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FEDERAL ELECTION COMMISSION  
WASHINGTON DC 20463

30 September 1992

MEMORANDUM

**SUBMITTED LATE  
AGENDA ITEM**

For Meeting of: OCT 1 1992

TO: The Commission

FR: Lee Ann Elliott *LL*  
Commissioner

RE: Draft Advisory Opinion 1992-33

I have read the General Counsel's proposal for handling the receipt and reporting of in kind contributions for allocable events. In my opinion, the draft is too strict in requiring federal party committees to immediately compensate their non federal accounts for receipt of in-kind contributions. I also think the proposed method of reporting is too burdensome, and is likely to create more errors and confusion than clarity in the handling these contributions.

*103.3 (b)(1)  
Contributions w/  
generating questions  
as to whether made  
by corp. must be  
within 60 days or  
deposited w/in  
10 days. LG  
dependent but effort*

1. Compensating the non-federal account.

The draft requires the federal account pay the non-federal account at the time the non-federal account receives an in-kind contribution. I find this an unrealistic requirement, and much stricter than how we normally handle allocable expenses.

*under allow  
transfer from  
non federal to  
federal w/ 70  
day window  
to maintain  
federal for non fed  
share of joint exp*

We currently allow federal accounts 60 days to pay for adjustments made in allocation ratios for fundraising events. 11 CFR 106.5(f)(2) Our other transfer rules used to require only 30 days, but the Commission unanimously expanded it to 60 days because committees were experiencing "cash flow problems" in making these detailed transfers. See Explanation & Justification to Allocation Regulations, 57 FR 8992.

1. The Commission also allows a 10 day pre-payment period, making the "window" a total of 70 days. For purposes of this memo, I would also include the 10 day pre-payment as an option.

I see no need to reverse course and require a 1 day payment period for in kind contributions. As we said in the E&J, the 60 day transfer period "allows greater consolidation of payments than is possible under the [old] system, and should thus ease possible compliance and cash flow problems in this area." Id. Further, having a 1 day payment requirement is inconsistent with our explicit determination to not require every expense be paid with two separate checks.

Lastly, I do not think in-kind contributions are materially distinguishable for allocation payment purposes from goods and services that are purchased by a committee. If a committee purchases flowers for an event, the federal account has "used or consumed" those flowers on the date of the event - even though the bill may not be paid for 60 days. I do not see the need to treat a gift of flowers more strictly than the purchase of flowers.

Accordingly, I recommend the General Counsel's draft be revised to allow the federal committee 60 days to make its transfer payment for its share of in kind contributions the non-federal account receives for allocable events.

## 2. Reporting

I agree with the General Counsel that the reporting of in kind contributions for allocable events must appear on the H3 and H4 Schedules. I do not think using Schedule I and Line 22 of the Detailed Summary Page will give the Commission the necessary reporting trail our regulations require.

But the draft's multi-step process of requiring the individualized transfer of each in kind contribution on H3 and coordinated daily federal payments is too complex. Consistent with my 60 day transfer recommendation, I think the reporting requirements can be simplified to allow federal committees to report the receipt of in kind contributions in lump sums for each particular fundraising event or administrative category.

✓  
This means the party committees would not have to separately record on H3 each instance an in kind contribution was received. Instead, the H3 would contain one overall transfer amount (for a period not to exceed 60 days) for each fundraising event. This simplification recognizes that party committees often receive more than one in kind contribution for fundraising and administrative expenses.

On the disbursement side, the federal committee could report on the H4 one lump sum payment to the non federal account representing the federal share of the in kind contributions. Importantly, the federal account must ensure that its transfer payment occurs within 60 days of all items within the lump sum. This ensures the federal committee is ~~not subsidized~~ by the nonfederal account, and allows the federal committees to consolidate payments and simplify its cash flow. Allowing lump sum payments may also eliminate the need for constant readjustment payments, since committees often do not know the federal exact share of an event until after its over.

Also on the H4 (and just below the reporting of the lump sum transfer) the federal account will have to itemize (as disbursements) each in kind contribution that made up the ~~lump sum transfer~~ reported on H3. This requirement is identical to the General Counsel's draft. The only overall difference is that I am requiring itemization once (on H4), not twice (on H3 and H4). Requiring itemization on the H4 will give us the disclosure information we need<sup>2</sup> and allow RAD to compare the total figure on H3 with the elements of the transfer on H4.

Accordingly, I recommend the draft be returned to the General Counsel's office to provide for lump sum reporting of in-kind transfers on H3, lump sum payments to the non federal account on H4, and detailed itemization of the elements of the in kind contributions on H4.

I request this memorandum be placed on the agenda for October 1, 1992.

✓  
2. For in kind contributions received from individuals, the H4 will also have to show the information currently required on Schedule A, including occupation and employer.

for and  
sum  
60 days

H3 show how  
signature donor  
itemize.