant General Counsel

Gregory R. Baker  
Attorney

**SUBJECT:** Proposed Final Audit Report for New York '92 Host  
Committee, Inc. (LRA #444 AR #93-34)

The Office of General Counsel has reviewed the proposed Final Audit Report for the New York '92 Host Committee, Inc. ("the Host Committee") which was forwarded to this Office on August 5, 1993. The following memorandum contains our comments on the proposed audit report.<sup>1</sup> Should you have any questions, please contact Gregory R. Baker, the attorney assigned to this matter.

Initially, we note that we concur with the Audit staff's findings with respect to apparent prohibited contributions (II.A.), disclosure of in-kind contributions (II.C.) and itemization of interest income (II.D.). In all cases, the Host Committee provided the requested documentation in its response to the Interim Audit Report. Thus, no further action is required with respect to these matters.

<sup>1</sup> The parentheticals refer to the section(s) and page(s) in the proposed report. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455.

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I. CONVENTION-RELATED EXPENDITURES (II.B.)

The Host Committee transferred \$135,500 from a money market account used for host-related expenditures ("host account") into an account used for convention-related expenditures ("convention account") between February 21, 1992 and August 25, 1992. The Interim Audit Report noted that the Host Committee transferred an additional \$12,300 after the close of the audit period. The Host Committee stated at the exit conference that contributions allowed under 11 C.F.R. § 9008.7(d)(3)(i) were initially deposited into the host account to earn interest and transferred to the convention account as needed to defray convention expenses. The Host Committee also provided the auditors with a schedule of specific contributions deposited into the money market account and subsequently transferred to the convention account.

Based on the limited information made available by the Host Committee, the Interim Audit Report recommended that the Committee demonstrate that the source of the funds transferred was local retail businesses, whose donations were proportional to the commercial return reasonably expected during the life of the convention. Furthermore, the Audit staff recommended that absent documentation to the contrary, expenditures totaling \$135,500 would be charged to the expenditure limitation pursuant to 11 C.F.R. § 9008.7(a).

In its response to the Interim Audit Report, the Host Committee submitted documentation from the contributors which demonstrated that permissible funds were present in the account when the transfers were made. Accordingly, the Audit staff concluded in the proposed Final Audit Report that the contributions are no longer chargeable to the expenditure limitation pursuant to 11 C.F.R. § 9008.7(a). In any event, the Audit staff requests in its cover memorandum to the proposed report that this Office specifically address two issues: (1) whether the information provided by the Host Committee adequately demonstrated that the donations were proportionate to the commercial return reasonably expected during the life of the convention; and (2) whether the businesses at issue qualify as "local retail businesses" pursuant to 11 C.F.R. §§ 9008.7(d)(3)(i), (ii) and (iii).

We believe that the Host Committee's response sufficiently addresses the Audit staff's concerns. The Committee's response demonstrates that the funds transferred were from permissible sources. Specifically, the Committee's response demonstrates that the contributions were made by local retail businesses and that the contributions did not exceed the commercial return reasonably expected during the life of the convention. The Host Committee submitted information showing the amount each business contributed and how each business calculated the reasonable



commercial return.<sup>2</sup> For instance, the Host Committee's response included information from the Hotel Inter-Continental which stated that its donation of \$8,200 was "at least proportionate to the commercial return reasonably expected [by the Hotel] during the Convention period (July 6 - July 19, 1992)."<sup>3</sup> The Hotel specifically noted that: (1) it was asked to reserve 200 rooms at an average rate of \$235 per night; (2) 35,000 to 40,000 people would be attending the convention, most of whom would require hotel housing; and (3) the nominee, Bill Clinton, and his staff stayed at the Hotel. Thus, we believe that the information provided by the Host Committee satisfies the Interim Audit Report's request for information and the requirements of 11 C.F.R. § 9008.7(d)(3).

We note that neither the FECA, the public funding statutes nor the Commission's regulations prohibit the transfer of funds from a host committee's general account to a separate account containing funds to be used to defray convention expenses, provided that the funds to be transferred would qualify under 11 C.F.R. § 9008.7(d)(3) to be used to defray convention expenses. See also Advisory Opinion ("AO") 1980-12 (The Commission stated that transfers by the Civic Host Committee for the 1980 Republican National Convention, Inc. would be permissible if the funds were donated by local retail businesses and each donation did not exceed an amount proportionate to the commercial return reasonably expected during the life of the convention). The Host Committee's response illustrates that the contributions deposited into the account were made by local retail businesses and that the contributions were proportionate to the commercial return reasonably expected during the life of the convention. Therefore, it is our opinion that the Committee's response adequately demonstrates that the funds transferred were permissible under section 9008.7(d)(3).

## II. SUNSHINE RECOMMENDATION

The Commission's Sunshine Act procedures provide that the Office of General Counsel make Sunshine recommendations on documents submitted to this Office for review. Section 2.3(b) of the Commission's Sunshine Act regulations provides that "every portion of every Commission meeting shall be open to

<sup>2</sup> The Host Committee submitted information from ten (10) contributors demonstrating that the transfers in question derived from permissible sources: (1) New York Telephone; (2) Hotel Inter-Continental; (3) Con Edison; (4) Circle Line - Statue of Liberty Ferry, Inc.; (5) Coca-Cola Bottling Company of New York; (6) Time Warner Cable; (7) New York Newsday; (8) Loews Hotels; (9) the Roosevelt Hotel; and (10) New York Port Authority.

<sup>3</sup> The Hotel Inter-Continental is located at 111 East 48th Street, New York, N.Y. 10017.

Memorandum to Robert J. Costa  
Final Audit Report for New York '92  
Host Committee, Inc. (LRA #444/AR #93-34)  
Page 4

public observation" except for those matters exempted from disclosure under section 2.4 of the regulations. This Office believes that Commission discussion of this document should be conducted in open session as it does not concern any matters exempted from public disclosure under 11 C.F.R. § 2.4.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D. C.

AK004355

November 15, 1993

Mr. Henry Miller, Treasurer  
New York '92 Host Committee, Inc.  
412 East 55th Street  
Apt. 3-G  
New York, NY 10022

Dear Mr. Miller:

Attached please find the Final Audit Report on New York '92 Host Committee, Inc. The Commission approved the report on November 10, 1993.

The Commission approved Final Audit Report will be placed on the public record on November 19, 1993. Should you have any questions regarding the public release of the report, please contact Fred S. Eiland of the Commission's Press Office at (202) 219-4155. Any questions you have related to matters covered during the audit or in the report should directed to Brian Dehoff or Tom Nurthen of the Audit Division at (202) 219-3720. These individuals can be reached toll free at (800) 424-9530.

Sincerely,

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

Robert G. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

05070191123

CHRONOLOGY - NEW YORK 192 HOST COMMITTEE, INC.

Pre-audit Inventory Commenced	09 25 92
Audit fieldwork	09 28/92 - 10 09 92
Interim Audit Report to Committee	05 25 93
Response Received to Interim Audit Report	07 02 93
Final Audit Report Approved by the Commission	11 10 93

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