

SANDLER, REIFF & YOUNG, P.C.

50 E STREET, S.E., SUITE 300
WASHINGTON, DC 20003

JOSEPH E. SANDLER
sandler@sandlerreiff.com
NEIL P. REIFF
reiff@sandlerreiff.com

TELEPHONE: (202) 479-1111
FACSIMILE: (202) 479-1115

COUNSEL:
JOHN HARDIN YOUNG
young@sandlerreiff.com

July 23, 2001

Lois G. Lerner, Esq.
Acting General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2001-11

JUL 23 4 18 PM '01

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Dear Ms. Lerner:

On behalf of our client, the Democratic Party of Virginia (the "State Party") we are requesting an advisory opinion, pursuant to 11 C.F.R. § 112.1, regarding the application the Federal Election Campaign Act ("the Act"), and the Commission's regulations with respect to the circumstances described below. Specifically, the State Party wishes to transfer funds from its non-federal to federal account to pay for the non-federal portion of certain administrative expenses. However, due to the circumstances described below, the necessary transfer would not be made within the seventy day window prescribed by the Commission's regulations at 11 C.F.R. § 106.5(g)(2)(ii)(B). Notwithstanding, the State Party believes that due to the extraordinary circumstances described below, the Commission should grant the State Party permission to make the transfer requested in this opinion.

FACTS

The State Party committee is the "state committee" of the Democratic Party for the state of Virginia as defined in 11 C.F.R. § 100.14. The State Party committee pays for expenditures that are allocable between federal and non-federal accounts in accordance with the Commission's regulations at 11 C.F.R. § 106.5. The ordinary practice of the State Party is to review its allocable expenditures on a monthly basis to determine the amount to be transferred from its non-federal account to its federal account during the prior month in accordance with allocation ratios prescribed by the Commission. This determination is undertaken by Ms. Karen Nuckols, an independent Certified Public Accountant who has been retained by the State Party to provide accounting services. Ordinarily, Ms. Nuckols provides the necessary information to make the transfer to the Executive Director of the State Party, Alan Moore. Mr. Moore would then request, by facsimile, that the State Party's bank, Wachovia Bank ("the Bank"), effectuate a wire transfer from its non-federal to its federal account for this purpose.

Lois G. Lerner, Esq.
Page Two
July 23, 2001

On June 18, 2001, Ms. Nuckols informed the State Party that it should transfer \$43,679.88 from its non-federal account to its federal account to pay for the non-federal share of certain allocable party disbursements made during April and May of 2001 (A copy of Ms. Nuckols communication to Mr. Moore is attached hereto as Exhibit 1; A list of expenditures that constitute the amount for the transfer is attached hereto as Exhibit 2). On that same day, Mr. Moore sent a facsimile to the bank requesting that the transfer be made (See Declaration of Alan Moore, attached hereto as Exhibit 3).

On July 12, 2001, Ms. Nuckols, in the ordinary course of her duties on behalf of the State Party, reviewed the June 2001 bank statements for the State Party for the purpose of conducting a monthly bank account reconciliation. During that review, Ms. Nuckols noticed that the June 18th transfer request had not been. Ms. Nuckols immediately informed Mr. Moore that the requested transfer was not made. Mr. Moore was surprised that the transfer was not made and immediately contacted the Bank. Upon review of its records, the Bank could not confirm whether or not it had received any request from the State Party on June 18, 2001 from the State Party to effectuate any wire transfers on its behalf. Mr. Moore has attempted to locate any records that would confirm whether any facsimile had been received by the bank.. According to Mr. Moore's affidavit, he specifically recalls that, on June 18, 2001, he faxed a letter to the Bank that requested a wire transfer be made on that date. Although Mr. Moore believes that the facsimile transmission was successfully completed, no written record can be located at the State Party to confirm whether or not the bank successfully received the facsimile transmission. Conversely, although the State Party's facsimile machine ordinarily notifies the sender if a facsimile does not successfully complete its transmission, no such notification can be located that suggests that the facsimile request was not transmitted successfully. Accordingly, the State Party believes that the bank received its facsimile request but failed to make the allocation wire transfer.

DISCUSSION

Commission regulations require that any expenditure by a state committee that is for joint federal and non-federal activity must be made from its federal account. 11 C.F.R. § 106.5(g)(1)(i). Commission regulations require a party committee that wishes to transfer the non-federal portion of an allocable expenditure to transfer such funds from its non-federal account to its federal account either ten days prior or sixty days after making the allocable expenditure. 11 C.F.R. § 106.5(g)(2)(ii). Commission regulations state that any transfer made outside of this seventy-day window is "presumed to be a loan or a contribution from the non-federal account to a federal account, in violation of the Act." 11 C.F.R. § 106.5(g)(2)(iii). Indeed, the State Party intended to comply with this restriction when it timely requested the transfer of June 18th. When the State Party discovered that the transfer had not been made on July 12th, the time period in which to legally make the transfer had already passed.

Lois G. Lerner, Esq.
July 23, 2001
Page Three

The State Party now wishes to transfer \$43,679.88 from its non-federal account and requests that the Commission issue an Advisory Opinion that such a transfer would not violate the prohibitions and limitations of the Act or the Commission's regulations. Such a ruling by the Commission would be consistent with prior advisory opinions in which the Commission ruled that the correction of errors by third parties or inadvertent errors by a committee would not be considered violations of the Act. For example, in Advisory Opinion 1999-33, the Commission permitted a committee to accept payroll deductions that were inadvertently held by a corporation in excess of the ten days required for deposit by Commission regulations. See also FEC Advisory Opinion 2000-11. Similarly, in Advisory Opinion 1990-27, the Commission permitted a state party committee to transfer funds from its non-federal account into its federal account when transfers from a federal candidate were inadvertently deposited into the committee's non-federal account.¹ Finally, in Advisory Opinion 1992-42, the Commission permitted a federal candidate to treat certain lost contributions that were designated as 1992 general election contributions for that election, even though replacement contributions were received after the 1992 general election date. In that case, checks were mailed to the committee's bank but were apparently never received by the bank. See also FEC Advisory Opinion 1993-5.

Each of the above cited Advisory Opinions stand for the proposition that the Commission has permitted committees, under certain extenuating circumstances, to treat funds as meeting the prohibitions and limitations of the Act despite some technical defect in the handling of those funds that would otherwise cause such funds to not be in compliance with the Act or the Commission's regulations. In this instance, the State Party merely wishes to recoup the non-federal portion of certain allocable administrative expenses (of which 75% of each expenditure was allocable to non-federal activity (See 11 C.F.R. § 106.5(d)(1))). Thus, the State Party reasonably believed that its facsimile request to make a transfer pursuant to the Commission's allocation regulations had been effectuated. It was not until July 12th that the State Party realized that the bank had not made the requested transfer. By that date, the Commission's allocation window for the applicable expenditures had already expired.

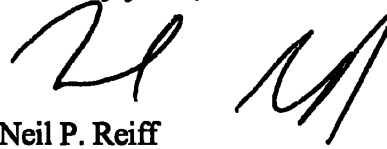
¹ It should also be noted that, when the Commission's allocation regulations were first promulgated, the Commission permitted committee's to recoup non-federal funds when inadvertent errors were made in the allocation process. See e.g. FEC Advisory Opinions 1991-15; 1992-2; 1992-27; 1993-3.

Lois G. Lerner, Esq.
July 23, 2001
Page Four

Based on the foregoing, the State Party requests permission from the Commission to transfer \$43,679.88 from its non-federal account to its federal account to recapture funds that it had believed to have been timely transferred by the bank on June 18th.

Thank you for your time and attention to this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'N. P. Reiff', written in a cursive style.

Neil P. Reiff
Special Counsel to the Democratic Party of
Virginia

EXHIBIT 1

Nuckols & Company, P.C.

CERTIFIED PUBLIC ACCOUNTANTS

Fax Cover Sheet

DATE: 6/18/01

TO: Alan

FAX: 343-3642

FROM: Kim

PHONE: 804.342.9175

FAX: 804.342.9176

RE: April/May Transfer

Urgent For Review Please Comment Please Reply Please Recycle

Number of pages including cover sheet: 1

Comments:

Alan,

Please transfer \$43,679.88 from the party's non federal checking to federal checking.

Call me if you have any questions.

Thanks!

Kim

Privileged Information

The information contained in this facsimile message is privileged and confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify us immediately by telephone and return the original to us at the address below. Thank you.

EXHIBIT 2

Alan:

Expenses included in transfer that was not made by bank:

page 2	4/20 - 4/30/01 - Admin. Expenses	\$ 38,801.17
page 3	5/1 - 5/3/01 - Admin. Expenses	19,440.49
		\$ 58,241.66
		x 75%
		\$ 43,681.25

I can't find the difference) of \$ 1.81,
I just think I made a math mistake.

07/20/2001

Democratic Party of Virginia
GENERAL LEDGER REPORT
FOR THE PERIOD 4/20/01 TO 4/30/01

03:20:36 PM

DATE	TT-R	REF NO	DESCRIPTION	DEBIT	CREDIT
1000-00 Cash - Checking Federal					
			Beginning Balance:	29,119.89	
			DEPOSIT	855.00	
04/23/01	BD-N		Virginia Employment Commi - <i>Payroll Tax</i>	0.00	674.20
04/24/01	VC-N	00000796	Networking Technologies - <i>Computer System</i>	0.00	30,000.00
04/24/01	VC-N	00000797			
04/26/01	BD-N		DEPOSIT	72,849.85	0.00
04/28/01	VC-N	00000912	Printing Services	0.00	500.00
04/30/01	BI-N		Interest Earned	29.13	0.00
04/30/01	EC-N	00000798	Judith C. Anderson	0.00	1,621.40
04/30/01	EC-N	00000799	Maggie Barlow	0.00	1,288.53
04/30/01	EC-N	00000800	Sandra Lee Brown	0.00	615.03
04/30/01	EC-N	00000801	Mary C. Broz	0.00	1,201.16
04/30/01	EC-N	00000802	Margaret M. Hogan	0.00	589.68
04/30/01	EC-N	00000803	Alan L. Moore	0.00	1,567.41
04/30/01	EC-N	00000804	Shanta L. Reid	0.00	318.29
04/30/01	VC-N	00000805	Wachovia	0.00	425.47
			Ending Balance:	64,052.70	
				TOTALS:	73,733.98
					38,801.17

Expenses

Salaries
Payroll Tax

Admin. Expenses 4/20 - 4/30 = \$38,801.17

07/20/2001

03:16:53 PM

Democratic Party of Virginia
GENERAL LEDGER REPORT
FOR THE PERIOD 5/ 1/01 TO 5/31/01

DATE	TT-R	REF NO	DESCRIPTION	DEBIT	CREDIT
1000-00 Cash - Checking Federal					
			Beginning Balance:	64,052.70	<i>Expenses</i>
05/01/01	VP-N	00000806	Advanta Leasing Services - Equip. lease	0.00	357.47 X
05/01/01	VP-N	00000807	Alan Moore - Travel, cell phone, supplies	0.00	641.99 X
05/01/01	VP-N	00000808	AT&T	0.00	3,888.30 X
05/01/01	VP-N	00000809	AT&T TeleConference Servi	0.00	131.92 X
05/01/01	VP-N	00000810	Federal Express	0.00	31.20 X
05/01/01	VP-N	00000811	Harrison & Bates Rent	0.00	3,834.07 X
05/01/01	VP-N	00000812	Johnny Howard Designs, In letterhead	0.00	9,954.18 X
05/01/01	VP-N	00000813	Network Access Solutions	0.00	225.00
05/01/01	VP-N	00000814	NTFC	0.00	164.39 X
05/01/01	VP-N	00000815	Pitney Bowes Credit Corp.	0.00	470.23
05/01/01	VP-N	00000816	Richmond Times Dispatch	0.00	43.40
05/01/01	VP-N	00000817	Sandler & Reiff, P.C.	0.00	300.00
05/01/01	VP-N	00000818	SoftwareCenter	0.00	31.35
05/01/01	VP-N	00000819	Total Office Solutions, I	0.00	250.00
05/02/01	VP-N	00000820	Arlington County Demo. Co - Rent	0.00	1,865.00
05/02/01	VP-N	00000821	Sprint PCS	0.00	226.76
05/02/01	VP-N	00000822	Trigon Blue Cross	0.00	78.50
05/02/01	VP-N	00000823	United Health Care	0.00	1,079.89
05/03/01	VC-N	x04/30	Virginia Department of Tax Payroll Tax	0.00	436.97 X
05/03/01	VC-N	x4/30	Wachovia Payroll Tax	0.00	2,826.02
05/15/01	VP-N	00000831	US Office Products Compan	0.00	422.16
			Ending Balance:	36,793.90	
TOTALS:				0.00	27,258.80

Items checked which should have been transferred on 6/19/01.
5/11 - 5/15 Admin Expenses \$ 19,440.49

EXHIBIT 3

**BEFORE THE
FEDERAL ELECTION COMMISSION**

In re:)	
Advisory Opinion Request)	AOR _____
Submitted by Virginia)	
Democratic Party)	

DECLARATION OF ALAN MOORE

1. I am the Executive Director of the Virginia Democratic Party (the "State Party"). I make this Declaration in connection with the Advisory Opinion Request being submitted herewith by the Virginia Democratic Party.

2. It is the State Party's practice to pay for its allocable expenses by paying the entire amount of an allocable expense from its federal account and transferring funds from its non-federal account to its federal account solely to cover the non-federal share of the allocable expense, pursuant to the Commission's rules, 11 C.F.R. §106.5(g)(1)(i). Such transfers are made within the time periods prescribed in the Commission's rules, 11 C.F.R. §106.5(g)(2)(ii)(B).

3. It is the State Party's practice to obtain the necessary information to make these transfers from Karen Nuckols, a certified public accountant who has been retained by the State Party to provide accounting services. Once the information is obtained, it is the State Party's practice for me to request, by facsimile, that the State Party's Bank, Wachovia Bank (the "Bank") effectuate the transfer from the non-federal to the federal account, via wire transfer.

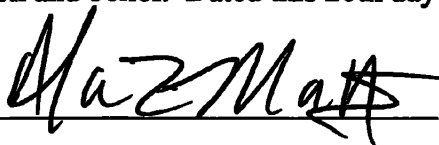
4. On June 18, 2001, I received a fax from Ms. Nuckols indicating the correct amount of the transfer in respect of expenses made during April and May of 2001 was \$43,679.88.

5. On that same day, June 18, 2001, I sent a written request to the Bank, via facsimile, requesting that a transfer be made, that same day, from the State Party's non-federal account to its federal account, in the amount of \$43,679.88 (A copy of the written request to the Bank is attached hereto as Exhibit A).

6. On July 12, I was informed by Ms. Nuckols that, based on her review of the June 2001 bank statements of the State Party, the transfer had not been made on June 18, 2001 as requested.

7. To the best of my knowledge, the Bank received my written request but failed to honor it.

I declare under penalties of perjury that the foregoing is true and correct to the best of my present knowledge, information and belief. Dated this 20th day of July, 2001.



Alan Moore

EXHIBIT A



www.vademocrats.org

1108 East Main Street, Second Floor
Richmond, Virginia 23219
Phone: 804/644-1966 800/322-1144
Fax: 804/343-3642

Emily Couric
General Chair

Lawrence H. Framme III
State Chair

Monday, June 18, 2001

First, please transfer \$43,679.88 the Democratic Party of Virginia's non-federal account, #31103872702, to the Democratic Party of Virginia's federal account, # 30850991902.

Please fax confirmation to (804) 343-3642. You may contact Alan Moore at 804-644-1966, ext. 223 if you have any questions.

Thank you.