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June 15, 1993

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

AOR 1993-09

Dear Sir or Madam:

**RE: Request for Advisory Opinion: Corporate Donations
to Building Fund**

The Michigan Republican State Committee, the State committee of the Michigan Republican Party as defined in 2 U.S.C. § 431 (15), submits this request for an advisory opinion by the Federal Election Commission (the "Commission").

STATEMENT OF FACTS

The Michigan Republican State Committee ("MRSC") is engaged in both Federal and non-Federal election activity. The MRSC plans to undertake one or all of the following actions:

- (1) Establish a building fund to purchase or construct a building to serve as a new headquarters for its Federal and non-Federal election activities.
- (2) Establish a building fund to pay off the balance of its land contract on the existing building which presently serves as headquarters for its Federal and non-Federal election activities.
- (3) In order to raise funds for the building fund described in #1 above, the MRSC may sell its land contract interest in its existing headquarters facility and apply the proceeds to the building fund established to purchase or construct a new headquarters facility for its Federal and non-Federal election activities.

As with any headquarters facility, the MRSC utilizes its headquarters facility to influence elections and other campaign purposes; however, creating the above-referenced building fund(s) is not done for the purpose of influencing the election of any candidate in any particular election for Federal, State, or local office. In its capacity as a committee registered with the

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Commission, MRSC plans to take the following actions and observe the following conditions in establishing the building fund(s) referenced above:

- (1) it will solicit and accept corporate contributions designated for the building fund(s);**
- (2) it will advise all potential corporate contributors that all corporate contributions will be used for the building fund(s);**
- (3) it will establish a "separate segregated" bank account in which corporate contributions designated for the building fund(s) will be deposited;**
- (4) it will disburse the corporate funds deposited in such separate account(s) to either: (a) purchase or construct a new headquarters; or (b) pay off the balance of its land contract on its existing headquarters;**
- (5) it will not use any corporate funds received for the purpose of influencing particular Federal, State, or local elections, or transfer such corporate funds to a bank account used to influence particular Federal, State, or local elections;**
- (6) it will not have to limit, other than on a voluntary basis, the amount of the corporation contributions, individually or collectively, to the building fund(s); and**
- (7) it will not have to report the corporate contributions to the building fund(s), other than on a voluntary basis, to the Commission.**

Based on the foregoing, the MRSC asks two questions. First, whether it may accept corporate contributions to either (1) pay off the balance of its land contract on the existing building which serves as headquarters for its Federal and non-Federal election activities on the terms and conditions described above or (2) purchase or construct a headquarters facility on the terms and conditions described above. Second, the MRSC also asks whether Federal law preempts any contrary Michigan prohibitions pertaining to corporate contributions to the building fund(s) described above. (Note: The MRSC is not seeking guidance as to reporting

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requirements for lawful building funds under State or local law since this issue has been squarely addressed by the Commission.)

The MRSC's intended actions are virtually identical to the Commission-approved activity set forth in Advisory Opinion 1991-5, Fed. Election Camp. Fin. Guide (CCH), ¶ 6015 (May 3, 1991), the major difference being that the MRSC may create a building fund to pay off the land contract for the MRSC's existing headquarters facility. Thus, the MRSC wants to make absolutely certain that the establishment of the building fund(s) described herein makes our situation "indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion [i.e. Advisory Opinion 1991-5] is rendered." 2 U.S.C. § 437f(c)(1)(B). For the following reasons, we respectfully request the Commission to approve of the MRSC's intended actions.

BACKGROUND

Federal law expressly allows the MRSC to accept corporate donations to purchase or construct a headquarters facility. Under the Federal Election Campaign Act, 2 U.S.C. § 431 et seq, and regulations of the Commission:

"[A] donation to a national or state committee of a political party that is specifically designated to defray the costs incurred for construction or purchase of an office facility is not considered to be a contribution or expenditure 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), 100.8(b)(13), and 114.1(a)(2)(ix)." Advisory Opinion 1991-5, Fed. Election Camp. Fin. Guide (CCH), ¶ 6015 (May 3, 1991).

Consequently, since such donations are not considered to be "contributions" or "expenditures," corporate donations are permissible. Advisory Opinion 1991-5. For example, in Advisory Opinion 1982-14, Fed. Election Camp. Fin. Guide (CCH), ¶ 5655 (April 9, 1982), the Commission ruled that since donations to a committee to influence the reapportionment process were not "contributions," the Federal Election Campaign Act was inapplicable and, therefore, corporations were allowed to make donations to the reapportionment committee.

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The Commission has consistently ruled that a state central committee may accept corporate funds to purchase or construct a headquarters building. Advisory Opinion 1991-5, Fed. Election Camp. Fin. Guide (CCH), ¶ 6015 (May 3, 1991); Advisory Opinion 1986-40, Fed. Election Camp. Fin. Guide (CCH), ¶ 5880 (December 18, 1986). In Advisory Opinion 1991-5, the Tennessee Democratic Party ("TDP") indicated its intention to accept corporate funds to purchase a building to serve as headquarters for its Federal and non-Federal activity. To TDP's intended conditions, the Commission responded:

"Under the conditions set out, conditions indicating specific designation by the contributors for the fund and indicating that the funds will not be used for the purpose of influencing a Federal election, TDP may accept corporate donations to the building fund. See Advisory Opinion 1986-40." (footnote omitted).

Significantly, the MRSC's intended actions and conditions are substantially identical to those set forth in Advisory Opinion 1991-5. Again, the only major difference from Advisory Opinion 1991-5 is that the MRSC may pay off the balance of its land contract on its existing headquarters facility. Therefore, under the guidelines established by the Commission in Advisory Opinion 1991-5, the MRSC's intended actions should be permissible.

The Commission noted, however, that the "building fund" exemption extends "only to donations to defray costs for construction or purchase of an office facility and does not extend to donations to pay such ongoing operating costs as property taxes and assessments. See Advisory Opinion 1983-8." The MRSC shall adhere to this requirement.

The Commission further indicated that since TDP intended to establish a separate account for the building fund, the donations need not be reported to the Commission:

"The regulations also provide that the amount of such a donation made to a committee which is not a political committee under 11 CFR 100.5 need not be reported. If such donation is made to a political committee, it shall be reported in accordance with 11 CFR 104.3(g), as a memo entry on Schedule A. 11 CFR

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100.7(b)(12) and 100.8(b)(13). See 11 CFR
114.1(a)(2)(ix).

The donations to be solicited by TDP will not meet any of the conditions for deposit in a Federal account, i.e., an account making expenditures for the purpose of influencing Federal elections. Such donations will not be designated for the Federal account, will not result from a solicitation which expressly states that the contributions will be used in connection with a Federal election, and will not be from contributors who are informed that their donations are subject to the limitations and prohibitions of the Act. 11 CFR 102.5(a)(2). Therefore, any donations received for the building fund would have to be deposited in an account separate from any Federal account maintained by TDP, as you have indicated will be done with the corporate donations. Since the separate account for building funds will not be a political committee under 11 CFR 100.5(g), the donations need not be reported to the Federal Election Commission. Advisory Opinion 1986-40." (footnotes omitted).

It should be noted that in Advisory Opinion 1991-5 and Advisory Opinion 1986-40, state law in those rulings would have prohibited corporate donations to a building fund. Under Michigan law, the Michigan Campaign Finance Act, MCL 169.201 et seq., as interpreted by the Michigan Department of State, could prohibit the establishment of the building fund(s) described herein. Nonetheless, where this "building fund" exemption applies, the Commission has consistently ruled that the Act and Commission regulations preempt the application of state or local law with respect to any prohibition on corporate donations to a building fund. Advisory Opinion 1991-5; Advisory Opinion 1986-40. See also, 2 U.S.C. § 453. Therefore, the MRSC also asks the Commission to reaffirm its position that the Act and Commission regulations preempt the application of Michigan or local law with respect to any prohibition on corporate donations to the building fund(s) described herein.

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**FOSTER, SWIFT,
COLLINS & SMITH, P.C.**

ATTORNEYS AT LAW

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We would appreciate an advisory opinion approving MRSC's intended activities described above. Should you need additional information in order to permit you to render an advisory opinion in this matter, please contact the undersigned.

Sincerely,

FOSTER, SWIFT, COLLINS & SMITH, P.C.


Eric E. Doster