



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 18, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-40

John R. Raese, Chairman
West Virginia Republican State Executive Committee
113 Washington Street West
P.O. Box A
Charleston, West Virginia 25362

Dear Mr. Raese:

This responds to your letters of September 23, 1986, and October 24, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation and acceptance of corporate donations by a building fund.

According to your request, the West Virginia Republican State Executive Committee maintains both a federal and a state account. The party committee plans to construct or purchase a building to house the party's offices. You indicate that the federal account, which is called the West Virginia Republican State Executive Committee ("the Committee"), will establish another account, called the West Virginia Republican Building Fund ("the Building Fund"), for the purpose of accepting donations. You explain that all donations solicited and expended for the building will be channeled only through this new fund. You ask whether the Building Fund may solicit and accept corporate donations.

Under the Act and Commission regulations, donations to a national or a state committee of a political party that are specifically designated to defray the costs of construction or purchase of an office facility are not considered to be contributions or expenditures, provided that the facility is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office. 2 U.S.C. 431(8)(B)(viii); 11 CFR 100.7(b)(12) and 100.8(b)(13). Thus, the Commission concludes that so long as the proposed office building is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, corporate donations to the Building Fund would not constitute contributions or expenditures under the Act, and therefore would not be prohibited. See 11 CFR 114.1(a)(2)(ix).

Any donations received for the Building Fund from corporations would have to be deposited in an account separate from the Committee (the federal account from which expenditures in connection with federal elections are made), as you have indicated will be done. Pursuant to 11 CFR 102.5(a)(2), only contributions that are designated for the federal account (the Committee), that result from a solicitation which expressly states the contributions will be used in connection with a federal election, and that are made by contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act may be deposited in the Committee. Donations solicited or designated for the Building Fund do not meet any of the foregoing conditions and, therefore, must be kept out of the Committee's account.

Any donations deposited in the Building Fund would not have to be reported under federal law. Commission regulations state that building fund donations "made to a committee which is not a political committee under 11 CFR 100.5" need not be reported. 11 CFR 100.7(b)(12). Because the Building Fund is not itself a "Political committee" for purposes of the Act (see 11 CFR 100.5), donations it receives need not be disclosed under the Act or Commission regulations.

The final issue raised by your request is whether the Act and Commission regulations would supersede and preempt any West Virginia statute that prohibited or limited the Building Fund's acceptance of corporate donations. Because the Act specifically addresses building fund donations and clearly permits them, the Commission concludes that any such West Virginia statute would be superseded and preempted.* See 2 U.S.C. 453 and 11 CFR 108.7.

This response 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)

Joan D. Aikens
Chairman for the
Federal Election Commission

P.S. Commission Josefiak voted against approval of this opinion and will file a dissenting opinion at a later date.

* The Commission notes that this request includes a letter from Mr. Ken Hechler, the West Virginia Secretary of State. Mr. Hechler advises you that West Virginia statutes appear to prohibit the proposed corporate donations, but that in his opinion Federal law preempts the application of such statutes as to building fund donations.