



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 3, 1983

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-8

Jan W. Baran, Esq.
Baker & Hostetler
818 Connecticut Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Baran:

This responds to your letter of March 15, 1983, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), to a fund ("the Fund") created by the National Republican Senatorial Committee ("the NRSC") to defray the costs of purchasing an office facility for the NRSC.

Your letter states that the NRSC is a political committee organized specifically to support Republican candidates seeking election to Federal office, and that the NRSC conducts its activities nationwide. In 1981 a trust was established by which the designated trustees obtained legal title, subject to a mortgage, to certain condominium buildings. Pursuant to the trust agreement, you state that these buildings are held in trust for the beneficial use of the NRSC as an office facility. You add that the buildings were not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office. The trustees are those individuals who hold the offices of chairman and treasurer of the NRSC. The exercise of the trustees' powers and authority is subject to the approval of the NRSC, and the NRSC has the power to revoke the trust. See Articles III and VI.

You state that the Fund was established by the original trustees for the purpose, of accepting only donations that will be used solely to defray the costs of purchasing the office facility. The Fund is separate from any NRSC account that is used to support the nomination or election of any candidates for Federal office. In light of the stated purposes of the Fund, you ask for confirmation of your view that the Fund is not a political committee and that donations to the Fund are not contributions under 2 U.S.C. 431(8) or 441b.

Under the Act, a donation to "a national or a State committee of a political party specifically designated to defray any cost for construction or purchase of any office facility not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office" is exempt from the Act's definition of contribution. 2 U.S.C. 431(8)(B)(viii) and 11 CFR 100.7(b)(12). Commission regulations recognize that, for purposes of receiving contributions, the NRSC is a political committee "established and maintained by a national political party"¹ and thus the so-called "building fund" exemption is applicable here. 11 CFR 110.1(b)(2)(iii), 110.2(a)(2)(ii). See also Advisory Opinion 1976-108, copy enclosed. Accordingly, the Commission concludes that the NRSC may accept donations to the Fund only for the express purpose of defraying the costs of purchasing the office facility. Disbursements from the Fund must also be limited to those made to defray the purchase costs of the NRSC's office facility.

In reaching this conclusion the Commission notes that your request raises two additional issues. First, the fact that the NRSC has created a trust to acquire legal title to the property (with the NRSC holding equitable title) does not, in and of itself, bar the applicability of 431(8)(3)(viii). The trust is clearly a part of the NRSC in that officers of NRSC established it, only NRSC officers may serve as trustees, and the exercise of the trustees' powers is subject to NRSC approval. Articles II and III. The operations of the trust are accordingly subject to the Act to the same extent as is the NRSC. Thus, under Article IV² of the trust instrument, the NRSC may not accept donations to the Fund to pay the property taxes, assessments, charges, and other expenses incurred by the trustees in administering the trust. Those costs are not for the "purchase or construction" of the office facility; therefore, they do not come within the scope of the 431(8)(B)(viii) exemption. Any donations received by the NRSC or the trustees to defray its operating expenses are subject to the Act's contribution limitations and prohibitions, as are donations received and used for other administrative expenses of the NRSC.

The second additional issue raised by your request is whether the NRSC is required to disclose donations to the Fund. The Commission has been unable to reach a decision on this point.

¹ For other purposes such as coordinated general election expenditures under 2 U.S.C. 441a(d), the NRSC while an auxiliary committee of the national committee is not itself a separate national committee entitled to separate 441a(d) limits. Compare definition of "national committee" in 2 U.S.C. 431(14), and see Federal Election Commission v. Democratic Senatorial Campaign Committee, 454 U.S. 27 (1981).

² Article IV of the trust agreement states:

"All property taxes, assessments, fees, charges and other expenses incurred by the TRUSTEES in the administration and protection of this Trust, shall, in the discretion of the TRUSTEES, be paid out of any income from the property held by the Trust or by the National Republican Senatorial Committee with their approval."

This constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Danny L. McDonald
Chairman for the Federal Election Commission

Enclosure (AO 1976-108)