

April 3, 2006

By Electronic Mail

Lawrence H. Norton  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

*Late Comments*  
*AOR 2006-11*

Re: *The Republican National Committee's Comments on Advisory Opinion Request 2006-11.*

Dear Mr. Norton:

The Republican National Committee ("RNC") writes to comment on the Washington Democratic State Central Committee's ("WDSCC") advisory opinion request of February 27, 2006, AOR 2006-11. This request sought the Commission's guidance on whether the costs of a proposed mass mailing that clearly identifies a federal candidate and only generically references other candidates may be allocated equally between the federal candidate and the WDSCC. The RNC respectfully asks for the Commission to confirm that an allocation based upon a percentage of space used in the mass mailing is appropriate.

Importantly, the Commission has rejected the position that multiple purpose communications – communications that clearly identify a federal candidate and also refer to other candidates in a generic fashion – are 100% allocable to the candidate. The Commission has accepted or approved of *some* division of costs between the candidate and the party committee; this has been the case for communications in various media, none of which appear to be different in kind from a mass mailing communication. The reasoning underlying such a division, as the Commission has recognized, is that a communication's generic portion benefits the *entire party ticket* rather than the particular candidate identified in the communication. *See e.g.*, 11 C.F.R. § 106, 68 Fed. Reg. 64,517 (Nov. 14, 2003) ("Although the specific mention of the clearly identified Federal candidate provides something of value to the candidate being promoted, it also provides the party with a benefit.") Such allocation has typically been based upon a "time and space" formula that allocates costs based upon the participants' time and/or space share of the communication. For example, the Commission has opined that allocation for multiple purposes is acceptable for dividing the costs of (1) a party newsletter, *see* FEC AO 1981 -3; 1978-46; (2) a national party conference, *see* FEC AO 1982-5; and (3) a federal candidate's media-advertisement time buy for an issue/solicitation ad, *see* FEC AO 1988-6. Put simply, the Commission's past opinions and actions with respect to

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2006 APR 3 P 2:16

multiple purpose allocation suggest such allocation should be acceptable with respect to the mass mailing at issue in AOR 2006-11.

Additionally, the Commission has expressly prescribed a 50/50 allocation for multiple purpose party phone banks, and this formula has proven successful in practice. 11 C.F.R. § 106.8. Section 106.8 has provided the regulated community with clear guidance about which phone banks may be allocated. *See also* 68 Fed. Reg. 64,517 – 64,518. Here, the Commission has set forth a five step test to determine whether a phone bank conducted by a party committee may be allocated. Such a test is straightforward, administrable, and outcomes under its application are predictable; such guidance greatly assists political parties' efforts to comply with the Act.

As noted above, before Section 106.8 became effective the Commission had accepted allocation for several multiple purpose communications based upon a percentage of time and/or space (indeed, even with respect to phone banks, *see* Bush-Cheney 2000 Audit Rpt.). *See* 11 C.F.R. § 106.1; *see also* FEC AO 1988-6, 1982-5, 1981-3, 1978-46. For the Commission to now find such costs wholly attributable to a clearly identified federal candidate in the context of a mass mailing simply would be out of step with the Commission's past treatment of costs related to other communications, including printed communications. *See* FEC AO 1981-3; 1978-46.

Finally, consistent with the phone bank allocation rules and the other above-discussed Commission precedent, the party committee portion of the mailing's costs – the generic portion of the proposed mass mailing – should be considered a party operating expense. A candidate's portion of such a mailer's costs, unless reimbursed by the federal candidate's campaign committee, would constitute either a coordinated, independent, or in-kind contribution to that candidate by the party. The party's allocable share, however, should not be regarded as a coordinated, independent, or in-kind contribution to the federal candidate under any circumstance.

For the foregoing reasons, the RNC respectfully asks the Commission to confirm that the costs of the mass mailing at issue in AOR 2006-11 may be allocated between the federal candidate and the WDSCC.

Respectfully submitted,



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