

longtime aide to Ed Rendell (who was then mayor of Philadelphia, and now is the Democratic Governor of Pennsylvania), chaired the host committee for the Republican National Convention. Mr. Rendell was also actively involved in the 2000 Philadelphia host committee's activities. In addition, Noelia Rodriguez, former Deputy Mayor to Mayor Richard Riordan, and now Press Secretary for First Lady Laura Bush, served as Executive Director of the Los Angeles host committee for the 2000 Democratic National Convention. Furthermore, the co-chair of the host committee for the 1996 Democratic National Convention in Chicago was Richard Notebaert, who has been a major contributor to Republican candidates and to the Republican Party. The fact that historically members of the opposite political party have played key roles in convention host committees strongly supports the Commission's conclusion that host committee activity is motivated by a desire to promote the convention city and not by political considerations. While it is always difficult to interpret Congressional silence, the Commission does note that BCRA specifically repealed another of the Commission's regulations, BCRA, sec. 214(b), 116 Stat. at 94, and yet did not similarly repeal or otherwise address the Commission regulations on convention financing. Congress has also declined other opportunities to disapprove of the Commission's regulations regarding host committees. These regulations were submitted to Congress in 1977, 1994, and 1999, and Congress has not taken action to invalidate the regulations. In those regulations, one of only two subparts is devoted to host committees and municipal funds, 11 CFR part 9008, subpart B, which provides host committees a legal prominence in the regulatory structure as well.

Courts have recognized that when it is not clear whether statutory amendments affect past agency interpretations, agencies are left with their ordinary ability to interpret the law as amended, subject to deferential judicial review. *See, e.g., Chisholm v. FCC*, 538 F.2d 349, 366 (D.C. Cir. 1976) (noting court's obligation to defer to agency's interpretation even if it is not the only interpretation permissible). Thus, the Commission must decide whether to maintain its interpretation of 2 U.S.C. 441b and 26 U.S.C. 9008(d) and extend it to 2 U.S.C. 441i(a) or to overturn the regulatory system governing convention financing.

In light of all of these specific circumstances described above—the

absence in BCRA of an express reference to conventions, the dearth of legislative history on the subject of convention financing, the prominence of conventions for the parties, the role of Members of Congress in convention activities, the extensive, existing regulations for convention financing, and the Commission's long-standing regulatory position regarding host committee funds, which has never been repudiated by Congress—the Commission declines to interpret the general prohibitions in 2 U.S.C. 441i(a) to eliminate the Commission's discretion to interpret 2 U.S.C. 441b, 441i(a), and 26 U.S.C. 9008(d) to permit the financing regime established by its rules in 11 CFR part 9008.

In considering whether to maintain the current convention financing system, the Commission evaluated the relationship between the convention committee and the localities hosting the convention. This relationship is established by an arms-length agreement negotiated by independent actors. There is keen competition among cities to host conventions, and on more than one occasion, cities have sought the conventions of both major national parties. The highly detailed contract underlying this relationship calls for the city, its host committee, its municipal fund, or some combination of the three to provide very specific facilities and services to the convention committee in exchange for the convention committee agreement to bring the Presidential convention to that city instead of any other. In turn, the city and region receive a significant economic benefit from the commerce that directly results from the convention.

For these reasons, the Commission concludes that convention committees may continue to receive in-kind donations from host committees and municipal funds of the convention expenses described in 11 CFR 9008.52. The Commission is adopting new 11 CFR 9008.55(a), stating in part that convention committees may accept in-kind donations that are in compliance with 11 CFR 9008.52 or 9008.53 from host committees or municipal funds. The Commission emphasizes that this interpretation is limited to the unique circumstances of Presidential nominating convention financing.

11 CFR 9008.55(b)—Historically, Host Committees and Municipal Funds Are Not “Agents” of National Party Committees

BCRA's ban on national parties soliciting, receiving, directing, transferring and spending non-Federal funds also applies to “agents” of

national party committees. In the Non-Federal Funds Final Rules, the Commission defined an “agent,” for purposes of 11 CFR part 300, as “any person who has actual authority, either express or implied * * * to solicit, direct, or receive any contribution, donation, or transfer of funds” on behalf of a national committee of a political party. 11 CFR 300.2(b)(1)(i). Section 300.2(b)(1) therefore requires a fact-specific determination of the nature of any authority conferred by a national party committee.

The NPRM sought comment on whether host committees and municipal funds satisfy the definition of “agents” under 11 CFR 300.2(b)(1) with respect to the national political party committees or their convention committees. Comment was also sought on whether host committees and municipal funds should be treated as *per se* agents of national party committees. Such an approach would have limited permissible funds for a host committee or municipal fund to funds subject to FECA's limitations, prohibitions, and reporting requirements, regardless of how the host committees and municipal funds function in practice, and regardless of their actual relationship with the national party committees. An alternative approach would have treated host committees and municipal funds as *per se* not agents of national party committees and, therefore, not subject as a matter of law to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1), no matter how such host committees and municipal funds actually operate or interact with the national party committees. The commenters were divided on these issues.

Some commenters argued that host committees are independent from convention committees and should therefore not be considered agents of convention committees. Both host committees for the 2004 Presidential nominating conventions for the two major parties assured the Commission that their sole purpose was to encourage commerce in their cities and project a favorable image of their cities to the convention attendees. Counsel to one host committee explained that the committee conducts its own fundraising by its own staff and consultants, without national party committee participation. Counsel to the other host committee stated that the committee does not raise funds on behalf of the national party committee holding its convention in that city. Conversely, other commenters would treat host committees as agents. One commenter reasoned that because host committees raise funds to pay for convention