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FEDERAL ELECTION COMMISSION

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 1992-27

Re: Advisory Opinion Request

Dear Mr. Noble:

This letter constitutes a request for an Advisory Opinion from the Federal Election Commission ("FEC" or "Commission") pursuant to 2 U.S.C. § 437f of the Federal Election Campaign Act of 1971, as amended, on behalf of the National Republican Senatorial Committee ("NRSC").

QUESTION PRESENTED

Consistent with the Advisory Opinions issued by the Commission permitting retroactive reallocation of fundraising expenses, may the NRSC retroactively reallocate its costs of fundraising for the period of January 1, 1991 through February 28, 1992.

FACTS

In late 1990, the Federal Election Commission issued new rules for the allocation of national party committee expenditures, including fundraising expenses. Specifically, 11 C.F.R. § 106.5(a)(2)(i) provides that committees may allocate

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[t]he direct costs of a fundraising program or event including disbursements for solicitations of funds and for planning and administration of actual fundraising events, where federal and non-federal funds are collected by one committee through such programs or event.

Further, 11 C.F.R. § 106.5(c)(3) states that "Senate and House campaign committees shall allocate the costs of each combined federal and non-federal fundraising program or event according to paragraph (f) of this section, with no minimum percentages required." Section 106.5(f) provides that "[i]f federal and non-federal funds are collected by one committee through a joint activity, that committee shall allocate its direct costs of fundraising . . . according to the funds received method." Finally, 11 C.F.R. § 104.10(b)(2) requires the itemized reporting of all fundraising expenditures.

These rules represent a substantial change to the regulations as they existed prior to January 1, 1991. They are complex and require entirely new reporting of these allocated expenditures. As of January, 1991, when the rules went into effect, the NRSC did not have an accounting system in place which could accommodate the new allocation and reporting requirements. From January 1, 1991 to February 29, 1992, the NRSC paid all fundraising expenses from its federal account. During the same period, while the NRSC was permitted by 11 C.F.R. § 106.5(a)(2) to allocate its fundraising costs, the NRSC did not have the internal capacity to do so.

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However, as of March 1, 1992, the NRSC implemented an accounting and reporting system to allow it to allocate and report costs in accordance with the Regulations. The NRSC would now like to retroactively reallocate the fundraising expenditures covered by section 106.5 for the period of January 1, 1991 through February 2, 1992.

In order to assist the Commission in making its determination, the NRSC will attempt to answer those questions raised by the General Counsel's Office prior to issuing Advisory Opinion 1992-2, Fed. Election Camp. Fin Guide (CCH) ¶ 6045 (1992) to the Democratic National Committee ("DNC") regarding the reallocation of fundraising costs retroactive to January, 1991.

First, the costs which the NRSC seeks to reallocate includes all costs of fundraising permitted pursuant to section 106.5(a)(2). This is meant to include those costs which the Commission permitted the DNC to reallocate -- i.e. the costs of salaries and benefits attributable solely to fundraising. Further, the NRSC's records distinguish between fundraising expenses and administrative or other expenses.

Second, this request covers two types of fundraising: direct mail and major donor programs. The NRSC direct mail fundraising contains purely fundraising messages and do not include generic party building messages or party advocacy messages distinct from

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the fundraising message. Further, the major donor programs, such as the NRSC Trust and Round Table, are 100% fundraising programs. These programs are event oriented. Further, this request does not encompass any joint fundraising events operated pursuant to 11 C.F.R. § 102.17, but encompasses purely NRSC fundraising events.

Third, the NRSC personnel who work on fundraising do so on a full-time basis. Only the salaries of these individuals will be reallocated.

DISCUSSION

The Commission has on three occasions permitted the retroactive reallocation of expenses which are subject to the Commission's new allocation regulations. In issuing its previous Advisory Opinions permitting the retroactive reallocation of these applicable expenses, the Commission has recognized that "the allocation regulations represent significant revisions to past practice and require a brief period of adjustment, i.e., the current election cycle, by political committees acting in good faith." AO 1992-2, Fed. Election Camp. Fin. Guide (CCH) ¶ 6045 (1992). See also AO 1991-25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6029 (1991); AO 1991-15, Fed. Election Camp. Fin. Guide (CCH) ¶ 6019 (1991). Despite the fact that the NRSC engages in fundraising for its federal and non-federal accounts, the NRSC did not have the capacity at the time the regulations went into effect

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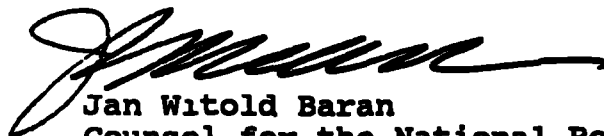
to allocate and report its fundraising costs according to the new Commission regulations. Thus, the NRSC paid 100% of its fundraising costs from its Federal account until such time as it was competent to adapt to the Commission regulations.

Further, the Commission Opinions to date have permitted reallocation within thirty days of the issuance of the Advisory Opinions. While the Commission has just adopted new regulations which has extended the window of reimbursements from a non-federal account to a federal account, the NRSC is certainly willing to comply with the thirty day time frame within which to make the appropriate transfers and reports.

Accordingly, the NRSC respectfully requests that the Commission allow it to retroactively reallocate its fundraising expenses as it allowed the DNC to do in Advisory Opinion 1992-2.

Please contact me if you need additional information.

Sincerely,



**Jan Witold Baran
Counsel for the National Republican
Senatorial Committee**