



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DISSENTING OPINION OF
VICE CHAIRMAN TREVOR POTTER AND
COMMISSIONER LEE ANN ELLIOTT
TO ADVISORY OPINION 1993-9

We dissent from the Commission's conclusion in this opinion that the FECA preempts a Michigan state law prohibiting the donation of corporate funds to a state political committee to be used to purchase or construct a state party headquarters.

The Federal Election Campaign Act only preempts state laws that are written "with respect to election to Federal office." 2 U.S.C. §453. By statutory definition, building funds are "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). Furthermore, the state party headquarters will be used by the state party in connection with state activity; activity which the FECA leaves almost entirely within the control of state law.

We do not believe that the Act's mere mention of building funds at §431(8)(B)(viii) causes state laws to be preempted. Just the opposite, that section only exempts from the federal definition of "contribution" and "expenditure" donations to building funds. As Commissioner Josefiak stated in his Dissenting Opinions to Advisory Opinions 1991-5 and 1986-40, "by its very language and statutory context, the building fund provision is an exception and a limit to FECA jurisdiction, not an extension of it." Thus, a federal committee may accept corporate contributions to its building fund. However, the building fund exemption does not preempt state contribution limits on building funds of state committees: the FECA leaves that jurisdiction to the States.

Accordingly, we do not support the majority's outcome in this case.

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Trevor Potter
Vice Chairman

Handwritten signature of Lee Ann Elliott in cursive.

Lee Ann Elliott
Commissioner

August 5, 1993