

certain expenses for a convention in that locality. Municipal funds may make expenditures for the same purposes as host committees. 11 CFR 9008.53. As with host committees, expenditures by a municipal fund that are in compliance with 11 CFR 9008.53 do not constitute convention committee expenditures and do not count toward the convention committee's expenditure limit. 11 CFR 9008.8(b)(2).

Under current regulations, host committees and municipal funds are allowed to accept monetary and in-kind donations from the same sources: local businesses, including corporations; local banks; local labor organizations; and local individuals. 11 CFR 9008.52 and 9008.53. Municipal funds, however, face more limitations on their fundraising than host committees. See 11 CFR 9008.53(b)(1)(i) and (ii). Municipal funds may not accept donations "restricted" for use in connection with a particular convention; they may not engage in fundraising restricted to a particular convention; and they may not themselves be restricted to a particular convention. 11 CFR 9008.53(b)(1)(i) and (ii). Host committees are not subject to any of these limitations. Once raised, funds received by a host committee or municipal fund may be used for the same purposes. See 11 CFR 9008.52(c)(1) and 9008.53. If the funds are raised and spent in compliance with 11 CFR 9008.52 or 9008.53, then they are exempt from the definition of "contribution and expenditure" in the Commission's regulations concerning corporate and labor organization funds, 11 CFR part 114. See 11 CFR 114.1(a)(2)(viii). On this basis, host committees and municipal funds accept and spend such funds, which constitute non-Federal funds.

II. Historical Basis for Current Legal Structure

In 1977, the Commission explained the basis for permitting in-kind contributions to host committees from corporations and labor organizations, stating: "Such in-kind contributions are presumably not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city." *Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971*, H.R. Doc. No. 95-44, 136 (1977). Similarly, donations of money were described as "presumably commercially motivated rather than politically, and thus will not be considered an unlawful contribution." *Id.* at 137. Host committee funds were "to be used for purposes designed to promote a good

image of the host city to the convention attendees." *Id.* at 136-37.

The Commission acknowledged that the host committee exception to the convention committee's expenditure limit could be considered a means of avoiding the expenditure limit. *Id.* at 137. The Commission explained that "it appears from the testimony of the major parties before the Commission that the Congress in deciding upon a dollar figure for expenditure limitations, took into consideration only those expenses actually paid by the national party for the 1972 convention and ignored in its computation the value of services provided by host cities and committees." *Id.* The Commission described its regulation on the use of funds by host committees as "represent[ing] an interpretation of 26 U.S.C. 9008(1) that the [expenditure] limit applies only to expenditures made by the national party, and that expenditures made by private host committees under certain restrictions will not be counted toward the ceiling." *Id.* (emphasis in original).

In 1979, the Commission recodified some of its regulations, including those related to corporate donations to host committees. The Commission described again the basis for this exception to the prohibition on corporate and labor organization funds in 2 U.S.C. 441b, stating: "While incorporated businesses are prohibited by 2 U.S.C. 441b from making contributions or expenditures in connection with a Federal election, donations by such corporations to a host committee in accordance with restrictions set forth in [11 CFR 9008.7(d) (1979)] are sufficiently akin to commercial transactions to fall outside the scope of that prohibition."

Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions, 44 FR 63036, 63038 (Nov. 1, 1979).

The basis for the municipal fund exception to the expenditure limit was also discussed, and the Commission explained that the expenditure limit would be "unrealistically low" if the value of "certain facilities and services" provided by the city "as part of an overall package to attract the convention to that city" counted toward the convention committee's expenditure limit. *Id.* at 63037. With regard to host committees, the Commission justified the restriction on who may donate funds as "necessary to insure that such donations are commercially, rather than

politically motivated." *Id.* at 63038.³ The Commission also observed that "Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses." See *id.* at 63038. The 1979 document made the same point about the apparent Congressional intent as presented in the 1977 *Explanation and Justification*. *Id.* at 63037.

In 1994, the Commission again revised its regulations governing publicly financed presidential nominating conventions. Incorporating the conclusions reached in Advisory Opinions 1982-27 and 1983-29, the Commission promulgated its municipal fund regulation, 11 CFR 9008.53. *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions*, 59 FR 33606, 33614 (June 29, 1994). Like donations to host committees, the Commission explained that "the new rules recognize that local businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes." *Id.* at 33615.

Five years later, in 1999, the Commission reiterated the presumed motivation of donors to host committees and municipal funds. In lifting the prohibition on bank donations to host committees, the Commission agreed with the observation that "local branches of national banks have the same interest in promoting the city and supporting commerce" as local corporations. *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49357 (Sept. 13, 1999).

III. Petition for Rulemaking

A petition for rulemaking jointly filed by three organizations seeks the repeal or revision of the Commission's regulations that permit host committees to accept corporate and labor organization funds and to use these funds for expenses incurred in conducting a nominating convention. The petition argues that the host committee regulation, 11 CFR 9008.52, and the exemption from the part 114 definition of "contribution and expenditure" of activity permitted by the host committee regulation, 11 CFR 114.1(a)(2)(viii), are contrary to FECA and BCRA. According to the petition, 2 U.S.C. 441b of FECA is violated by the

³ At that time, the amount of donations to host committees was also limited. See 11 CFR 9008.7(d)(3)(ii) (1980).