



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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COMMISSION  
SECRETARIAT

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November 4, 1998

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon   
Acting Staff Director

FROM: Lawrence M. Noble  
General Counsel

By: Kim Bright-Coleman   
Associate General Counsel

Rhonda J. Vosdinh   
Assistant General Counsel

Delbert K. Rigsby   
Attorney

SUBJECT: 1996 Democratic National Convention Committee, Inc. -  
Request for Oral Hearing (LRA #471)

On September 8, 1998, the 1996 Democratic National Convention Committee, Inc. (the "Convention Committee") requested the opportunity to address the Commission in open session in connection with its request for an administrative review of a repayment determination contained in the audit report as provided in the Commission's regulations at 11 C.F.R. §§ 9008.12(c) and 9007.2(c)(2)(ii).<sup>1</sup> See Attachment. According to 11 C.F.R. § 9008.12(c), the Commission will follow the same repayment determination procedures for publicly funded convention committees, and publicly funded convention committees will have the same rights and obligations as are provided for repayment determinations involving publicly funded candidates under 11 C.F.R. §§ 9007.2(c) through (h). The Office of General Counsel recommends that the Commission grant the Convention Committee's request for an oral hearing and schedule the hearing for January 13, 1999.

<sup>1</sup> The Convention Committee's request for an administrative review of the repayment determination was timely in accordance with 11 C.F.R. § 9007.2(c)(2)(i).

The Commission's regulations provide that if a publicly funded convention committee disputes the Commission's repayment determination, the convention committee may request an administrative review of the determination. 11 C.F.R. § 9007.2(c)(2). The convention committee shall submit written legal and factual materials to demonstrate that no repayment, or a lesser repayment, is due. 11 C.F.R. § 9007.2(c)(2)(i). A convention committee may request an opportunity to address the Commission in open session. 11 C.F.R. § 9007.2(c)(2)(ii). The convention committee should identify in its legal and factual materials the repayment issues that it wants to address at the oral hearing. *Id.* The Commission may grant this request by an affirmative vote of four of its members, and inform the convention committee of the date and time set for the oral hearing. *Id.*

The Convention Committee has requested an opportunity to make an oral presentation regarding its dispute of the Commission's repayment determination made pursuant to 26 U.S.C. § 9008(h). Specifically, the Convention Committee states that "requiring the Convention Committee to repay payments made by the Host Committee [Chicago's Committee for '96] and the City [of Chicago] for telephone service charges would be arbitrary, capricious and contrary to law" because "given the ambiguous and contradictory language of the regulation [11 C.F.R. § 9008.52(c)] and the E&J, the Convention Committee did not have fair notice that the regulation could be interpreted to allow payment by a host committee for a whole variety of administrative and overhead expenses, but not including telephone service charges." Furthermore, the Convention Committee states that the "Commission's reliance on the one sentence of language in its E&J as governing the scope of the regulation is in violation of the Administrative Procedures Act."

The Office of General Counsel recommends that the Commission grant the Convention Committee's request for an oral hearing. Should the Commission approve our recommendation, the Office of General Counsel proposes that procedures similar to those used for previous oral hearings during the 1996 election cycle be followed. Pursuant to these procedures, the Office of General Counsel will prepare an agenda document containing materials relevant to the Convention Committee's oral hearing. This document will be provided to the Commission and to the Convention Committee prior to the date of the hearing.

At the hearing, the Chairman will make an opening statement. The Convention Committee will then be given 30 minutes to make a presentation on the issues raised in the legal and factual materials it has submitted. 11 C.F.R. § 9007.2(c)(2)(ii). Following the presentation, individual Commissioners, the General Counsel, and the Audit Division may ask questions. 11 C.F.R. § 9007.2(c)(2)(ii). The letter to the Convention Committee will inform them of these procedures and also state that any additional materials the Convention Committee may wish to have the Commission consider should be submitted to the Office of General Counsel within five (5) days following the oral hearing.

**RECOMMENDATIONS**

The Office of General Counsel recommends that the Commission:

1. Grant the request of the 1996 Democratic National Convention Committee, Inc. to address the Commission in open session as provided at 11 C.F.R. § 9007.2(c)(2)(ii);
2. Schedule the oral hearing for January 13, 1999 at 10:00 a.m.; and
3. Approve the appropriate letter.

**Attachment**

1996 Democratic National Convention Committee, Inc. response dated September 8, 1998.

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**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**DATE & TIME OF TRANSMITTAL: Wednesday, November 4, 1998 4:00**

**BALLOT DEADLINE: Monday, November 9, 1998 4:00**

**COMMISSIONER: ELLIOTT, MASON, McDONALD, SANDSTROM, THOMAS, WOLD**

**SUBJECT: 1996 Democratic National Convention Committee, Inc. -  
Request for Oral Hearing (LRA #471) Memorandum to the  
Commission dated November 3, 1998.**

I approve the recommendation(s)

I object to the recommendation(s)

COMMENTS: \_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

**BEFORE THE  
FEDERAL ELECTION COMMISSION**

**REQUEST OF  
1996 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.  
FOR ADMINISTRATIVE REVIEW OF  
REPAYMENT DETERMINATION**

Pursuant to 11 C.F.R. §§ 9008.12(c) and 9007.2(c)(2), the 1996 Democratic National Convention Committee, Inc. (the "Convention Committee") hereby disputes the repayment determination set forth in the Report of the Audit Division on the 1996 Democratic National Convention Committee, Inc., approved by the Commission on June 25, 1998 and served on the Convention Committee on July 8, 1998 (the "Final Audit Report"), and requests administrative review of that determination.

Pursuant to 11 C.F.R. §§ 9008.12(c) and 9007.2(c)(2)(ii), the Convention Committee further requests that the Commission provide an opportunity for the Convention Committee to address the Commission in open session, to demonstrate that no repayment is required.

The sole issue presented by the Final Audit Report is whether the Convention Committee should be required to repay \$600,325 paid by Chicago's Committee for '96 (the "Host Committee") and \$126,510 paid by the City of Chicago (the "City") for local and long distance telephone service charges for telephone calls made by the Convention Committee. (Final Audit Report at 10-12). That question turns on the application of the Commission's regulation governing permissible disbursements by a host committee, 11 C.F.R. § 9008.52(c),<sup>1</sup> which reads in pertinent part:

- (1) Local businesses (excluding banks), local labor organizations and other local organizations or individuals may donate funds or make in-kind donations to a host committee to be used for the following purposes: . . .
  - (v) To provide the national committee use of an auditorium or convention center and to provide construction and convention

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<sup>1</sup> Private contributions to a separate fund or account or a government agency or municipality may be made to pay for the same categories of expenses as those for which a host committee may pay. 11 C.F.R. § 9008.53(b)(1).

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; . . .

(xi) To provide other similar convention-related facilities and services.

The Final Audit Report concedes that payment by the Host Committee and/or the City for Convention Committee for offices and office equipment, whether at the Convention Hall or off-site, was entirely permissible under this language. Final Audit Report at 10. Further, the Audit Division reviewed and allowed payments by the Host Committee and/or the City for numerous office-related service charges, including maintenance, cleaning, use of office supplies, equipment rental charges, cellular phone service charges, pager service charges, and the like. Nevertheless, Final Audit Report drew a distinction between all of these charges for office equipment facilities and services, on the one hand, and telephone service charges, on the other hand, citing a single sentence of the language of the Commission's Explanation and Justification for its Convention regulations: "Please note that the revised rules do not permit host committees or municipalities to pay salaries of those working for the convention committee or the national party, or to pay the convention committee's or the national party's overhead and administrative expenses related to the convention." Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, Final Rules, 59 Fed. Reg. 33606 at 33614 (June 29, 1994).

In these circumstances, requiring the Convention Committee to repay payments made by the Host Committee and the City for telephone service charges would be arbitrary, capricious and contrary to law, for two reasons. First, given the ambiguous and contradictory language of the regulation and the E&J, and their contradictory application by the Audit Division, the Convention Committee simply did not have fair notice that the regulation could be interpreted to allow payment by a host committee for a whole variety of administrative and overhead expenses, but not including telephone service charges. Second, the Commission's reliance on the one sentence of language in its E&J as governing the scope of the regulation is in violation of the Administrative Procedure Act, 5 U.S.C. §§ 553(b) and (c), because the Convention Committee clearly was not afforded any notice of or opportunity to comment on the entire concept that convention committee

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administrative and overhead charges would be excluded from the category of permissible disbursements by a host committee or municipality.

**I. THE AMBIGUOUS AND CONTRADICTIONARY LANGUAGE AND APPLICATION OF THE REGULATION AND E&J FAILED TO PROVIDE THE CONVENTION COMMITTEE WITH FAIR NOTICE THAT PAYMENT OF TELEPHONE CHARGES WAS PROHIBITED**

To be sure, "substantial deference" must be given "to an agency's interpretation of its own regulations." Thomas Jefferson University v. Shalala, 512 U.S. 504, 512 (1994). Where the imposition of a civil sanction is at stake, however, "the due process clause prevents that deference from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires." Gates & Fox Co., Inc., v. Occupational Safety and Health Review Commission, 790 F.2d 154, 156 (D.C. Cir. 1986)(Scalia, C.J.). "In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability." General Electric Co. v. United States Environmental Protection Agency, 53 F.3d 1324, 1328 (D.C. Cir. 1995). As the court explained in Diamond Roofing Co. v. Occupational Safety & Health Review Commission, 528 F.2d 645 (5<sup>th</sup> Cir. 1976), the regulated entity:

is entitled to fair notice in dealing with his government. Like other statutes and regulations which allow monetary penalties against those who violate them, an occupational safety and health standard must give an employer fair warning of the conduct it prohibits or requires. . . .

If a violation of a regulation subjects private parties to criminal or civil sanctions, a regulation cannot be construed to mean what an agency intended but did not adequately express. . . . [T]he . . . enforcer of the Act has the responsibility to state with ascertainable certainty what is meant by the standards he has promulgated.

528 F.2d at 649. See also, Rollins Environmental Services, Inc. v. U.S. Environmental Protection Agency, 937 F.2d 649, 654 (D.C. Cir. 1991)(lack of adequate notice resulting from regulation's inherent uncertainty in meaning resulted in setting aside penalty for violating regulation).

In this case, it cannot possibly be said that the Convention Committee had fair warning that the Commission's regulation prohibited the payment by a host committee or municipality of telephone service charges, for the following reasons.

**A. The Language of the Regulation Does Not Distinguish Between Telephone Service Charges and Other Office Equipment Facilities and Services**

"A regulation should be construed to give effect to the natural and plain meaning of its words." Diamond Roofing Co., *supra*, 528 F.2d at 649. It is impossible to glean from a reading of the plain language of the regulation, section 9008.52(c)(1), that host committees are permitted to pay for a wide variety of office-related facilities and services, but not telephone service charges.

The regulation clearly permits host committees to pay for "offices" and "office equipment." 11 C.F.R. § 9008.52(c)(1)(v). The regulation goes on to allow host committees to pay, without limitation, to "provide other similar convention-related facilities and services." *Id.* § 9008.52(c)(1)(xi)(emphasis added). Thus, host committees are indisputably permitted to pay for the provision and installation of telephone equipment for the convention committee. Any natural and plain reading of the regulation would give rise to the conclusion that the host committee is also permitted to pay for "other similar" "services," and that use of a telephone is a "service" similar to the provision and installation of telephone "facilities".

Further, the very use of the phrase "other similar convention-related facilities and services" indicates that the list provided in the preceding subsection of the regulations is illustrative rather than exclusive. Cf. Puerto Rico Maritime Shipping Authority v. Interstate Commerce Commission, 645 F.2d 1102, 1112 n. 26 (D.C. Cir. 1981)(use of word "including" indicates specified list is illustrative, not exclusive). Clearly the use of telephones is an "other service," "similar" to the provision, for example, of other utilities for which a charge is paid—specifically, air conditioning and electricity, specifically listed in subsection (c)(1)(v).

Nothing in the plain language of this regulation, therefore, gives the convention committee any notice whatsoever that the provision and installation of office equipment may be paid for by a host committee, but not service charges for use of such equipment,



or that certain types of service charges for use of offices or office equipment may be paid for by the host committee (e.g., electricity for offices), but not telephone service charges.

**B. Nothing in the Administrative History of the Regulation, Including the E&J, Gives Fair Notice That Telephone Charges Are Excluded From the List of Expenses for Which Host Committees May Pay**

Nothing in the administrative history of the regulation gives a convention committee any indication that certain types of convention committee administrative facilities and services may be paid for by a host committee, but not telephone service charges. First, the regulation has never contained, in any of its formulations, any limitation on payment of convention committee administrative expenses by a host committee, provided that the source of funds was permissible. The first regulations promulgated by the Commission allowed certain local businesses to donate funds to a host committee in an amount "proportionate to the commercial return reasonably expected" by that business during the convention, and allowed the host committee to use those funds "to pay for what would otherwise be a convention expense by the national committee," obviously including convention committee administrative costs. Former section 121.9(b), 41 Fed. Reg. 35965 (Aug. 25, 1976). The Commission's explanation to Congress made clear that such funds could be used by the host committee, "if it so chooses, to . . . defray convention expenses of the national party. . . ." House Doc. 95-44, 95<sup>th</sup> Cong., 1<sup>st</sup> Sess. 137 (1977).

The second version of the regulation, promulgated in 1979, added the list of purposes for which expenditures could be made by government agencies and municipalities, including the term, "other similar convention related facilities and services," and provided that host committees could make expenditures for purposes that "include but are not limited to" the purposes listed for municipalities, provided the funds were donated by local retail businesses in an amount proportionate to the commercial return reasonably expected. Former sections 9008.7(b)(2) and (d)(3), 44 Fed. Reg. 63036 at 63041-42 (Nov. 1, 1979). In essence, the concept of these regulations, carrying forward the policy of the original regulations, was that the restrictions on source of the funds would ensure that the donations were commercially motivated and that, once these

restrictions were met, the host committee could spend the funds for any "convention expenses." See Explanation & Justification, section 9008.7, 44 Fed. Reg. at 63038.

In promulgating the current version of the regulations, the Commission decided to eliminate what it regarded as complex and unworkable distinctions between "local" and "local retail" businesses. 59 Fed. Reg. at 33610. But the new rules continued to provide, as the Commission explained, that "both host committees and government agencies and municipalities may accept monetary and in-kind donations from local businesses and other local organizations and individuals to defray a variety of expenses for promoting the convention city and paying for convention-related facilities and services."

Explanation and Justification ("E&J"), section 9008.52, 59 Fed. Reg. at 33614 (emphasis added). Significantly, the Commission retained, in the final language of the current rules in section 9008.52(c), the exact same list of permissible host committee disbursements as had been set forth in prior section 9008.7(b)(2) in 1979, including "[o]ther similar convention related facilities and services," for which a host committee could use funds donated by local retail businesses under section 9008.79(d)(3). The Commission openly recognized, in 1979, that this list allowed the host committee to "defray convention expenses, without limitation, and that was precisely the reason there had been placed severe limitations on the source of the funds. 44 Fed. Reg. at 63037-38. Thus, the legislative history of the language of the current regulation indicates no intent whatsoever to limit the use of host committee funds for administrative expenses.

That leaves, of course, the one sentence of the E&J of the current regulation, asking convention committees to "Please note that the revised rules do not permit host committees or municipalities to pay. . . the convention committee's or the national party's overhead and administrative expenses related to the convention. 59 Fed. Reg. at 33614. The problem with this sentence is that it is flatly contradicted by the language of the regulation itself, rendering it essentially unintelligible. The E&J language does not say that a host committee can pay some administrative expenses, but not telephone charges. It says that a host committee may not pay any administrative or overhead expenses of the convention committee. Yet the plain language of the regulation itself clearly permits payment of such expenses, in particular, "offices" and "office equipment." Offices and office equipment are administrative and overhead expenses, by anybody's definition.

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How can a convention committee make any sense whatsoever of a sentence in the E&J that says a host committee cannot pay convention committee administrative expenses and a regulation that says a host committee can pay administrative expenses? Certainly, such contradictory language cannot even remotely be said to give fair notice of which types of administrative expenses will be allowed—in particular, which types of office facilities and services will be allowed to be paid by the host committee and which will not.

The Final Audit Report suggests that the “E&J offers a reasonable starting point for applying the regulations.” Final Audit Report at 12. But a “reasonable starting point” is not enough to tell a party committee that it is going to be held liable for more than \$700,000 in repayments based on a distinction that is nowhere to be found in the language or history of the rules. For these reasons, nothing in the administrative history of the regulation—including the E&J language on which the Final Audit Report places so much reliance—gives fair notice that telephone service charges would be disallowed as a permissible host committee disbursement.

**C. The Application of the Regulation by the Audit Division Was Contradictory and Inconsistent**

The Audit Division itself interpreted and applied the language of section 9008.52(c), and the E&J language, in an entirely contradictory and inconsistent way. The Host Committee and the City paid for, and the Audit Division allowed their payments for, a variety of administrative and overhead expenses for convention-related facilities and services for the Convention Committee, including use of office equipment as well as provision and installation of such equipment. Indeed, the Audit Division itself acknowledges that, notwithstanding the language of the E&J purporting to bar host committee payments for any convention committee administrative or overhead expenses, it was permissible for the Host Committee to pay for Convention Committee offices and office equipment, including telephone systems. Final Audit Report at 10.

Moreover, as best we can determine from the record, the Audit Division allowed payments by the Host Committee for service charges which are conceptually and definitionally indistinguishable from telephone serve charges Convention Committee

pager ("beeper") charges, usage charges for cellular phones, rental of certain types of office equipment, and consumable office supplies such as paper, printer and fax cartridges, pens, pads, fasteners and the like, as well as postage for use by the Convention Committee. The Audit Division, again, approved such payments notwithstanding the language of the E&J suggesting that a host committee may not pay for any convention committee administrative and overhead expenses.

Thus, the Audit Division's own inconsistent and contradictory application of the regulation demonstrates that no regulated entity could possibly figure out, or have been put on notice, that the regulation contained distinctions between certain kinds of administrative expenses and others, or that certain kinds of service charges would be allowable and others would not. For this reason too, the regulation did not provide fair notice to the Convention Committee that telephone service charges would be disallowed.

**D. The Definition of Convention Expenses Is Useless in Interpreting the Scope of Permissible Host Committee Disbursements**

The Final Audit Report places some reliance on the fact that the Commission's rules of course allow a convention committee itself to pay for its own administrative and overhead expenses. The Final Audit Report cites 11 C.F.R. § 9008.7(a)(4)(x), which permits a convention committee pay for its own "[a]dministrative and office expenses for conducting the convention, including . . . telephone charges." Reference to these regulations was also made during the open Commission meeting on June 25, 1998, at which the Final Audit Report was approved.

That a convention committee may pay for certain expenses with its own funds, from the public grant, says nothing whatsoever about whether a host committee may also pay for such expenses. There are numerous categories of expenses which the regulations allow either the convention committee or the host committee to pay for, including its own offices and office equipment, and expenses for preparing the physical site of the convention, including rental of the hall, platforms and seating, all of which are specifically set forth both in section 9008.7(a)(4), as permissible convention committee expenses, and in section 9008.53(c)(1), as permissible host committee expenses. There is no provision in the regulations, anywhere, or in the E&J, even remotely suggesting that if

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a particular category of expense may be paid for by the convention committee itself, it cannot be paid for by the host committee or municipality, and any such reading would be flatly contradicted by the language of the regulations.

Therefore, it is utterly meaningless that the convention committee could lawfully have paid for all of its own administrative and overhead expenses. The question is whether the convention committee was fairly put on notice that certain categories of administrative and overhead expenses could be paid for by the host committee, while others, specifically telephone charges, could not. The definition of "convention expenses" is wholly irrelevant and useless in addressing that question.

**E. The Convention Committee Was Not Provided Fair Notice that the Regulation Prohibited Host Committees from Paying for Telephone Service Charges**

In the circumstances described above, where the regulation obviously failed to give fair warning of the conduct the Commission now seeks to prohibit—i.e., payment by host committees of telephone service charges—it would be unlawful for the Commission to force the Democratic National Committee to repay those Host Committee payments. In Gates & Fox Co., supra, a federal contractor working on the Washington Metro system was cited for violating an OSHA regulation requiring that certain breathing devices be provided for workers near the "advancing face" of a shaft and that "such equipment" shall be on certain equipment in that area "and in other areas" where employees might be trapped by smoke. The contractor had not been working near an "advancing face", but was working in another area where employees might be trapped by smoke. The court found that the language was ambiguous because it was not clear whether the "other areas" were only those near an advancing face, or could include other areas as well. The court concluded that the contractor could not be fined for the violation because it "did not receive constitutionally adequate notice" that OSHA would apply the regulation to such other areas. 790 F.2d at 156. The court reasoned that:

Courts must give deference to an agency's interpretation of its own regulations. . . . Where the imposition of penal sanctions is at issue, however, the due process clause prevents that deference from validating the application of a regulation that fails to give fair warning of the conduct it prohibits or requires.

Id.

Similarly, in Satellite Broadcasting Co., Inc. v. FCC, 824 F.2d 1 (D.C. Cir. 1987), the FCC dismissed a company's application to operate a microwave radio station because the application had been filed in the wrong place. The court found that the FCC's rules addressed the proper place for filing in a "baffling and inconsistent fashion." 824 F.2d at 2. One section of the rules said that private radio applications should be filed in Gettysburg, PA, while another section suggested that applications for any lottery should be filed in accordance with the rules for each service, and for that specific service, the place of filing was Washington. The company filed in Washington but the FCC ruled they should have filed in Gettysburg. The court vacated the FCC's dismissal decision as arbitrary and capricious, holding that the company's interpretation of the confusing rules was equally reasonable and that:

Traditional concepts of due process incorporated into administrative law preclude an agency from penalizing a private party for violating a rule without first providing adequate notice of the substance of the rule. . . . The Commission through its regulatory power cannot, in effect, punish a member of the regulated class for reasonably interpreting Commission rules. Otherwise the practice of administrative law would come to resemble "Russian Roulette." The agency's interpretation is entitled to deference, but if it wishes to use that interpretation to cut off a party's right, it must give full notice of its interpretation.

[*id.* at 3-4.

Again, in General Electric Co. v. U.S. Environmental Protection Agency, 53 F.3d 1324 (D.C. Cir. 1995), the EPA fined GE for distilling the contaminated solvent from certain PCB's before incinerating them. One section of EPA's complex rules appeared to allow intermediate processing for purposes of disposal. Another section required disposal of the solvent by an approved method, which would not include distillation, only immediate incineration. The court held that EPA's reading of its regulations was reasonable, and would be upheld, but that the agency could not impose any fine or penalty on GE for violating that regulation based on such the agency's interpretation:

Due process requires that parties receive fair notice before being deprived of property. . . . In the absence of notice—for example, where the regulation is not sufficiently clear to warn a party about what is expected of it—an agency may not deprive a party of property by imposing civil or criminal liability.

53 F.2d at 1328. The court noted that there had been no pre-enforcement efforts to bring about compliance and no other way for GE to have known the EPA would interpret the

regulations the way it did: "[W]e conclude that the interpretation is so far from a reasonable person's understanding of the regulations that they could not have fairly informed GE of the agency's perspective." Id. at 1330. The court found that the regulations on their face did not prohibit use of distillation as a pre-disposal process, that other parts of the regulation appeared to permit use of distillation, that the parties themselves were confused about which sections of the rules actually applied. EPA pointed to a policy statement purporting to address PCB separation activities, but the court found that the application of that policy was itself unclear. The court concluded that:

EPA did not provide GE with fair warning of its interpretation of the regulations. Where as here, the regulations and other policy statements are unclear, where the petitioner's interpretation is reasonable, and where the agency itself struggles to provide a definitive reading of the regulatory requirements, a regulated party is not "on notice" of the agency's ultimate interpretation of the regulations, and may not be punished.

Id. at 1333-34 (emphasis added). See, to the same effect, United States v. Hoechst Celanese Corp., 964 F. Supp. 967 (D.S.C. 1996), aff'd in part, rev'd in part, 128 F.3d 216 (4<sup>th</sup> Cir. 1997), cert. denied, 118 S. Ct. 2367 (1998)(where regulation was unambiguous and unclear and there was no pre-enforcement warning of agency interpretation, there could be no finding of liability or penalty imposed); United States v. Consolidated Edison Co. of New York, 1988 U.S. Dist. LEXIS 13234, No. CV 88-0049 (E.D.N.Y., Nov. 16, 1988)(where EPA regulation was ambiguous, regulated party was not put on fair notice of EPA interpretation and no penalty could be imposed).

As in these cases, the Commission's regulations governing permissible disbursements by host committees are "baffling and inconsistent," Satellite Broadcasting, supra, 824 F.2d at 2, to say the least. As in Gates & Fox, supra, the plain language of the regulation does not draw the distinction the Commission seeks to impose, between telephone service charges and other administrative expenses. The language of the regulation, expressly allowing payment of some convention committee overhead and administrative expenses by host committees, flatly contradicts that of the E&J, purporting to prohibit any payment by host committees of convention committee administrative and overhead expenses. The application of the regulation by the Audit Division itself was

contradictory and inconsistent. And, as in General Electric, it was surely reasonable for the Convention Committee to regard telephone service charges as being an "other similar convention-related service" within the meaning of the regulation, similar to office equipment and supplies, to utility charges, and to service charges for office equipment that the Audit Division in fact treated as permissible for payment by the Host Committee.

In these circumstances, it is manifest that the Convention Committee was not provided with "fair warning" of the Commission's interpretation, was not "on notice" of the Commission's "ultimate interpretation" imposed for the first time in this audit, and therefore "may not be punished" with a repayment obligation of more than \$700,000.

General Electric Co., supra, 53 F.3d at 1333-34.

**II. THE CONVENTION COMMITTEE WAS NOT PROVIDED WITH ANY NOTICE OR OPPORTUNITY FOR COMMENT ON THE E&J LANGUAGE THE COMMISSION NOW REGARDS AS CONTROLLING**

As noted, the Final Audit Report, in holding that the Host Committee and city payments of telephone service charges for the Convention Committee were impermissible, relies almost entirely on the language of the E&J indicating that the revised rules "do not permit host committees or municipalities to . . . pay the convention committee's . . . overhead and administrative expenses related to the convention." Final Audit Report at 10-12, citing E&J, 59 Fed. Reg. at 33614. To the extent that the Commission has conferred on this language the force of a new regulation, controlling the entire scope of section 9008.52(c) of the regulations, the Commission has clearly violated the Administrative Procedure Act, 5 U.S.C. §§ 553(b)&(c), by failing to provide the Convention Committee or the DNC any notice of or opportunity to comment on this new restriction on the scope of permissible host committee disbursements.

The Commission issued a Notice of Proposed Rulemaking, with a request for comments on new rules governing federal financing of Presidential nominating conventions, on August 12, 1993, 58 Fed. Reg. 43046. Section 9008.53 of the proposed new rules essentially retained the concept of the former rules: host committees could accept donations from local retail businesses, in amounts proportionate to the expected commercial return, and the host committee could use those funds to defray essentially any convention expenses. The proposed rules further clarified that municipalities could



donate or expend their own funds to defray any convention expenses, without limitation in amount. The preamble to the NPRM confirmed that the only changes to the existing rules were to combine certain sections, confirm that host committees could accept in-kind as well as cash donations, confirm that banks do not qualify as local retail businesses and clarify that municipalities could donate funds to host committees without restriction in amount. 58 Fed. Reg. at 43051-52. There was no suggestion anywhere in the NPRM that the Commission was considering any new restriction on the use of funds donated by local retail businesses to host committees, under this section, for payment of administrative or overhead expenses.

The DNC submitted comments on the proposed new rules and also presented oral testimony before the Commission at an open hearing on October 27, 1993. Of course, the DNC, having been given no indication whatsoever that the Commission was considering restricting the scope of permissible host committee disbursements for convention committee administrative or overhead expenses, did not think to comment on any such concept either in its written comments or at the hearing. As best as we can determine from the record, no one commented on this issue in any way.

The Commission considered the new rules at a number of open meetings during April, May and June of 1994. The final Agenda Document, #94-58, had revised section 9008.52 to eliminate the requirement that the amount donated to a host committee by a local business be proportionate to the expected return, but added a requirement that it be in the ordinary course of business for the local donors to make donations to nonpolitical conventions. *Id.* at 5-6. The Agenda Document made clear, however, that with respect to the scope of permissible host committee disbursements, the new "rules allow local businesses and other local organizations to make monetary or in-kind donations to either the host committee or the municipality for a variety of purposes involving the promotion of the convention city and the costs of convention facilities and services." Agenda Document #94-58, Discussion § O at p. 5(emphasis added).

Indeed, the entire concept of limiting the scope of permissible host committee expenditures with respect to convention committee administrative expenses was not introduced, to our knowledge, until the very last meeting of the Commission on the new rules. At that meeting, one of the Commissioners suggested adding language to the E&J

to indicate that the host committee could not pay for convention committee administrative expenses. That suggestion was adopted without a formal vote by the Commission. The exact wording was created by the Office of General Counsel and inserted in the E&J, which was finally approved by the Commission, presumably on tally vote, and issued on June 29, 1994. There was no advance notice whatsoever that this new concept would suddenly be introduced and adopted at the last Commission meeting on the proposed new rules, let alone an opportunity for anyone to comment on it.

Agencies are of course allowed to modify proposed rules during the rulemaking process, without necessarily affording an opportunity for a second round of comment. As the District of Columbia Circuit has explained, however:

The test we have developed for deciding whether a second round of comment is required in a particular case is whether the final rule promulgated by the agency is a "logical outgrowth" of the proposed rule. . . . We apply that standard functionally by asking whether "the purposes of notice and comment have been adequately served," . . . that is, whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule.

American Water Works Ass'n v. Environmental Protection Agency, 40 F.3d 1266, 1274 (D.C. Cir. 1994)(citations omitted). Accord, United States v. Bethlehem Steel Corp., 38 F.3d 862 (7th Cir. 1994); Shell Oil Co. v. Environmental Protection Agency, 950 F.2d 741 (D.C. Cir. 1991).

In the case of the Commission's rules governing host committee disbursements, it is clear that the restriction on the ability of host committees to pay for convention committee administrative and overhead expenses was in no way a "logical outgrowth" of the proposed rule. Nothing in the proposed rules even hinted that such a restriction would be imposed. The DNC was given no opportunity whatsoever to comment on such a restriction. Had the DNC been afforded such an opportunity, it could have called on the Commission to clarify exactly what types of convention committee expenses the host committee would be precluded from paying, thereby obviating all of the confusion and uncertainty that gave rise to the repayment obligation imposed by the Final Audit Report. Manifestly, then, the "purposes of notice and comment" have not been "adequately served" in this case.

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In Koontzky v. Reich, 17 F.3d 1509 (D.C. Cir. 1994), the Labor Department's rules permitted employers to substitute alien workers on labor certifications. DOL issued a notice of proposed rulemaking to implement legislative changes in the immigration laws, including changes in the system for priority dates, but not mentioning any change in the ability of employers to substitute aliens. Then, in the final rule, the department amended its rules to limit the validity of labor certifications to the alien named on the employer's application. The court held that the rule was invalid because the department had failed to afford notice of or opportunity to comment on the no-substitution provision. The court noted that that the NPRM "did not contain the terms of the no-substitution rule it later promulgated; it did not propose abolishing substitution; and it did not mention the issues involved in doing so." 17 F.3d at 1513. Acknowledging that "a final rule need not match the rule proposed," the court nevertheless held that "a necessary predicate. . . is that the agency has alerted interested parties to the possibility of the agency's adopting a rule different than the one proposed. The adequacy of notice depends, . . . on whether the final rule is a 'logical outgrowth' of the proposed rule." Id. The court ruled that, in this case:

The Department's interim final rule does not even come close to complying with the notice requirement of § 553. Something is not a logical outgrowth of nothing. The notice of proposed rulemaking contains nothing, not the merest hint, to suggest that the Department might tighten its existing practice of allowing substitution. . .

Id. The court concluded that, "Interested persons. . . therefore had no opportunity to present their views on the matter before the Department acted." Id. at 1514. See also, National Mining Ass'n v. Mine Safety and Health Adm'n, 116 F.3d 520, 530-32 (D.C. Cir. 1997)(new rule invalidated where NPRM made no mention of changing significant aspect of rule; notice considered inadequate when "interested parties could not reasonably have anticipated final rulemaking from draft rule").

Likewise, in the case of the Commission's rulemaking, the NPRM contained "nothing, not the merest hint, to suggest" that the Commission was going to prohibit host committees from using any of their funds to pay for convention committee administrative and overhead expenses. The DNC would obviously have been very interested in commenting on such a proposal. Manifestly it was deprived of any such opportunity,

before the Commission acted in adopting the E&J language and thereby changing the scope of the entire regulation, at least as the Commission now seeks to apply it. In the absence of any notice of or opportunity to comment on this significant language effectively adopted as part of the final rule, the Commission has violated the Administrative Procedure Act. Therefore the rule was not validly adopted.

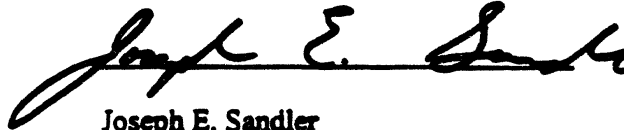
### CONCLUSION

The Commission may have good reasons to craft a rule that limits the scope of disbursements by host committees and municipalities for convention committee administrative and overhead expenses. The answer is to undertake a rulemaking that proposes such a rule, a rule which makes clear to host and convention committees exactly what types of convention committee expenses can and cannot be paid for by host committees and municipalities, and that invites public comment on such a proposed rule.

To require convention committees to guess about the meaning of a vague, ambiguous and contradictory regulation together with its equally contradictory preamble language, with a penalty of hundreds of thousands of dollars in repayment obligations for guessing wrong, violates fundamental precepts of constitutional due process and administrative law. The Convention Committee was not even remotely afforded fair notice that section 9008.53(c) prohibited host committee payment of telephone service charges while permitting host committee payment of numerous other categories of convention committee expenses, including overhead expenses. And had the DNC been provided notice of and an opportunity to comment on the entire concept of limiting host committee payment of convention committee administrative expenses, in the first place, the rule could have been clarified and the entire problem could have been avoided. The Commission's failure to provide such notice and opportunity to comment is a clear violation of the Administrative Procedure Act.

For these reasons, pursuant to 11 C.F.R. § 9007.2(c)(3), the Commission should revise the repayment determination in the Final Audit Report to find that the Host Committee payment of \$600,325 of telephone service charges and the City payment of \$126,510 of telephone service charges were permissible disbursements and not in-kind contributions to the Convention Committee, and therefore, that no repayment by the Convention Committee is required.

Respectfully submitted,



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Counsel for 1996 Democratic National Convention  
Committee, Inc.

Dated: September 8, 1998



FEDERAL ELECTION COMMISSION

WASHINGTON, D C. 20463

July 17, 1998

MEMORANDUM

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

FROM: ROBERT J. COSTA *rel. FW RJC 7-17-98*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON  
DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.

Attached please find a copy of the final audit report and related documents on the 1996 Democratic National Convention Committee, Inc. which was approved by the Commission on June 25, 1998

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: Commissioners  
Office of Staff Director  
Office of General Counsel  
Office of Public Disclosure  
FEC Library

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**REPORT OF THE AUDIT DIVISION**  
**ON**  
**1996 DEMOCRATIC NATIONAL**  
**CONVENTION COMMITTEE, INC.**

**Approved June 25, 1998**



**FEDERAL ELECTION COMMISSION**  
**999 E STREET, NW**  
**WASHINGTON, DC**

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**REPORT OF THE AUDIT DIVISION  
ON THE  
1996 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.**

**EXECUTIVE SUMMARY**

The 1996 Democratic National Convention Committee, Inc. (DNCC) registered with the Federal Election Commission on June 6, 1995 as a National Convention Committee of the Democratic Party.

The audit was conducted pursuant to Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the nominating convention is held. In accordance with 26 U.S.C. §9008(b), the Committee received \$12,364,000 in federal funds.

The findings of the audit were presented to the Committee at an exit conference held on August 7, 1997 and in the Exit Conference Memorandum (ECM). The Committee's responses to the findings are contained in the audit report.

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

**APPARENT CONVENTION EXPENSES PAID BY THE HOST COMMITTEE AND CITY OF CHICAGO-** 26 U.S.C. §9008(h), 11 CFR §9008.3(a)(4)(vii), 11 CFR §9008.7(a)(4), 11 CFR §9008.12(b)(3) and (b)(7), 11 CFR §9008.52 (c), 11 CFR §104.3(a). The Audit staff identified payments, totaling \$2,580,742, made by Chicago's Committee for '96 (Host Committee) and the City of Chicago for certain production and telecommunications expenses which did not appear to fall within the categories of permissible expenses which could be paid by the Host Committee or the City of Chicago.

The production payments, which totaled \$1,455,407, were made to six vendors for services such as providing a public address system, constructing camera platforms and lighting, providing stagehands, riggers, projectionists, electricians, teamsters, etc. Based on the DNCC's response to the ECM, the Audit staff conceded that audio services, including a public address system, provided by one vendor could be permissibly paid. The Commission determined that services provided by the remaining five vendors were permissible Host Committee expenditures. Regarding the telecommunications expenses, the Commission determined that payments totaling \$726,835 for the DNCC's local and long distance telephone charges were not permissible Host Committee or City expenses and the amount must be repaid to the US Treasury and itemized as an in-kind contribution on an amended disclosure report.

**IN-KIND CONTRIBUTIONS TO THE HOST COMMITTEE VIEWED AS APPARENT CONVENTION EXPENSES-** 11 CFR §9008.(b)(3), 11 CFR §9008.7(a)(4)(ix). The Audit staff identified an "electronic voting system" contributed by AT&T, valued at \$150,000, and a "credentials management system" contributed by the Polaroid Corporation, valued at \$15,000, which appeared to be items which should have been paid for by the DNCC. The Commission determined however, that the use of funds for a voting tabulation

system was a permissible Host Committee expense. In addition, based on the DNCC's response to the ECM, the Audit staff concluded that the credentials management system was used as a security measure and, as such, did not result in a prohibited in-kind contribution.

**IMPROPER USE OF FUND PAYMENTS-** 11 CFR §9008.12(a), (b)(4), and (c). The DNCC made payments of \$33,183 to seven vendors for expenses that were not convention-related. The DNCC received reimbursements totaling \$14,131 from four of the vendors. The amount, of the payments to the remaining two vendors, \$19,052, is repayable to the US Treasury. The DNCC made the repayment on July 24, 1997.

**DETERMINATION OF NET OUTSTANDING CONVENTION EXPENSES AND AMOUNTS SUBJECT TO THE SPENDING LIMITATION-** 26 U.S.C. §9008(b)(1) and (5); 11 CFR §9008.5(b); 11 CFR §9008.8(a)(1), (b)(1), (b)(2); 11 CFR §9008.10(g); 11 CFR §9008.12(b)(3), (b)(7), (c). The Net Outstanding Convention Expenses amount of (\$676,218) is in contrast to the DNCC's most recent calculation, prepared October 21, 1997, showing unspent funds of \$50,617. The Audit staff's inclusion of \$726,835 in in-kind contributions, viewed as subject to the spending limitation, created this situation. Prior to receipt of the ECM, the DNCC made a repayment to the US Treasury in the amount of \$120,562. The Commission determined that the \$120,562 paid to the US Treasury by the DNCC is a credit against the \$726,835 repayment due. The net repayment due is \$606,273 (\$726,835 - \$120,562).

**APPARENT ALLOCABLE CONVENTION-RELATED EXPENSES-** During the review of background materials, the Audit Staff identified a possible in-kind contribution to the DNCC. Published reports stated that the Democratic National Committee assumed \$25,000 in hotel bills associated with its Finance Chairman and the DNCC's Treasurer. R. Scott Pastrick's stay in Chicago during the Democratic National Convention. The Audit staff requested documentation such as copies of the hotel bills, information concerning the payment of the expenses, a copy of Mr. Pastrick's appointment calendar during the convention and an explanation of why at least a portion of the expenses were not related to the convention. The DNCC responded that Mr. Pastrick was not required to serve in the role of Treasurer of the DNCC during the convention week. The requested documentation was not provided.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

**REPORT OF THE AUDIT DIVISION  
ON THE  
1996 DEMOCRATIC NATIONAL CONVENTION COMMITTEE, INC.**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of the 1996 Democratic National Convention Committee, Inc. (the Committee or DNCC), 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 Section 9008(g) of Title 26 of the United States Code which directs the Commission to conduct an examination and audit of the payments for presidential nominating conventions no later than December 31 of the calendar year in which the presidential nominating convention is held.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the Committee 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 February 6, 1995, the date the Committee initially deposited funds from the Democratic National Committee (DNC), through September 30, 1996. In addition, certain financial activity was reviewed through September 30, 1997, to determine any amounts due to the United States Treasury. The Committee reported an opening cash balance of \$-0-, total receipts of \$12,380,763, total disbursements of \$9,859,144, and a closing cash balance on September 30, 1996 of \$2,521,619.<sup>1</sup>

**C. COMMITTEE ORGANIZATION**

The Committee registered with the Federal Election Commission on June 6, 1995, as a National Convention Committee of the Democratic Party. The Treasurers for the period audited were Robert T. Matsui from June 6, 1995 to October 6, 1995, R.

<sup>1</sup> All figures in this report have been rounded to the nearest dollar.

Scott Pastrick from October 6, 1995 to February 5, 1997 and Carol Pensky from February 5, 1997 to the present. During the audit period, the Committee maintained offices in Washington, D.C. and Chicago, IL. The Committee records are maintained in Washington, D.C..

The Committee used seven bank accounts to handle its financial activity. From these accounts it made approximately 1,958 disbursements. The Committee received \$12,364,000 in federal funds which represents the full entitlement established at 26 U.S.C. §9008(b).

**D. AUDIT SCOPE AND PROCEDURES**

The Audit of the Committee covered the following general categories as appropriate:

1. The receipt of contributions from prohibited sources;
2. the receipt of contributions or loans in excess of the statutory limitations (Findings II.A. and B.);
3. proper disclosure of receipts including the itemization of receipts when required, as well as, the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of Committee debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to Committee bank records;
7. adequate record keeping for transactions;
8. accuracy of the Statement of Net Outstanding Convention Expenses filed by the Committee to disclose its financial condition (Finding II.D.);
9. compliance with requirements concerning expenditures for convention expenses (Finding II.C.);
10. the Committee's compliance with spending limitations; and,
11. other audit procedures that were deemed necessary in the situation (Finding II.E.).

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As part of the Commission's standard audit process, an inventory of committee records was 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 the review of records presented, fieldwork began immediately.

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 report in an enforcement action.

## **II. AUDIT FINDINGS AND RECOMMENDATIONS — AMOUNTS DUE TO THE U.S. TREASURY**

### **A. APPARENT CONVENTION EXPENSES PAID BY THE HOST COMMITTEE AND CITY OF CHICAGO**

Section 9008(h) of Title 26 of the United States Codes states, in part, that the Commission shall have the same authority to require repayments from the national committee of a political party as it has with respect to repayments from any eligible candidate under section 9007(b).

Section 9008.3(a)(4)(vii) of Title 11 of the Code of Federal Regulations states, the convention committee shall agree to comply with the applicable requirements of 2 U.S.C. 431 et seq., 26 U.S.C. 9008, and the Commission's regulations at 11 CFR Parts 100-116 and 9008.

In addition, Section 104.3(a) of Title 11 of the Code of Federal Regulations states, in part, that each report filed under 104.1, shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at 11 CFR 104.3(a)(1) through (4).

Section 9008.12(b)(3) of Title 11 of the Code of Federal Regulations states, in part, if the Commission determines that contributions accepted to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

Section 9008.12(b)(7) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may seek a repayment from the convention committee if the convention committee knowingly helped, assisted or participated in making convention expenditures by the host committee, governmental agency or municipal corporation that are not in accordance with 11 CFR §§9008.52 or 9008.53.

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 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 under 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 facilities and services.

Section 9008.7(a)(4) 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.

### **Background**

The Audit staff identified payments made by and contributions to Chicago's Committee for '96 (the Host Committee) and payments made by the City of Chicago (the City) relative to several vendors totaling \$2,580,742, which appear to be for convention-related expenses and not for items noted above at 11 CFR §9008.52(c). Most of the information pertaining to the vendors was obtained as a result of our audit of the Host Committee.

On August 4, 1994, the City of Chicago and the 1996 Democratic National Convention Committee, Inc. entered into a written agreement (the Convention Contract or Contract). One section of this agreement provided for the establishment of a host committee to serve, in part, as a separate fund to satisfy the financial obligations of the City specified in the Convention Contract, and, for securing cash and in-kind contributions necessary to obtain goods and services needed for the Convention. The Host Committee formally registered with the FEC on August 16, 1994 as Chicago's Committee for '96.

On August 19, 1996, the City and the DNCC amended the Contract, in part, with a budget revision entitled "Chicago '96/City Budget." Each expense classification in the revised budget was identified by line number, line item, total amount budgeted, total cash spent, and total in-kind contributions allocated to that line item. The Audit staff's review of management controls disclosed that the Host Committee's disbursement records included memoranda which identified expenditures made on behalf of the DNCC and the budget line number to which each expense should be allocated. The apparent objective of these controls was to facilitate managerial reporting and compliance with the budget. Furthermore, the Host Committee obtained written concurrence from the DNCC for all of the payments. In accordance with the Convention Contract, expenses defrayed fell into one of two major budgetary classifications, production expenses or telecommunications costs, as discussed below.

The issue of the permissibility of these payments was addressed in Exit Conference Memoranda (ECM) resulting from the audits of both Chicago '96 and the DNCC. Both committees, as well as the City of Chicago, were given an opportunity to respond to the Memoranda, and information provided by them is incorporated in the discussions below.

In response to the respective Exit Conference Memoranda, both the DNCC and the Chicago's Committee for '96 argued 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* (E&J) 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."<sup>2</sup>

#### 1. Production Expenses

Pursuant to the Contract, the City agreed to provide, among other things, the following production hardware and related services to the DNCC: "a lighting system and the services of lighting consultants and a lighting designer to operate the system;" "an audio system (including but not limited to microphones at each delegation and all audio feeds) and the services of audio consultants and an audio designer to operate the system;" "the broadcast on one of the City's cable television stations gavel to gavel coverage of the Convention and special programming directly related to the Convention"

<sup>2</sup> See 44 Fed. Reg. 63,038 (Nov. 1, 1979).

provided that the "station shall make available to the DNCC a tape of such coverage...without charge for rebroadcast, display, or other rights;" and, "all necessary production control personnel, including camera persons, grips, video control and tape operators, audio and video maintenance engineers, chyron operators, video and utility personnel, riggers, gaffers, property master and such other production assistants as may be required."

The Audit staff's review of the Host Committee's disbursement records identified payments to six vendors totaling \$1,455,407. Furthermore, documents obtained by the Audit staff indicate that the City of Chicago paid an additional \$233,500.<sup>3</sup> These payments were apparently made in execution of the Contract's provisions related to production; these expenditures are discussed in detail below.

a. **Audiotek Corporation**

The Audit staff identified one disbursement by the Host Committee to Audiotek Corporation dated August 19, 1996, in the amount of \$113,500 as partial payment against invoice #12542. Host Committee internal memoranda allocated the payment to budget line item "32-Audio." According to the Host Committee's contract with Audiotek, the vendor was to provide public address systems, press and media feed distribution systems, delegate microphone selection systems, and on site technicians for the convention. A payment of \$113,500 by the City against the same invoice was also identified.

b. **Automated Studio Lighting**

The Audit staff identified four payments to Automated Studio Lighting, totaling \$299,016, from July through October 1996. Host Committee records disclosed that all but one of the payments was allocated to budget line item "31-Lighting." The remaining disbursement, in the amount of \$48,070, was allocated to budget line "19-Production Personnel." Vendor invoices reviewed by the Audit staff supported the Host Committee's expense classifications.

c. **Chicago Scenic Studios, Inc.**

The Audit staff identified two payments to Chicago Scenic Studios, Inc. during August and November of 1996, totaling \$615,083. The Audit staff's review of Host Committee records disclosed that both disbursements were allocated to budget line item "19-Production Personnel." Vendor documentation confirmed that all charges submitted were for production labor. A proposal from the vendor described labor

<sup>3</sup> No audit was performed of the City of Chicago; however, we do note that pursuant to 11 CFR §9008.53(b) expenditures made by a municipality or government agency should also meet the requirements of 11 CFR §9008.52(c).



services to be provided as stagehands, riggers, teamsters, projectionists, broadcast engineers, cameramen, carpenters, and decorators for the convention.

d. Theatrical Resources, Inc.

The Audit staff identified one payment in the amount of \$132,808 to Theatrical Resources, Inc. made during July 1996. A review of Host Committee records disclosed that the disbursement covered payroll for riggers and electricians working during July and August 1996 pursuant to a contract between the DNCC and the vendor. The expense was allocated to budget line "19-Production Personnel." A separate review of the convention committee's records disclosed that the DNCC subsequently paid this vendor a total of \$59,848 with three additional checks written during September 1996 and February 1997.

e. VANCO Lighting Services

The Audit staff identified one payment in the amount of \$175,000 to VANCO lighting services during July 1996. A review of Host Committee records disclosed that the expense was allocated to budget line "31-Lighting." Vendor invoicing described the services provided during July and August 1996 as a "rigging package" and identified the Convention as the "show" to be supported by VANCO.

f. Vari-Lite, Inc.

The Audit staff identified one payment by the Host Committee in the amount of \$120,000 to Vari-Lite, Inc. during August 1996 as payment against invoice #1701/02. A review of Host Committee records disclosed that the expense was allocated to budget line "31-Lighting." Vendor invoicing identified the Convention to be the "producer" using automated lighting and technical support provided during July and August 1996. The Audit staff also reviewed City memoranda asserting the equipment provided to be "lighting instruments, border and cyclorama striplights, follow spotlights, floodlights, special effects lighting, spotlights, etc." for the Convention. A payment of \$120,000 by the City against Vari-Lite invoice #1701/01 was also identified.

In the ECM, the Audit staff concluded that payments to the vendors described above are not expenses properly paid by the Host Committee or the City pursuant to 11 CFR §9008.52(c) or §9008.53(b). Rather, they are convention expenses that should have been paid by the DNCC pursuant to 11 CFR §9008.7(a) for reasons discussed below.

As noted previously, some of these disbursements 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 believes that the expenses paid by the Host Committee related to rigging cameras, automated lighting, and audio systems with the stated purpose of providing media feeds or cable broadcasts are not the same as building a platform from which cameras can be used for the television production. Furthermore, the Host Committee defrayed DNCC contracted labor costs unrelated to rigging or construction, i.e., projectionists, broadcast engineers, and cameramen. Whereas the Host Committee made numerous other disbursements separate from the production expenditures relating to construction of podiums, platforms and other facilities at the Convention center, the disbursements in this case appear to be related to the overall processes of television production and broadcasting.

Categories of permissible host committee expenses enumerated at 11 CFR §9008.52(c)(1) deal with preparing the convention site to host the convention and to promote the convention city. In contrast, production expenditures made by the Host Committee directly facilitated television and other media coverage of Convention proceedings through press feeds and cable broadcasts. Instead of merely preparing the convention center premises or promoting the City of Chicago, these expenditures aided the Democratic Party in bringing its message to the public in hope of influencing support for the political party hosting the convention and its candidate for President. Furthermore, expenditures related to putting on a stage "production" to be seen by the country are clearly costs of conducting a convention as described at 11 CFR §9008.7(a) and not the type of disbursement envisioned under the host committee regulations. Consequently, in the ECM, the Audit staff concluded that the total amount of \$1,455,407 paid by the Host Committee and \$233,500 paid by the City for production expenses, result in an in-kind contribution to the DNCC. In addition, the Committee is required to itemize these in-kind contributions on an amended report.

In the ECM, the Audit staff recommended that the committees provide documentation to demonstrate that the payments described above were allowable Host Committee and City expenses pursuant to 11 CFR §9008.52(c) and did not result in prohibited in-kind contributions to the DNCC. Also, for these specific items, the Committee was to address whether these disbursements would have been necessary for the convention hall if not for the television production requirements. If the Committee elected to view any of the aforementioned expenses as allocable in whole or in part to permissible activities, the documentation supporting the Committee's basis for such allocation was to be presented.

In response to the ECM, the DNCC challenged the Audit staff's position, stating "...it is clear that these expenses were of a type that the Commission's regulations explicitly and specifically provide may be paid for by the Host Committee or the City." The DNCC summarized payments to each vendor, asserting that "[a]ll of the expenses at issue were incurred for lighting or sound equipment used within the Convention Hall, or for services or equipment directly involved in constructing and preparing the podium." Citing 11 CFR §9008.52(c)(1)(v) and (xi), the DNCC concluded

that “[i]t could not be clearer that the items for which these six vendors were paid are within the scope of this subsection.”

Furthermore, the DNCC asserted in its response that the “...Audit Division has completely misperceived the purposes of these expenditures,” adding that “[m]uch of the labor and equipment involved would have been required even if the Convention had never been broadcast.” The DNCC goes on to say that “...to the extent that sound, lighting, and other electrical was [emphasis in original] needed or used to facilitate television, radio or cable broadcast of the Convention proceedings, the expenses of such equipment are manifestly a permissible expense under section 9008.52(c)(1)(v).”

The DNCC contended that “[n]othing in the language, prior history or *Explanation and Justification* for the current regulations in any way suggests any limitation on the Host Committee’s ability” to defray expenses “...related to facilitating broadcast or other press coverage of the Convention, as distinct from other expenses of constructing and preparing the Convention Hall.” The DNCC concluded that the Audit staff had “...no basis for such a distinction,” adding that there is “no possibility” that any committee “could have been aware of any such distinction by reading the regulations.”

Of special interest was a section of the DNCC’s response providing details regarding the \$113,500 Host Committee payment to Audiotek Corporation. According to the DNCC, services provided by this vendor comprised “...public address systems, wiring and speakers so that people in all parts of the Hall could hear the proceedings while they were taking place, delegate microphone systems, a hearing impaired wireless system for the Hall (so that hearing-impaired persons within the Hall could follow the proceedings), amplification for the orchestra playing within the Hall, and labor to install and assist in the operation of this on-site sound equipment.” Based on these additional details, the Audit staff concluded Audiotek’s services were essentially similar to “loudspeaker systems,” and therefore permissible under 11 CFR §9008.52(c)(1)(v).

Regarding the remaining five vendors, however, other statements in the DNCC’s response confirm that at least some portion of the payments were used to facilitate television, radio or cable broadcast of the Convention proceedings. Furthermore, other than Audiotek, the responses from both the DNCC and Chicago ‘96 failed to offer any new documentation or basis for allocation which identify those parts of the expenses that would have been required even if the Convention had never been broadcast, as recommended in the ECM. The Audit staff believes that the regulations, together with the explanatory material published in the *Federal Register*, form a reasonable basis for its position, and therefore concludes that Chicago ‘96 and the City of Chicago made prohibited in-kind contributions to the DNCC in the amount of \$1,461,907 (\$1,688,907—\$227,000).

On April 23, 1998 the Commission, during its consideration of the audit report on the 1996 Committee on Arrangements for the Republican National Convention, voted that the use of funds, for such services as provided by the remaining five vendors discussed above, is a permissible host committee expense.

## 2. Telecommunications

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

As mentioned above, 11 CFR §9008.52(c) permits host committees to provide the national committee use of a convention center and convention-related services for that location such as offices and office equipment. In addition, an explanation of the regulatory intent behind 11 CFR §9008.52(c), printed in the *Federal Register* (Vol. 59, No. 124, Page 33614), states, in part, that the revised rules do not permit host committees or municipalities to pay the convention committee's or the national party's overhead and administrative expenses related to the convention.<sup>4</sup>

Pursuant to the Convention Contract, the City agreed: to provide the DNCC with a telecommunications system; to provide the DNCC with a cellular phone system; and, to pay for all long distance service charges incurred by the DNCC at the Convention facilities. The Audit staff's review of disbursements disclosed that the Host Committee and City made substantial payments on behalf of the DNCC for telephone installation and service. Because telephone installation costs are allocable to office equipment, and therefore are permissible host committee expenses pursuant to 11 CFR §9008.52(c)(1)(v), the following discussion focuses on telephone service charges.

According to Host Committee records, payments totaling \$600,325 were made to defray local and long distance telephone service charges. Furthermore, documents obtained by the Audit staff indicate that the City of Chicago paid an additional \$126,510.<sup>5</sup> These payments were apparently made in execution of the Contract's provisions related to telecommunications and are discussed in more detail below.

<sup>4</sup> See 59 Fed. Reg. 33,614 (June 29, 1994).

<sup>5</sup> See Footnote 3.

a. Ameritech

In the Exit Conference Memorandum (ECM), the Audit staff identified 10 payments to Ameritech, which net of refunds to the Host Committee from the vendor, totaled \$512,637. In addition, payments by the City totaling \$105,621 were identified. A review of the invoices disclosed that all of the billings were local telephone service charges for Convention telephone numbers or accounts apparently assigned to the DNCC. Furthermore, internal Host Committee memoranda attributed all of the expenses to the DNCC.

b. AT&T

The Audit staff identified 15 payments by the Host Committee to AT&T, totaling \$87,688. A review of the invoices disclosed that all of the billings were long distance telephone service charges for Convention telephone numbers or accounts apparently assigned to the DNCC. Furthermore, internal Host Committee memoranda attributed all of the expenses to the DNCC. Payments by the City totaling \$20,889 to AT&T were also identified.

In the ECM, the Audit staff concluded that service charges for telephone calls made by the DNCC in support of its operations were a convention overhead expense which did not contribute to preparation of convention center premises or promotion of the City of Chicago. Therefore, the \$600,325 paid by the Host Committee and \$126,510 paid by the City for telephone service charges, result in in-kind contributions to the DNCC. The Audit staff also recommended that the Committee provide documentation to demonstrate that the payments for telephone service charges were allowable Host Committee or City expenses pursuant to 11 CFR §9008.52(c) and did not result in prohibited in-kind contributions to the DNCC.

In its response, the DNCC argued that "by any reasonable reading, the regulation on its face [emphasis in original] authorizes the host committee to pay for the costs of telephone service for the Convention." In the DNCC's opinion, "[t]o say that the costs of office telephones are not an overhead or administrative expense but that the costs of using the telephones are such an expense is to draw a distinction that no reasonable reading of the plain language of the regulation would support." The DNCC then criticized the "language of the *Explanation and Justification* (E&J)," declaring that it should "not be given precedence over the plain language of the regulation," and that "the E&J language is itself ambiguous."

The Host Committee took a different approach in its response, stating that the telecommunications systems "existed for the benefit of Chicago '96" and that without having provided these services, it would have been impossible for the Committee to fulfill its obligations under the Convention Contract.

The Host Committee asserted that the "telecommunications system served to accomplish a wide variety of tasks directly related to the Convention" including construction as well as security. The Host Committee concluded that expenditures for the phone charges "fall within the parameters of 11 C.F.R. Section 9008.52(c)," and therefore, it was appropriate to pay for them.

Despite the arguments presented above, the Audit staff believes that the E&J offers a reasonable starting point for applying the regulations as intended by the Commission. The Audit staff further concludes that charges for local and long distance telephone calls made by the DNCC are most appropriately classified as administrative and overhead expenses of the convention committee and not construction or security expenses benefiting the host committee. Therefore, the total amount of \$600,325 paid by the Host Committee and \$126,510 paid by the City for telephone charges, result in in-kind contributions to the DNCC.

### **Recommendation #1**

The Audit staff recommends that the Commission determine that the Host Committee made in-kind contributions totaling \$600,325, and the City of Chicago made an in-kind contribution of \$126,510, and that this total of \$726,835 is repayable to the United States Treasury. In addition, the Committee should file an amended disclosure report and itemize these in-kind contributions.

#### **B. IN-KIND CONTRIBUTION TO THE HOST COMMITTEE VIEWED AS APPARENT CONVENTION EXPENSES**

Section 9008.12(b)(3) of Title 11 of the Code of Federal Regulations states that if the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

In the Convention Contract, the City agreed, in part, to provide the DNCC with "an electronic voting system for use in the Convention Hall" and "a photo security system to control access to the Convention Offices." During a review of the Committee's donor records, the Audit staff identified in-kind contributions from two vendors totaling \$165,000. In the ECM, the Audit staff stated that contributed equipment appears to have been used for convention-related purposes pursuant to terms of the Contract and not for items noted above at 11 CFR §9008.52(c)(1) as discussed below.

##### **1. AT&T**

During a review of the Host Committee's donor records, the Audit staff identified an in-kind contribution from AT&T of an "electronic voting system"

valued at \$150,000 by the vendor which appears to have been used for convention-related purposes and not for items noted above at 11 CFR §9008.52(c)(1). The donated voting system fulfilled Convention budget line number "70-Electronic Voting."

The Host Committee asserted that the electronic voting system "enabled state delegations to have interactive contact with leadership and other personnel on the convention podium itself." According to the Host Committee, the voting system was used in the United Center as a part of the actual convention services in accordance with the Convention Contract. A Democratic National Convention press release issued during November, 1995 confirmed that AT&T was designated as an official technology provider, and that delegates would be using AT&T integrated technology on the Convention floor.

In the ECM, the Audit staff found that the donation of a voting system provided the DNCC with the same benefit as if the Host Committee had paid a convention expense, and therefore was an impermissible use of Host Committee resources. Categories of permissible uses for contributions to host committees enumerated at 11 CFR §9008.52(c)(1), involve preparing the convention site to host the convention and promoting the convention city. In contrast, the equipment donated by AT&T was used to provide Democratic Party leadership with rapid tabulation of delegate voting. This enhancement to political operations at the Convention served a partisan function in conflict with the host committee regulations. Therefore, the Audit staff concluded that use of the voting system, valued at \$150,000, resulted in a prohibited in-kind contribution to the DNCC. The Audit staff also recommended in the ECM that the Committee provide documentation to demonstrate that the electronic voting system was put to permissible uses pursuant to 11 CFR §9008.52(c) and did not result in prohibited in-kind contributions to the DNCC.

In response to a conference held at the close of audit fieldwork, the DNCC verified that "(t)he electronic system used to count the votes of delegates at the Convention" served as "a core part of the physical systems needed to run the convention." Later, in its response to the ECM, the DNCC pointed out that 11 CFR §§9008.52(c)(1)(v) and (vi) permit the host committee to pay for office equipment in the convention hall as well as similar convention-related facilities and services. According to the DNCC, "[t]here is no logical difference between telephone receivers used to communicate information to the podium and a computerized system that does the same thing." The DNCC found it "difficult to imagine a 'facility' more 'related' to the Convention than a system for counting delegate votes." The DNCC also rejected the Audit staff's position on the grounds that "[t]o say that a voting system is an 'enhancement to political operations' contributes nothing to any analysis of permissibility of this expenditure, since virtually every expenditure...specifically allowed by section 9008.52(c)(1)(v) could be said to 'enhance' political operations."

In response to the ECM, the Host Committee described its obligation to provide a delegate voting system under the Convention Contract as part of

the "actual convention services." The Host Committee disagrees that the voting system's furtherance of a partisan party function would prohibit its use by the DNCC, arguing that "because a convention naturally must serve one party or another, it is implicitly understood that the convention itself is partisan while a host committee remains nonpartisan." Also, the Host Committee stated its understanding that "similar Voting Systems have been donated for past conventions and no regulatory problems have been raised." As a result, the Host Committee concluded that the delegate voting system "falls squarely within the parameters of 11 C.F.R. Section 9008.52(c)."

The responses discussed above do not demonstrate that the in-kind contribution was permissible under the regulations. Furthermore, they confirm that the Audit staff correctly interpreted the basic purpose of the electronic voting system. In light of this, the Audit staff concluded that use of the voting system, valued at \$150,000, resulted in a prohibited in-kind contribution to the DNCC. On January 22, 1998, the Commission, during its consideration of the audit report on the San Diego Host Committee/Sail to Victory San Diego '96, voted that the use of funds for a voting tabulation system was a permissible host committee expense.

## 2. Polaroid Corporation

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.

In the ECM, the Audit staff identified an in-kind contribution from Polaroid Corporation of a "credentials management system" assigned a value of \$15,000 by the vendor. According to Polaroid's proposal, the system would capture and maintain a text and image database of all DNCC and host committee employees. Included in the \$15,000 valuation were six months rental of the system, labor, logo scanning, training, shipping, and card design. According to DNCC training materials, the credentials were to be worn by every attendee, and, the passes granted five levels of access, designated by credential color, to different sections of the convention facility.

The Audit staff concluded that the donation of the credentials management system provided the DNCC with the same benefit as if the Host Committee had paid a convention expense, and consequently, is not a permissible use of host committee resources as defined at 11 CFR §9008.52(c)(1). As a result, the Host Committee apparently made a prohibited in-kind contribution of \$15,000 to the DNCC. Also, it was recommended in the ECM that the Committee provide documentation to demonstrate that the credentials management system was put to permissible uses pursuant to 11 CFR §9008.52(c) and did not result in prohibited in-kind contributions to the DNCC.



In its response to the ECM, the Host Committee disagreed that the use of the credentials management system was not in compliance with 11 CFR 9008.52(c). The Host Committee asserts that the system "related directly to the security services necessary to ensure safety and orderly conduct for the convention staff and participants," and therefore came under provision which allow host committees to defray the costs of law enforcement services necessary to ensure orderly conventions. According to the Host Committee, the system "provided photo identification passes for a variety of personnel working at the 320 North Clark location (which housed both Chicago '96 and the DNCC, as well as numerous other city and state offices and courtrooms) as well as at the United Center," the site of the convention. The DNCC's response addressed this issue in a similar manner.

In order to clarify representations made above, the Audit staff contacted both committees. Statements made by representatives of the DNCC and the Host Committee, along with documents contained in the audit workpapers, corroborate that the credentials management system generated identification cards which were used exclusively as a security measure for employees of both committees to gain access to the 320 North Clark Street office facility and United Center, but only during construction and preparation phases leading up to the Convention. There was no evidence that the credentials management system assisted the DNCC in managing the movement of delegates or other personnel once inside the Convention. Accordingly, the Audit staff concludes that the use of the donated credentials management system was within the scope of 11 CFR §9008.52(c)(1)(vii) and did not result in a prohibited in-kind contribution to the DNCC.

### **C. IMPROPER USE OF FUND PAYMENTS**

Section 9008.12(a) of Title 11 of the Code of Federal Regulations states, in relevant part, that a national committee that has received payments from the Fund under 11 CFR Part 9008 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. The Commission will notify the committee of any repayment determinations made under this section as soon as possible, but not later than 3 years after the last day of the Presidential nominating convention. The Commission's issuance of an audit report to the committee will constitute notification for purposes of the three year period.

Section 9008.12(b)(4) states, in relevant part, that if the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.6(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.7, it shall notify the national committee of the amount improperly used and the national committee shall pay to the Secretary an amount equal to the amount specified.

Section 9008.12(c) of Title 11 of the Code of Federal Regulations states the Commission will follow the same repayment determination procedures, and the committee has the same rights and obligations as are provided for repayment determinations involving publicly funded candidates under 11 CFR 9007.2(c) through (h).

During our review of the DNCC's disbursements, we identified payments, totaling \$33,183, to seven vendors for expenses which did not appear to be convention-related. In the case of four vendors, the payments (\$14,131) defrayed the travel expenses of non-DNCC staff or represented overpayments of DNCC convention-related expenses. The DNCC sought and received reimbursements in each instance; therefore, no repayment is necessary.

As to the remainder, (\$19,052), these payments involved (a) reimbursements to two vendors for lost telecommunications equipment, \$15,902, and (b) airline tickets purchased for which no convention-related purpose could be shown, \$3,150. On July 24, 1997 a check drawn on an account of the Democratic National Committee and payable to the United States Treasury was received, representing a repayment of \$19,052 pursuant to 11 CFR §9008.12(b)(4).

In response to the ECM, the Committee stated that the recommended repayment has been made.

## **Recommendation #2**

The Audit staff recommends that the Commission determine that the total amount of \$19,052 is repayable to the United States Treasury. As noted above, the repayment has already been made.

### **D. DETERMINATION OF NET OUTSTANDING CONVENTION EXPENSES AND AMOUNTS SUBJECT TO THE SPENDING LIMITATION**

Sections 9008(b)(1) and (5) of Title 26 of the United States Codes state, in relevant part, that the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$4,000,000, as adjusted pursuant to the provisions of 2 U.S.C. §441a(c).

Section 9008.5(b) of Title 11 of the Code of Federal Regulations, states that the entitlements established by 11 CFR 9008.4 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.8(a) and the amount of private contributions received under 11 CFR 9008.6(a) by the national committee of a political party. Except as provided in 11 CFR 9008.12(b)(7), in calculating these adjustments, amounts expended by Government and municipal corporations in accordance with 11 CFR 9008.53, in-kind donations by businesses to the national

committee or convention committee in accordance with 11 CFR 9008.9; expenditures by host committees in accordance with 11 CFR 9008.52; expenditures to participate in or attend the convention under 11 CFR 9008.8(b)(2); and legal and accounting services rendered in accordance with 11 CFR 9008.8(b)(4) will not be considered private contributions or expenditures counting against the limitation.

Section 9008.8(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that the national party committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.4 and 9008.5.

Section 9008.8(b)(1) of Title 11 of the Code of Federal Regulations states that expenditures made by the Host Committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 CFR 9008.52.

In addition, 11 CFR §9008.8(b)(2) states that expenditures made by government agencies and municipal corporations shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

Section 9008.10(g) of Title 11 of the Code of Federal Regulations states, in part, that a convention committee shall file, no later than sixty days after the last day of the convention, a statement of that committee's net outstanding convention expenses. A revised statement shall be filed no later than 30 calendar days after the end of the ninth month following the last day of the convention, and shall be accompanied by the interim repayment, if required under 11 CFR 9008.12(b)(5)(ii).

Section 9008.12(b)(3) of Title 11 of the Code of Federal Regulations states that if the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

Section 9008.12(b)(7) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may seek a repayment from the convention committee if the convention committee knowingly helped, assisted or participated in making convention expenditures by the host committee, governmental agency or municipal corporation that are not in accordance with 11 CFR §§9008.52 or 9008.53.

Section 9008.12(c) of Title 11 of the Code of Federal Regulations states that the Commission will follow the same repayment determination procedures, and the committee has the same rights and obligations as are provided for repayment

determinations involving publicly funded candidates under 11 CFR 9007.2(c) through (h).

The 1996 Democratic Convention ended on August 29, 1996. The DNCC filed its initial Statement of Net Outstanding Convention Expenses (NOCE), as of October 13, 1996, on October 29, 1996. A revised NOCE, also as of October 13, 1996, was filed on October 21, 1997. The Audit staff reviewed the DNCC's financial activity through September 30, 1997, analyzed winding down costs, and prepared the figures shown below.

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**STATEMENT OF NET OUTSTANDING CONVENTION EXPENSES**

As of October 13, 1996  
As Determined at 10/21/97

**ASSETS**

Cash on Hand	\$1,649,981	
Accounts Receivable:	295,030	
Capital Assets	<u>0</u>	
Total Assets		\$1,945,011

**OBLIGATIONS**

Accounts Payable for Convention Expenses	\$1,855,019	
In-kind Contributions	726,835 (a)	
Winding Down Costs 10/01/97 and later: Estimated	<u>39,375 (b)</u>	
Total Obligations		<u>\$2,621,229</u>
<b>NET OUTSTANDING CONVENTION EXPENSES</b>		<u><u>(\$676,218)</u></u>

**FOOTNOTES TO NOCE**

- (a) This is the amount from Finding II.A.2., previously discussed in this report.
- (b) Includes approximately \$6,600 in reported winding down costs paid 10/22/98-3/31/98 and estimated winding down costs of approximately \$33,000. The Audit staff will review the Committee's disclosure reports and records to compare the actual figures with the estimated figures and prepare adjustments as necessary.

The NOCE as calculated by the Audit staff shows a deficit of \$676,218 which is in contrast to the DNCC's most recent calculation, prepared October 21, 1997, showing unspent funds of \$50,617. The Audit staff's inclusion of \$726,835 in in-kind contributions, viewed as subject to the spending limitation, created this situation.

Prior to receipt of the ECM, the DNCC made a repayment to the U.S. Treasury in the amount of \$120,562, representing its calculation of an interim repayment of unspent funds pursuant to 11 CFR 9008.12(b)(5)(ii). Since the repayment was made, the DNCC identified an additional \$69,945<sup>6</sup> in convention expenses, thus explaining the \$50,617 in unspent funds shown on its October 21, 1997 statement ( $\$120,562 - \$69,945 = \$50,617$ ).

Since the value (\$726,835) of in-kind contributions received from the Host Committee and the City is repayable to the U.S. Treasury (see Recommendation #1 at page 12), the \$120,562<sup>7</sup> already paid to the U.S. Treasury is viewed as a credit against the amount due.

### **Recommendation #3**

It is recommended that the Commission determine that the \$120,562 paid to the U.S. Treasury by the DNCC be considered a credit against the \$726,835 repayment due related to the acceptance of in-kind contributions discussed at Finding II.A.2. The net repayment due is \$606,273 ( $\$726,835 - \$120,562$ ).

#### **E. APPARENT ALLOCABLE CONVENTION-RELATED EXPENSES**

During our review of background materials related to the convention, we identified a possible in-kind contribution to the DNCC. According to published reports,<sup>8</sup> the Democratic National Committee was assuming about \$25,000 in hotel bills incurred at the Chicago convention in August, 1996, "partly because of concerns that a donor who originally paid the bill might have used foreign funds, according to sources." The hotel bill reportedly covered costs associated with Democratic National Committee finance chairman Rosen's stay in the presidential suite at Chicago's Four Seasons, R. Scott Pastrick's stay in a smaller suite, and two additional rooms.

<sup>6</sup> The DNCC identified additional accounts receivable of \$11,986 and additional accounts payable of \$81,931 which resulted in a net increase in convention expenses of \$69,945.

<sup>7</sup> The DNCC may, at its option, submit a written request to the Commission requesting that funds previously refunded to the U.S. Treasury be certified for payment of convention expenses (11 CFR §9008.12(b)(5)(ii). If such a request was made and if approved by the Commission, the net repayment due of \$606,273 would increase by an amount equal to the amount certified to the DNCC for payment of convention expenses.

<sup>8</sup> *The Washington Post*, Dec. 12, 1996, p.A28; and Jan. 8, 1997, p. A14.

Mr. Pastrick served as treasurer of the DNCC from October 5, 1995 to January 20, 1997, and also served as treasurer of the DNC Services Corporation/ Democratic National Committee, Democratic Unity Fund, and six other committees registered with the Commission, according to the FEC Disclosure Data Base for the 95-96 cycle. The DNCC did not defray the cost of Mr. Pastrick's hotel expenses during convention week. During fieldwork, the Audit staff requested copies of the hotel bill and related expenses and information concerning the payment of these expenses. Also requested was information as to why no portion of these expenses relate to the convention, even though Mr. Pastrick and Mr. Rosen were both present during convention week and met with persons attending the convention.

The DNCC responded by stating that "during the week of the convention, Mr. Pastrick's sole function, other than a five minute speech at the Monday Convention session, was to serve in a fundraising capacity for the DNC [Democratic National Committee]." The DNCC went on to explain that there was no point during the week of the convention where Mr. Pastrick was required to serve in the role of treasurer of the DNCC. A copy of Mr. Pastrick's remarks of August 26th was provided. He was introduced as "Treasurer of the Democratic National Committee." In his remarks, Mr. Pastrick made references to Party finances, campaign finance reform, and the November general election. Information relating to the hotel expenses and payment thereof was not provided.

In the Audit staff's opinion, the expenses associated with Mr. Pastrick's suite during convention week would seem, at least in part, allocable to the DNCC, as would the two additional rooms, given his position and responsibilities as the DNCC treasurer.

In the ECM, the Audit staff requested that the DNCC provide support for its position. The documentation was to include (a) copies of the hotel bill and related expenses for Mr. Pastrick's suite and the two additional rooms, (b) information concerning the payment of these expenses, (c) a copy of Mr. Pastrick's appointment calendar or other written record of his activities during convention week, and (d) any additional information the DNCC believes is relevant in support of its current position.

In its response to the ECM, the DNCC did not submit any of the documentation requested in the ECM in support of its position. The DNCC did reiterate the points discussed above and further stated:

[I]t is fundamental to the Convention financing system that the costs of national party fundraising at the Convention should not be paid for with public Convention grant. 11 CFR §9008.7(a)(4)(viii)(B). Thus, it is clear that no part of Mr. Pastrick's expenses should have been allocated to the DNCC." The Audit Division's insistence that part of the expenses of a Party official to attend the Convention should be charged to the public. The Audit Division's position, were the Commission to uphold it, would

be an open invitation for future abuse--an invitation to national party committees to slough off part of their fundraising costs on the taxpayers. That is exactly what the Commission should be discouraging, not encouraging. The Audit staff's hunt for further documentation, proof of Mr. Pastrick's activities during the Convention, etc., is pointless and counterproductive. His expenses were properly paid for by the DNC.

Given the lack of documentation provided in response to the request contained in the ECM, the Audit staff's position is unchanged.

**F. SUMMARY OF AMOUNT DUE TO THE U.S. TREASURY**

Finding II.A.2.	In-Kind Contribution- Telecommunications	\$ 726,835
Finding II.C.	Improper Use of Funds	<u>\$ 19,052</u>
Subtotal		\$ 745,887
Amounts paid to date:		(\$19,052)
		<u>(\$120,562)</u>
Net Amount Due		<u>\$ 606,273</u>



Received  
3/17/98



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 17, 1998

**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

Rhonda J. Vosdingh  
Assistant General Counsel

Delbert K. Rigsby  
Attorney

**SUBJECT:** Proposed Audit Report on the Democratic National Convention Committee, Inc.  
(LRA #471)

**1. INTRODUCTION**

The Office of General Counsel has reviewed the proposed Audit Report on the Democratic National Convention Committee, Inc. (the "Convention Committee"), which was submitted to this Office on January 7, 1998.<sup>1</sup> This memorandum summarizes our comments on the proposed Audit Report.<sup>2</sup> Some of the issues discussed in the proposed Audit Report and herein overlap with issues in the proposed Audit Report on the Chicago Committee '96 (the

<sup>1</sup> Comments from this Office are due on March 4, 1998.

<sup>2</sup> Since the proposed Audit Report concerns the audit of a convention committee, this Office recommends that the Commission consider this document in open session in accordance with 11 C.F.R. §§ 9008.11, 9007.1(e)(1) and 9038.1(e)(1).

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"Host Committee").<sup>3</sup> Many issues discussed herein also overlap with this Office's comments on the Audit Report for the Committee on Arrangements for the Republican National Convention, which were submitted to the Audit Division on November 19, 1997. This Office concurs with the findings in the proposed Audit Report that are not discussed separately in this memorandum. If you have any questions, please contact Delbert K. Rigsby, the attorney assigned to this review.

## II. APPARENT CONVENTION EXPENSES PAID BY THE HOST COMMITTEE AND CITY OF CHICAGO (II.A)<sup>4</sup>

The proposed Report states that the Host Committee's and the City of Chicago's payments to vendors for television production and telecommunications were impermissible expenses. Those impermissible expenses may have resulted in apparent prohibited in-kind contributions to the Convention Committee. In regard to the television production expenses, the proposed Report states that the Host Committee apparently made in-kind contributions of \$1,341,907 and the City of Chicago apparently made in-kind contributions of \$120,000 to the Convention Committee. The proposed Report concludes that such television production expenses appear to be in-kind contributions to the Convention Committee because they are not permissible host committee expenditures listed in 11 C.F.R. § 9008.52(c), and were not used to promote the city and prepare the convention site for the convention.

Host Committee expenditures that are made in accordance with 11 C.F.R. § 9008.52 shall not be considered convention committee expenditures and shall not count against the convention committee's expenditure limit. 11 C.F.R. § 9008.8(b)(1). Moreover, host committee expenditures that are not permitted by 11 C.F.R. § 9008.52 may be considered convention committee expenditures and shall be subject to the expenditure limitation in 11 C.F.R. § 9008.8(a)(1). The Commission may seek a repayment from the convention committee if the convention committee knowingly helped, assisted or participated in making convention expenditures by the host committee, governmental agency or municipal corporation that are not in accordance with 11 C.F.R. §§ 9008.52 or 9008.53. 11 C.F.R. § 9008.12(b)(7).<sup>5</sup> Because 11 C.F.R. § 9008.12(b)(7) is an applicable regulation to this audit, the proposed Report should include a discussion of this regulation with the discussion of the other applicable regulations.

This Office concurs with the proposed Report's conclusion that the television production expenditures appear to be impermissible host committee expenses, which may have resulted in apparent prohibited in-kind contributions to the Convention Committee. The proposed Audit

<sup>3</sup> The proposed Audit Report for the Host Committee was submitted to this Office on December 29, 1997 and comments on that Report were submitted to the Audit Division on February 23, 1998.

<sup>4</sup> Parenthetical references are to the relevant section of the proposed Audit Report.

<sup>5</sup> The Explanation and Justification for 11 C.F.R. § 9008.12(b)(7) states that strict and vicarious liability will not be imposed on convention committees for actions taken by cities or host committees, but convention committees will be held accountable for actions of cities or host committees involving impermissible activities in which they knowingly helped or participated. 59 Fed. Reg. 33613 (June 29, 1994).

Report interprets 11 C.F.R. § 9008.52 narrowly in concluding that the television production expenses were impermissible host committee expenditures. The proposed Report concluded that most of the television production expenses were for lighting and personnel costs for the television production and broadcasting of the convention and not for infrastructure costs to prepare the convention site to host the convention. Infrastructure costs are deemed to be permissible host committee expenses under 11 C.F.R. § 9008.52 because such costs are necessary to prepare the convention site for the convention. Production personnel costs are deemed impermissible expenses. The proposed Report notes that the Audit staff requested, in the Exit Conference Memorandum, that the Convention Committee submit additional documentation to demonstrate that the payments were allowable Host Committee expenses, but the Convention Committee did not provide such documentation.<sup>6</sup>

In regard to telecommunications expenses, the proposed Audit Report concludes that the Host Committee appears to have made impermissible host committee expenses totaling \$600,325 for local and long distance telephone charges, which may have resulted in apparent prohibited in-kind contributions to the Convention Committee. Additionally, the City of Chicago appears to have made impermissible expenses totaling \$126,510 for local and long distance telephone charges, which may have resulted in apparent prohibited in-kind contributions to the Convention Committee. The proposed Report concludes that local and long distance telephone charges are administrative and overhead expenses of the Convention Committee and not construction or security expenses benefiting the Host Committee. To support its conclusion that the telephone charges are overhead expenses, the proposed Report cites the Explanation and Justification for 11 C.F.R. § 9008.52(c), which states that the regulation "does not permit host committees . . . to pay the convention committee's or the national party's overhead and administrative expenses related to the convention."

This Office concurs with the proposed Audit Report that the telephone charges appear to be impermissible host committee expenses, which may have resulted in apparent prohibited in-kind contributions to the Convention Committee. However, this Office believes that this section of the proposed Report should also discuss 11 C.F.R. § 9008.7(a)(4), which defines convention expenses that are permitted to be paid with public funds received by the convention committee. Administrative and office expenses, specifically telephone charges, are listed as such types of expenses. 11 C.F.R. § 9008.7(a)(4)(x).

Additionally, this Office believes that the proposed Report should contain further discussion regarding the contract between the City of Chicago and the Convention Committee, which obligated the city to pay for many expenditures of the convention, such as the television production expenses and the telecommunications expenses. The Host Committee was established pursuant to this contract to meet the financial obligations of the city in hosting the convention. This contract provides evidence that the Convention Committee knowingly participated in the

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<sup>6</sup> The Host Committee only submitted additional documentation regarding Audiotek, one of the vendors. After reviewing the additional documentation, the audit staff concluded that the payment to Audiotek was a permissible host committee expense because the equipment provided was essentially a loudspeaker system.

Host Committee's spending on activities not listed in 11 C.F.R. § 9008.52. Additionally, for most convention expenditures, the Host Committee prepared a form letter listing the vendor, budget line item and amount of the expenditure and requested the Convention Committee to sign the letter acknowledging and approving such Host Committee expenditures. Those letters also provide evidence that the Convention Committee knowingly participated in the Host Committee's expenditure of funds on activities that were not set forth in 11 C.F.R. § 9008.52.

### **III. IN-KIND CONTRIBUTION TO THE HOST COMMITTEE VIEWED AS APPARENT CONVENTION EXPENSES (ILB)**

The proposed Report concludes that an electronic voting system provided by AT&T to the Host Committee should be considered an apparent prohibited in-kind contribution to the Convention Committee in the amount of \$150,000 because it is not an expense listed within 11 C.F.R. § 9008.52, and was not used to promote the city or prepare the convention site for the convention. In its response to the Exit Conference Memorandum, the Convention Committee stated that this service was a core part of the physical systems needed to run the convention. The Convention Committee also argued that the voting system is closely related to office equipment, which is a permissible host committee expense under 11 C.F.R. § 9008.52(c)(v). The proposed Report should explain that 11 C.F.R. § 9008.12 (b)(3) provides that if the national committee accepts contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation, the Commission will notify the committee of the amount of those contributions and the national committee shall pay such amount to the U.S. Treasury.

This Office has discussed with the Audit staff whether there is any documentation indicating that the voting system was a part of a larger computer system that performed other functions, such as an electronic bulletin board for delegates to receive messages and the ability to obtain information about restaurants and tourist sites in the city. If the voting system was part of a larger integrated system with multiple functions, an argument can be made that it should be considered a permissible host committee expense and not an in-kind contribution to the Convention Committee. In the audit of the San Diego Host Committee, the Audit staff was able to specify the amount of funds (\$44,067) that were spent solely on the voting system even though it was a part of a larger computer system. The Audit staff concluded that the expense of \$44,067 was an impermissible host committee expense. During the Commission meeting on January 22, 1998, the Commission voted to allow \$44,067 spent on the voting tabulation system as a permissible host committee expense.

The documentation provided by the Convention Committee indicates that the sole purpose of the electronic voting system was to tabulate votes. If the electronic voting system was a separate system whose sole function was to tabulate votes, it would seem that the voting system was an impermissible host committee expense. However, to be consistent with the Commission's decision regarding the electronic voting system in the San Diego Host Committee Audit Report, this Office recommends that the proposed Audit Report be revised to state that the electronic

voting system appears to be a permissible host committee expense and does not result in a prohibited in-kind contribution to the Convention Committee.

#### **IV. DETERMINATION OF NET OUTSTANDING CONVENTION EXPENSES AND AMOUNTS SUBJECT TO THE SPENDING LIMITATION (ILD)**

The proposed Report states that there are additional convention expenses of \$69,945 that have been identified since the Convention Committee made a \$120,562 interim repayment to the United States Treasury as required by 11 C.F.R. § 9008.12(b)(5). The proposed Report recommends that the interim repayment of \$120,562 by the Convention Committee be classified as an asset to the Convention Committee and the Democratic National Committee be permitted to purchase this asset. Thereafter, the Convention Committee would use the funds to pay additional convention expenses and the remaining amount would be required to be credited against the balance of the in-kind contributions (i.e., paid to vendors who provided apparent in-kind contributions to the Convention Committee).

This Office does not agree with this recommendation. There are no Commission regulations that would permit the Commission to require the Convention Committee to follow the approach to the interim repayment suggested in the proposed Report. The Commission cannot require the Democratic National Committee to purchase such asset, and it is speculative that the Convention Committee would adopt this course of action. In its response to the Exit Conference Memorandum, the Convention Committee disputes the Audit Division's conclusion regarding the apparent in-kind contributions and would most likely oppose this recommendation. If the Convention Committee refuses to adopt this approach to the interim repayment, the Commission would not have a legal basis for requiring the Convention Committee to follow this procedure.

This Office recommends that this section of the proposed Report be revised to state that the Commission's regulation that relates to an interim repayment provides that if funds previously refunded to the U.S. Treasury by a convention committee are needed to defray additional convention expenses, a convention committee may submit a written request to the Commission requesting that funds previously refunded be certified for payment of convention expenses. 11 C.F.R. § 9008.12(b)(5)(ii). Upon such request, the Commission could certify \$69,945, the amount of additional convention expenses that the Audit Division has verified the Convention Committee owes, to be refunded to the Convention Committee.<sup>7</sup> According to the Convention Committee's version of the Net Outstanding Committee Expenses (NOCE) statement, the Convention Committee would then have a surplus of \$50,617. This surplus could be applied toward reducing the amount of in-kind contributions and consequently, reduce the Democratic National Committee's repayment for apparent in-kind contributions by the Host Committee to the Convention Committee. The Commission, however, could deny the Committee's request for certification to pay convention expenses from funds previously refunded and thus, the entire interim repayment of \$120,562 could be used to offset the amount of apparent in-kind

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<sup>7</sup> The Commission may deny such a request by the Democratic National Convention Committee after reviewing the information it submits.

contributions attributed to the Committee's expenditure limit. *See* 11 C.F.R. § 9008.12(a) (The national committee is responsible for any repayment to the U.S. Treasury).

This section of the proposed Report should also discuss 11 C.F.R. § 9008.12(b)(7) as a basis for repayment because the Convention Committee knowingly participated in the making of convention expenditures by the Host Committee. Finally, the Convention Committee's NOCE statement has a category under liabilities that is named "Amount Payable to the U.S. Treasury for in-kind contributions." This category seems inconsistent with 11 C.F.R. § 9008.10(g)(3), which states that the amount submitted as the total of outstanding convention obligations on the NOCE statement shall not include any amounts determined or anticipated for repayment under 11 C.F.R. § 9008.12. While the Audit staff is using the terminology "Amount Payable to the U.S. Treasury" for this category, the Audit staff has determined that the in-kind contributions must be repaid on the basis of 11 C.F.R. §§ 9008.12(b)(3) and 9008.12(b)(7). Thus, the NOCE statement may need to be reviewed to resolve this apparent inconsistency.

CONFIDENTIAL



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

July 7, 1998

Ms. Carol Pensky, Treasurer  
1996 Democratic National Convention Committee, Inc.  
430 South Capitol Street, SE  
Washington, DC 20003

Dear Ms. Pensky:

Attached please find the Audit Report on the 1996 Democratic National Convention Committee, Inc. The Commission approved this report on June 25, 1998. As noted on page 3 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9008.12(a)(1) and (c), the Commission made a determination that a repayment to the Secretary of the Treasury in the amount of \$745,887 is required. Of that amount, the Committee has repaid \$139,614. The balance, \$606,273, is required to be repaid within 90 calendar days after service of this report (October 8, 1998).

Should the Committee dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9008.12(c) provide the Committee with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (September 8, 1998), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. In addition to the submission of written materials the Committee may request an opportunity to address the Commission in open session. The request for an oral hearing should identify the repayment matters that will be addressed and the Committee's presentation must be based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel. If the Committee decides to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If the Committee does not dispute this determination within the 60 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on July 15, 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 Rick Halter or Wanda Thomas of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa  
Assistant Staff Director  
Audit Division

cc: Joseph Sandler  
Attachment as stated

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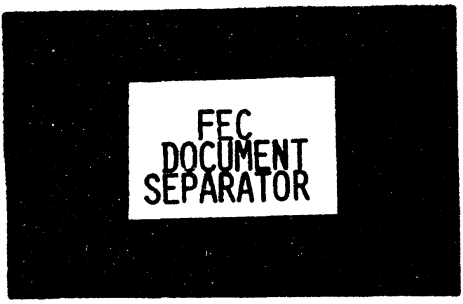
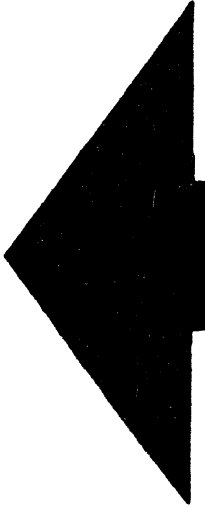


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**1996 Democratic National Convention Committee, Inc.**

Audit Fieldwork	12/2/96 - 7/1/97
Exit Conference Memorandum to the Committee	8/7/97
Response to Exit Conference Memorandum Received	10/21/97
Audit Report Approved	6/25/98



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DOCUMENT  
SEPARATOR