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February 19, 1991

Federal Election Commission
Office of General Counsel
999 E Street, N.W.
Washington, D. C. 20463

AOR
1991-05

91 FEB 25 AM 10:16

FEB 25 11 30 AM '91

Re: Tennessee Democratic Party - Advisory Opinion Request

Dear FEC:

I represent the Tennessee Democratic Party, 431 11th Avenue North, Nashville, Tennessee 37203, and submit this advisory opinion request on its behalf.

91 FEB 25 PM 3:45

I. Introduction

The Tennessee Democratic Party ("TDP") is a political party engaged in both federal and non-federal election activity. TDP has a committee registered with the Federal Election Commission (No. C00167346). It also has various non-federal committees registered with the Tennessee Registry of Election Finance and Tennessee County Election Commissions. TDP maintains separate bank accounts for its federal and non-federal activity.

The TDP intends to raise funds to purchase a building. The building will serve as a headquarters for its federal and non-federal campaign activity.

TDP is aware that Federal election law allows state political parties in certain circumstances to accept corporate contributions specifically designed to defray the costs of the purchase or construction of an office facility. 2 USCA §431(8)(B)(viii); 11 CFR 100.7(b)(12); 11 CFR 100.8(b)(13); 11 CFR 114.1(a)(2)(ix); and AO 1986-40. TDP is also aware that Federal election law supersedes and preempts state law prohibitions and reporting requirements regarding corporate donations to state political party building funds in certain circumstances. AO 1986-40; 2 USCA §453, and 11 CFR 108.7.

Tennessee election law prohibits corporate contributions to political parties in certain circumstances. T.C.A. §2-19-132 (copy enclosed). Tennessee election law also requires the reporting of certain contributions

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and expenditures used in state and local elections to the Tennessee Registry of Election Finance and Tennessee County Election Commissions. T.C.A. §2-10-101 et seq. (copy enclosed).¹

II. Facts

TDP, based on the foregoing legal authorities, intends to accept corporate contributions to a building fund on certain terms and conditions. TDP, more specifically, plans to take the following actions in its capacity as a committee registered with the FEC:

1. TDP will solicit and accept corporate contributions designated for the building fund;

2. TDP will advise all potential corporate contributors that all corporate contributions will be used exclusively for the building fund;

3. TDP will establish a separate segregated bank account in which only corporate contributions designated for the building fund will be deposited;

4. TDP will disburse the corporate contributions deposited in the segregated building fund account only to: (a) purchase or construct a headquarters; or (b) refund contributions if a facility is not acquired;

5. TDP will not use any corporate funds received for the purpose of influencing particular federal, state or local elections or transfer any such corporate funds to a bank account used to influence particular federal, state or local elections;

6. TDP will not have to limit, other than on a voluntary basis, the amount of the corporate contributions, individually or collectively, to the building fund; and

7. TDP will not have to report, other than on a voluntary basis, the corporate contributions to the building fund to the FEC, Tennessee Registry of Election Finance or the Tennessee County Election Commissions.

^{1/} Copies of the applicable Tennessee election law are enclosed because of the preemption questions presented herein. TDP is aware that the FEC does not have jurisdiction to interpret Tennessee law and is not requesting it to do so.

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III. Questions Presented

TDP requests an advisory opinion from the FEC on whether the actions proposed above may be taken pursuant to applicable Federal election law. 2 USCA §431 et seq.; and 11 CFR 1.1 et seq. Two basic questions are presented:

1. May TDP accept corporate contributions to purchase or construct a headquarters facility on the terms and conditions described herein?

2. Does Federal law preempt Tennessee law prohibitions and reporting requirements, if any, regarding corporate contributions to the TDP building fund described herein?

Thank you for your consideration of this matter. Please contact me if you need any further information.

Sincerely,


Todd Campbell

TC:vh

Enclosures

Tennessee Code Annotated

1990 Supplement

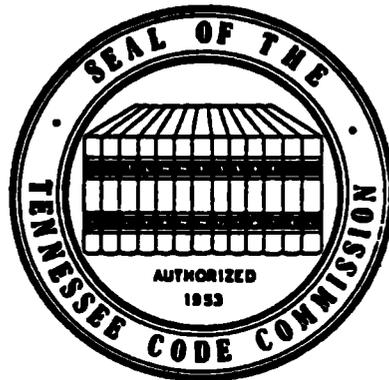
Updated through the 1990 Session of the General Assembly

Volume 2

1985 Replacement

THE OFFICIAL TENNESSEE CODE

Prepared Under the Supervision of the
Tennessee Code Commission



FRANK F DROWOTA III, Chairman
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1990

2-19-126. Bribing voters.

Cited State ex rel Anderson v Fulton, 712 S W 2d 90 (Tenn 1986)

2-19-127. Voter accepting bribe.

Cited State ex rel Anderson v Fulton, 712 S W 2d 90 (Tenn 1986)

2-19-128. Penalty for violation of §§ 2-19-125 — 2-19-127. — Any person convicted of any of the offenses mentioned in §§ 2-19-125 — 2-19-127 is guilty of a Class C felony [Acts 1972, ch 740, § 1, T C A , § 2-1928, Acts 1989, ch 591, § 9]

Amendments The 1989 amendment re-wrote the section Effective Dates Acts 1989 ch 591 § 121 November 1, 1989

Cross-References Penalty for Class C felony, § 40-35-111 Cited State ex rel Anderson v Fulton, 712 S W 2d 90 (Tenn 1986)

2-19-129. Betting on election — Penalty.

Sentencing Reform Notes The penalty provided in this section was changed to a Class C misdemeanor on November 1 1989 See Acts 1989 ch 591, § 113 and §§ 40-35 110, 40-35-111

Textbooks Tennessee Jurisprudence, 13 Tenn Juris , Gaming, Gambling and Gambling Contracts, § 5

2-19-130. Candidate betting with voter.

Sentencing Reform Notes The penalty provided in this section was changed to a Class C misdemeanor on November 1, 1989 See Acts

1989, ch 591, § 113, and §§ 40-35-110 40-35-111

2-19-131. Betting with voter to procure a challenge or to prevent him from voting

Sentencing Reform Notes The penalty provided in this section was changed to a Class C misdemeanor on November 1, 1989 See Acts

1989, ch 591 § 113, and §§ 40-35-110, 40-35-111

2-19-132. Corporate funds — Improper use in election — (a) It shall be unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever

(b) The prohibition of subsection (a) shall not apply to a contribution made by a national committee of a political party as defined in 2 U S C § 431(14) and (16), which has incorporated in accordance with 11 C F R § 114 12(a), when such committee contributes to a state political party executive committee, established by chapter 13, part 1 of this title, if the funds contributed do

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not contain any corporate contributions to the national committee of the political party [Acts 1972, ch 740, § 1, T C A , § 2-1932, Acts 1989, ch 357, § 1, 1990, ch 841, § 1]

Amendments The 1989 amendment deleted 'or for the purpose of aiding in the success or defeat of any proposition submitted to a vote of the people,' following "municipal"

The 1990 amendment added (b)
Effective Dates Acts 1989, ch 357, § 2 July 1, 1989

Acts 1990, ch 841, § 3 April 10, 1990
Attorney General Opinions Constitutionality, OAG 85-081 (3/14/85), OAG 86-36 (2/18/86)

Application to corporation whose charter has been revoked, OAG 87-16 (1/27/87)

Corporate contributions for inaugural festivities, OAG 87-38 (3/11/87)

Insurance company, trade association political campaign contributions, OAG 88-63 (3/21/88)

Corporate administrative expenses in deducting union dues used partly for campaign contributions, OAG 88-96 (4/25/88)

2-19-133. Penalty for improper use of corporate funds. — Every executive officer, agent, or other representative of any corporation, doing business within this state, who knowingly consents to, approves, or aids in the use of the funds of a corporation, for any of the purposes mentioned in § 2-19-132(a) is guilty of a Class C misdemeanor [Acts 1972, ch 740, § 1, T C A , § 2-1933, Acts 1989, ch 591, § 113, 1990, ch 841, § 2]

Amendments The 1989 amendment rewrote the section

The 1990 amendment substituted "§ 2-19-132(a)" for "§ 2-19-132"

Effective Dates Acts 1989, ch 591, § 121 November 1, 1989

Act 1990, ch 841, § 3 April 10, 1990

Cross-References Penalty for Class C misdemeanor, § 40-35-111

Attorney General Opinions Application to corporation whose charter has been revoked, OAG 87-16 (1/27/87)

2-19-134. Coercing or directing employees to vote for measure, party, or person — Penalty.

Sentencing Reform Notes The penalty provided in this section was changed to a Class C misdemeanor on November 1, 1989 See Acts 1989, ch 591, § 113, and §§ 40-35-110, 40-35-111

2-19-135. Threatening work stoppage as a result of election.

Sentencing Reform Notes The penalty provided in this section was changed to a Class C misdemeanor on November 1, 1989 See Acts 1989, ch 591, § 113, and §§ 40-35-110, 40-35-111

2-19-140. Penalty against corporation and officers.

Sentencing Reform Notes The penalty provided in this section was changed to a Class C misdemeanor on November 1, 1989 See Acts 1989, ch 591, § 113, and §§ 40-35-110, 40-35-111