



FEDERAL ELECTION COMMISSION  
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August 27, 2004

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon *JAP*  
Staff Director

FROM: Lawrence H. Norton *LHN*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Brad C. Deutsch *BCD (RCS)*  
Assistant General Counsel

Cheryl A.F. Hemsley *CAH*  
Staff Attorney

Subject: Draft AO 2004-28

**AGENDA ITEM**  
For Meeting of: 09-09-04

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for September 9, 2004.

Attachment

1 ADVISORY OPINION 2004-28  
2  
3 W. Charles Smithson, Esq.  
4 Executive Director and Legal Counsel  
5 Iowa Ethics and Campaign Disclosure Board  
6 501 East 12<sup>th</sup>, Suite 1A  
7 Des Moines, Iowa 50319

**DRAFT**

8  
9 Dear Mr. Smithson:

10 This responds to your letter dated July 14, 2004, on behalf of the Iowa Ethics and  
11 Campaign Disclosure Board (the “Board”) requesting an advisory opinion concerning the  
12 application of the Federal Election Campaign Act of 1971, as amended (the “Act”), and  
13 Commission regulations to potential State disclosure requirements regarding donors to State  
14 party committee non-Federal office building funds.

15 ***Background***

16 The Board administers the campaign finance laws in Iowa as those laws pertain to State  
17 and local elections. You state that both the Iowa Democratic and Republican Parties have non-  
18 Federal office building funds. These accounts were established after the Commission issued  
19 Advisory Opinion 1998-8 to the Iowa Democratic Party (“IDP”). This advisory opinion  
20 concluded that the Act and Commission regulations preempted the Iowa State law that had  
21 sought to prohibit corporate donations to State party committee non-Federal office building  
22 funds. Although Advisory Opinion 1998-8 did not directly address the issue of whether Federal  
23 law would also prohibit Iowa from requiring disclosure of building fund donations, the advisory  
24 opinion noted that the IDP had acknowledged Iowa’s ability to regulate such disclosure.<sup>1</sup>

25 You state that while the Board does not wish to prohibit corporate donations to State  
26 party non-Federal office building funds, the Board seeks guidance as to whether Iowa is

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<sup>1</sup> Advisory Opinion 1998-8 at n. 2 (citing Advisory Opinions 1997-14 and 1991-5).

1 prohibited from requiring disclosure of donors to such office building funds, in light of the  
2 passage of the Bipartisan Campaign Reform Act of 2002 (“BCRA”) and amended Commission  
3 regulations.

#### 4 *Question Presented*

5 Is the Board prohibited by either the Act, as amended by BCRA, or Commission  
6 regulations from requiring disclosure of donors to a State party committee non-Federal office  
7 building fund?

#### 8 *Legal Analysis and Conclusions*

9 No, the Act and regulations do not prohibit the Board from requiring disclosure of donors  
10 to a State party committee non-Federal office building fund. The Act and Commission  
11 regulations now specifically allow a State to require disclosure of donors to State party non-  
12 Federal office building funds. *See* 2 U.S.C. 453 and 11 CFR 300.35.

13 In BCRA, Congress amended 2 U.S.C. 453 such that a State party may, subject to State  
14 law, “use exclusively funds that are not subject to the prohibitions, limitations, and reporting  
15 requirements of the Act” [*i.e.*, non-Federal funds] for the purchase or construction of its office  
16 building.

17 Consistent with this amendment to the Act, Commission regulations at 11 CFR 300.35(a)  
18 and (b)(1) provide that if a State party committee uses non-Federal funds to purchase or  
19 construct its office building, then the sources, uses and disclosure of those funds are subject to  
20 State law (so long as funds are not donated by foreign nationals).<sup>2</sup>

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<sup>2</sup> The Commission noted in the *Explanation and Justification* implementing 11 CFR 300.35 that pre-BCRA advisory opinions, including Advisory Opinion 1998-8, were partially superseded inasmuch as those advisory opinions concluded that Federal law preempted State laws regarding certain donations to State party non-Federal office building funds. *See* 67 *Fed. Reg.* 49064, 49191 (July 29, 2002). Note, however, that if a State party uses Federal funds for the purchase or construction of its office building, disclosure is subject to Federal law. *See* 2 U.S.C. 453 and 11 CFR 300.35.

