



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 6, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-15

Mr. Ron Fennel
Executive Director
Democratic Party of Georgia
1100 Spring St., Suite 350
Atlanta, GA 30367

Dear Mr. Fennel:

This responds to your letters of April 17, 1991, and April 26, 1991, requesting an advisory opinion on behalf of the Democratic Party of Georgia ("GDP") concerning application of the Federal Election Campaign Act ("FECA" or "the Act"), and Commission regulations to the transfer of funds between the GDP's nonfederal and Federal accounts.

The GDP is a "state committee" within the meaning of the Act. 2 U.S.C. 431(15); 11 CFR 100.14(a). Under the new allocation regulations, which became effective on January 1, 1991, state party committees with separate Federal and non-federal accounts must allocate their administrative expenses and generic voter drive costs between those accounts using the "ballot composition method." 11 CFR 106.5(d). This method is

based on the ratio of federal offices expected on the ballot to total federal and non-federal offices expected on the ballot in the next general election to be held in the committee's state or geographic area. 11 CFR 106.5(d)(1)(i).

The ballot composition ratio is determined at the start of each two-year Federal election cycle. Thus, the 1991-92 election cycle ratio is based on the offices which will appear on the November 1992 general election.¹

You state that the GDP originally calculated the ballot composition ratio for the 1991-92 Federal election cycle as 50%/50%. This formula was used from January 1 through March 17, 1991, at

which time an allocation ratio of 37% Federal/ 63% non-federal was computed. The 37%/63% ratio has been used since that time.

Further inquiry to the Elections Division of the Georgia Secretary of State's Office indicates that, in November 1992, the Georgia general election ballot will include the following Federal offices: United States President, United States Senator (one seat), and United States Representative. The state portion will include State Senator, State Representative, two statewide executive offices (one Public Service Commissioner and the Commissioner of Labor), and partisan local offices.²

Application of the allocation formula set forth at 11 CFR 106.5(d)(1)(ii) results in 3 Federal points and 5 non-federal points, for a total of 8 points. The correct Federal share of joint expenses is thus 3/8, or 37%; while the correct nonfederal share is 5/8, or 63%.

Under 11 CFR 106.5(g)(1)(i), party committees which have established separate Federal and nonfederal accounts, such as the GDP, must pay for all joint Federal and nonfederal activities from their Federal accounts. There is ordinarily a 40-day "window," from 10 days before to 30 days after an expenditure, during which a nonfederal account may reimburse a Federal account for the nonfederal portion of its allocable expenditures. 11 CFR 106.5(g)(2)(ii)(B).

You state that, had the 37%/63% allocation ratio been used from January 1, 1991, an additional \$16,353.43 would have been transferred from the nonfederal to the Federal account to pay for the nonfederal share of the joint expenditures. You now request permission to make this transfer, notwithstanding the fact that the 30-day period in which transfers (post-expenditure) must ordinarily be accomplished has expired.

The regulations do not specifically contemplate transfers of funds from a nonfederal to a Federal account outside of the 40-day window. However, an analogy can be made between this situation and that discussed in Advisory Opinion 1983-22. That opinion dealt with 11 CFR 114.5(b)(3), which specifies that if a separate segregated fund ["SSF"] pays an expense that could have been paid by its connected organization, the organization may reimburse the SSF, if it does so within 30 days. The advisory opinion allowed reimbursement of check-printing charges to be made after the 30-day period had expired, due to the special circumstances involved in that case (the SSF submitted its advisory opinion request before the expiration of 30 days from its receipt of a bank statement listing the charges in question, and 11 CFR 114.5(b)(3) took effect within this time period).

The allocation regulations took effect on January 1, 1991, the beginning of the 1991-92 election cycle. You were thus allowed to use the 37%/63% federal/state ratio starting on that date, and indicate that you would have done so had it not been for the miscalculation.

The purpose of the allocation regulations is to ensure that money that does not meet FECA restrictions is not used to influence Federal elections. In this instance, however, the correct ratio indicates that 63% of the money expended for allocable expenditures was attributable to state and local elections, dating back to January 1, 1991. The re-quested adjustment would thus not result in the use of non-FECA money to influence Federal elections, but would rather reimburse the Federal account for expenditures it had made to influence state and local elections.

As already noted, there is ordinarily a 30-day post- expenditure deadline for a committee's nonfederal account to reimburse its Federal account for its nonfederal expenditures. 11 CFR 106.5(g)(2)(ii)(B). However, under these circumstances--a good faith miscalculation of the proper ballot composition ratio which resulted in an underpayment to a Federal from a nonfederal account--and consistent with Advisory Opinion 1983-22, the Commission concludes that the GDP may, within 30 days after the date of this opinion, transfer \$16,353.43 from its nonfederal to its Federal account to reflect the proper ballot composition ratio.

You also request guidance on how this transfer should be reported. Preliminarily, the Schedule H1 for the reporting period should contain a note explaining that although the actual ratio is 37% Federal/63% nonfederal, the GDP mistakenly made a 50%/50% allocation initially, and certain adjustments are reported on Schedules H3 and H4. An additional entry for the adjustment should be made on Schedule H3 when the transfer is actually made. The GDP should note that this adjustment was made after corrections to the ballot composition ratio, and that the time period covered by the transfer is January 1 to March 17, 1991.

On Schedule H4, the GDP should make entries for payments between January 1 and March 17, 1991, as they were originally calculated. It should then make an adjusting entry, with a note in the name/address box explaining that it is an adjustment of earlier allocations based on a corrected ballot composition ratio. This entry would have a "total amount" of \$0, a Federal share of -\$16,353.43, and a nonfederal share of \$16,353.43. This approach would insure that the correct subtotals for the period would come forward to the detailed summary page. Sample forms H1, H3, and H4 illustrating the foregoing methods and directions are attached.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Attachments

Enclosure (AOs 1983-22 and 1991-6)

1/ The Commission notes that the election cycle for allocation purposes differs from that found at 11 CFR 100.3(b). As was made clear in Advisory Opinion 1991-6, the allocation rules envision a two year cycle which begins on January 1 of each odd-numbered year, and extends through December 31 of the following even-numbered year. 11 CFR 106.5(d)(1)(i); 55 Fed. Reg. 26064 (June 26, 1990); Advisory Opinion 1991-6.

2/ We note that the Commissioner of Labor election will be a special election, held in conjunction with the November 1992 general election. The Explanation and Justification ["E&J"] to the allocation rules states that the formula set forth at 11 CFR 106.5(d)(1)

generally covers years in which a special election is held. However, because of the varying situations that might arise, the Commission has not spelled out rules to cover each variation. The allocation formula to be used and attribution of disbursements to specific candidates will have to be determined on a case-by-case basis. 55 Fed. Reg. 26058, 26064 (June 26, 1990).

In this instance, however, the fact that this office would be on the November 1992 general election ballot was known prior to January 1, 1991: the Labor Commissioner who was elected in November 1990 announced shortly thereafter that he would not take office, but rather would serve as Commissioner of the Department of Human Resources in the cabinet of the newly-elected Governor of Georgia. Thus the proper allocation formula could have been computed at the start of the 1991-92 election cycle.

DETAILED SUMMARY PAGE
OF RECEIPTS AND DISBURSEMENTS
 PAGE 2, FEC FORM 3X

SAMPLE
 AO 1991-15

(revised 1/1/91)

NAME OF COMMITTEE Democratic Party of Georgia Federal Account		REPORT COVERING PERIOD FROM 1/1/91 TO 6/30/91	
		COLUMN A Total This Period	COLUMN B Calendar Year
I. Receipts			
11. Contributions (other than loans) From:			
a. Individual/Persons Other Than Political Committees			
i. Itemized (use Schedule A)			
ii. Unitemized			
iii. Total	(add i and ii) >		
b. Political Party Committees			
c. Other Political Committees (such as PACs)			
d. Total Contributions	(add a iii, b and c) >		
12. Transfers From Affiliated/Other Party Committees			
13. Loans Received			
14. Loan Repayments Received			
15. Offsets To Operating Expenditures (Refunds, Rebates, etc.)			
16. Refunds of Contributions Made to Federal Candidates and Other Political Committees			
17. Other Federal Receipts (Dividends, Interest, etc.)			
18. Transfers from Nonfederal Account for Joint Activity		157,603	
19. Total Receipts	(add 11d, 12, 13, 14, 15, 16, 17, and 18) >		
20. Total Federal Receipts	(subtract line 18 from line 19) >		
II. Disbursements			
21. Operating Expenditures:			
a. Shared Federal/Non-Federal Activity (from Schedule H4)			
i. Federal Share		92,397	
ii. Non-Federal Share		157,603	
b. Other Federal Operating Expenditures			
c. Total Operating Expenditures	(Add a i, a ii, and b) >	250,000	
22. Transfers to Affiliated/Other Party Committees			
23. Contributions to Federal Candidates/Committees and Other Political Committees			
24. Independent Expenditures (use Schedule E)			
25. Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d)) (use Schedule F) ..			
26. Loan Repayments Made			
27. Loans Made			
28. Refunds of Contributions To:			
a. Individuals/Persons Other Than Political Committees			
b. Political Party Committees			
c. Other Political Committees (such as PACs)			
d. Total Contribution Refunds	(Add a, b and c) >		
29. Other Disbursements			
30. Total Disbursements	(add 21c, 22, 23, 24, 25, 26, 27, 28d, and 29) >		
31. Total Federal Disbursements	(subtract line 21 a ii from line 30) >		
III. Net Contributions/Operating Expenditures			
32. Total Contributions (other than loans)(from line 11d)			
33. Total Contribution Refunds (from line 28d)			
34. Net Contributions (other than loans)(subtract line 33 from 32)			
35. Total Federal Operating Expenditures	(add 21 a i and 21 b) >		
36. Offsets to Operating Expenditures (from line 15)			
37. Net Operating Expenditures	(subtract line 36 from 35) >		

METHOD OF ALLOCATION FOR SHARED FEDERAL
AND NON-FEDERAL ADMINISTRATIVE EXPENSES
AND GENERIC VOTER DRIVE COSTS

NAME OF COMMITTEE

Democratic Party of Georgia Federal Account

NATIONAL PARTY COMMITTEES

FIXED FEDERAL PERCENTAGE (CHECK THE APPROPRIATE LINE AND ENTER % IN BOX TO RIGHT) %
 PRESIDENTIAL YEAR (65%)
 ALL OTHER YEARS (60%)

HOUSE AND SENATE PARTY CAMPAIGN COMMITTEES

MINIMUM FEDERAL PERCENTAGE (65%) (IF CHECKED, ENTER 65% IN BOX TO RIGHT) %
 OR
 FUNDS EXPENDED:
 ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL %
 ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL %
 ADJUSTMENTS TO FUNDS EXPENDED:
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ %
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$

NOTE: FUNDS EXPENDED MUST BE USED IF THE FEDERAL PROPORTION IS GREATER THAN 65% IN ANY YEAR.

SEPARATE SEGREGATED FUNDS AND NON-CONNECTED COMMITTEES

FUNDS EXPENDED:
 ESTIMATED DIRECT CANDIDATE SUPPORT — FEDERAL %
 ESTIMATED DIRECT CANDIDATE SUPPORT — NON-FEDERAL %
 ADJUSTMENTS TO FUNDS EXPENDED:
 ACTUAL DIRECT CANDIDATE SUPPORT — FEDERAL \$ %
 ACTUAL DIRECT CANDIDATE SUPPORT — NON-FEDERAL \$

STATE AND LOCAL PARTY COMMITTEES

BALLOT COMPOSITION

CHECK ALL OFFICES APPEARING ON THE NEXT GENERAL ELECTION BALLOT:

	NUMBER OF POINTS
1. PRESIDENT <input checked="" type="checkbox"/> (1 POINT)	1
2. U.S. SENATE <input checked="" type="checkbox"/> (1 POINT)	1
3. U.S. CONGRESS <input checked="" type="checkbox"/> (1 POINT)	1
4. SUBTOTAL — FEDERAL (ADD 1, 2, AND 3)	3
5. GOVERNOR <input type="checkbox"/> (1 POINT)	
6. OTHER STATEWIDE OFFICE(S) <input checked="" type="checkbox"/> (1 OR 2 POINTS)	2
7. STATE SENATE <input checked="" type="checkbox"/> (1 POINT)	1
8. STATE REPRESENTATIVE <input checked="" type="checkbox"/> (1 POINT)	1
9. LOCAL CANDIDATES <input checked="" type="checkbox"/> (1 OR 2 POINTS)	1
10. SUBTOTAL — NON-FEDERAL (ADD 5, 6, 7, 8, AND 9)	5
11. TOTAL POINTS (LINE 4 PLUS LINE 10)	8

NOTE: Although the actual ratio is 37% Federal/63% non-federal, the GDP mistakenly made a 50%/50% allocation initially during the period of 1/1/91-3/17/91. Correcting adjustments are reported on Schedules H3 and H4 pursuant to Advisory Opinion 1991-15.

FEDERAL ALLOCATION - LINE 4 DIVIDED BY LINE 11 37 %

TRANSFERS FROM
NON-FEDERAL ACCOUNTS

NAME OF COMMITTEE Democratic Party of Georgia			TOTAL AMOUNT TRANSFERRED
NAME OF ACCOUNT Non-federal account		DATE OF RECEIPT {1/1-3/17/91}	\$ 62,500
BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
i) Total Administrative/Voter Drive	62,500		
ii) Direct Fundraising (List Events-Amount for Each)			
a)			
b)			
c)			
d)			
e) Total Amount Transferred For Direct Fundraising			
iii) Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a)			
b)			
c)			
d)			
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support			
NAME OF ACCOUNT (adjustment 1/1-3/17 incorrect ballot composition)		DATE OF RECEIPT 6/1/91	\$ 16,353.43
BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
i) Total Administrative/Voter Drive	16,353.43		
ii) Direct Fundraising (List Events-Amount for Each)			
a)			
b)			
c)			
d)			
e) Total Amount Transferred For Direct Fundraising			
iii) Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a)			
b)			
c)			
d)			
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support			
TOTALS FOR BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND-RAISING AMOUNT	EXEMPT ACTIVITY/DCS
SUBTOTAL THIS PAGE	78,853		
TOTAL THIS PERIOD			

TRANSFERS FROM
NON-FEDERAL ACCOUNTS

AO 1991-15
SAMPLE

NAME OF COMMITTEE Democratic Party of Georgia			TOTAL AMOUNT TRANSFERRED
NAME OF ACCOUNT Non-federal account		DATE OF RECEIPT [3/18-6/30/91]	\$ 78,850
BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND- RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
i) Total Administrative/Voter Drive	78,850		
ii) Direct Fundraising (List Events-Amount for Each)			
a) _____			
b) _____			
c) _____			
d) _____			
e) Total Amount Transferred For Direct Fundraising			
iii) Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a) _____			
b) _____			
c) _____			
d) _____			
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support			
NAME OF ACCOUNT		DATE OF RECEIPT	\$
BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND- RAISING AMOUNT	EXEMPT ACTIVITY/DIRECT CANDIDATE SUPPORT
i) Total Administrative/Voter Drive			
ii) Direct Fundraising (List Events-Amount for Each)			
a) _____			
b) _____			
c) _____			
d) _____			
e) Total Amount Transferred For Direct Fundraising			
iii) Exempt Activity/Direct Candidate Support (List Events-Amount For Each)			
a) _____			
b) _____			
c) _____			
d) _____			
e) Total Amount Transferred For Exempt Activity/Direct Candidate Support			
TOTALS FOR BREAKDOWN OF TRANSFER RECEIVED			
	ADMIN./VOTER DRIVE AMOUNT	DIRECT FUND- RAISING AMOUNT	EXEMPT ACTIVITY/DCS
SUBTOTAL THIS PAGE	78,850		
TOTAL THIS PERIOD	157,603		

DISBURSEMENT SCHEDULE H4
(effective 1/1/91)

JOINT FEDERAL/NON-FEDERAL
ACTIVITY SCHEDULE

PAGE	OF
FOR LINE 21a	

NAME OF COMMITTEE

Democratic Party of Georgia Federal Account

A. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
[Payees for Salaries]		[1/1-3/17]	62,500	31,250	31,250
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE: \$ 250,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
B. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
[Payees for Overhead]		[1/1-3/17]	62,500	31,250	31,250
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE: \$ 250,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
C. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
[Payees for Salaries]		[3/18-6/30]	52,500	19,425	33,075
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE: \$ 250,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
D. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
[Payees for Overhead]		[3/18-6/30]	52,500	19,425	33,075
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE: \$ 250,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
E. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
Acme Voter List Co. 1234 Main St. City, GA 00000	Voter List preparation union/generic	4/12/91	20,000	7,400	12,600
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE: \$ 250,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
F. FULL NAME, MAILING ADDRESS & ZIP CODE	PURPOSE/EVENT	DATE	TOTAL AMOUNT	FEDERAL SHARE	NON-FEDERAL SHARE
Adjustment for incorrect ballot composition 1/1/91-3/17/91				-16,353.43	16,353.43
CATEGORY: <input checked="" type="checkbox"/> ADMINISTRATIVE/VOTER DRIVE <input type="checkbox"/> FUNDRAISING <input type="checkbox"/> EXEMPT EVENT YEAR-TO-DATE: \$ 250,000 <input type="checkbox"/> DIRECT CANDIDATE SUPPORT					
SUBTOTAL OF JOINT FEDERAL AND NON-FEDERAL ACTIVITY THIS PAGE.....			250,000	92,397	157,603
TOTAL THIS PERIOD (last page for each line only)(Fed. share to 21 a i and non-Fed. share to 21 a ii).....			250,000	92,397	
TOTAL THIS PERIOD FOR THE NON-FEDERAL SHARE (used for line 31 of the detailed summary page).....					157,603