



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 6, 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-9

Eric E. Doster
Foster, Swift, Collins & Smith, P.C.
313 South Washington Square
Lansing, MI 48933-2193

Dear Mr. Doster:

This responds to your letters dated June 15 and July 6, 1993, on behalf of the Michigan Republican State Committee ("the MRSC") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance of corporate funds by a building fund of the MRSC.

The MRSC is the State committee of the Michigan Republican Party and is engaged in both Federal and non-Federal election activity. The MRSC plans to undertake one or all of the following activities:

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

You state that, as with any headquarters, the MRSC uses the facility to influence Federal and non-Federal elections, but creating the building funds is not done for the purpose of influencing any elections. You state that "[i]n its capacity as a committee registered with the Commission," MRSC plans to take the following actions and observe the following conditions: (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 only 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 purchase or construct a new headquarters, or 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 corporate 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. Furthermore, the MRSC plans to apply the funds only for construction or purchase of an office facility and not to pay such ongoing costs as property taxes and assessments. See Advisory Opinions 1991-5 and 1983-8.

In a letter sent by the Michigan Department of State to you last July, the State asserted that Michigan law prohibited the donation of corporate funds to be used to purchase or construct a party headquarters. The letter relied on an interpretive statement issued by the Michigan Department of State in 1984 which cited Michigan Compiled Laws 169.254 and 169.255 and stated that an office used even occasionally for campaign purposes, such as soliciting support for a candidate or fundraising, "may not be purchased or rented with funds commingled with corporate money."

You state that the MRSC's intended actions and conditions are substantially identical to those set forth in Advisory Opinion 1991-5 where the Commission approved the establishment of a party building fund and stated that any Tennessee State law prohibiting such a building fund under those conditions would be preempted. You state that the only "major difference" is that the MRSC may create a building fund to pay off the balance of its land contract on its existing headquarters facility. You wish to know whether, on the terms and conditions described above, the MRSC may accept corporate contributions either to pay off the balance of its land contract on the existing building or to purchase or construct a new headquarters facility. You also ask whether Federal law preempts any Michigan law prohibitions on corporate contributions to the building fund(s).^{1/}

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value to a national or state committee of a political party, which 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). Raising funds to pay off the land contract on the existing building enables the party to complete its purchase of the building and obtain legal title, and thus is a permissible

purpose for the exemption. In addition, raising funds for a new headquarters by selling the MRSC's interest in the existing headquarters is materially indistinguishable from the receipt of donations for the new headquarters. 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, the MRSC may accept corporate donations to the building fund as a part of any or all of the three activities described in your request. See Advisory Opinions 1991-5 and 1986-40.

The Act states that its provisions and the rules prescribed thereunder, "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. 453. The House committee that drafted this provision intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the Conference Committee report on the 1974 Amendments to the Act, "Federal law occupies the field with respect to criminal sanctions relating to limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses, but does not affect the States' rights" as to other areas such as voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong., 2d Sess. 69 (1974). The Conference report also states that Federal law occupies the field with respect to reporting and disclosure of political contributions to and expenditures by Federal candidates and political committees. *Id.* at 100-101.

When the Commission promulgated regulations at 11 CFR 108.7 on the effect of the Act on state law, it stated that the regulations follow section 453 and that, specifically, Federal law supersedes state law with respect to the organization and registration of political committees supporting Federal candidates, disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51. 11 CFR 108.7(b). The regulations provide that the Act does not supersede state laws concerning the manner of qualification as a candidate or political party organization, dates and places of elections, voter registration, voting fraud and similar offenses, or candidates' personal financial disclosure. 11 CFR 108.7(c). The Commission explained that "[t]hese types of electoral matters are interests of the states and are not covered in the act." House Document No. 95-44, at 51.

The Act and Commission regulations specifically address building fund donations and clearly permit them. In addressing such donations and the entities receiving them, i.e., political committees or organizations specifically not attaining such status, the Act speaks to subject matter involving the organization of political committees, limitations and prohibitions under the Act, and the disclosure of receipts and expenditures. Congress explicitly decided not to place restrictions upon this subject -- the cost of construction and purchase of an office facility by a national or state political party committee -- which it might otherwise have chosen to treat as election influencing activity. Because such a facility would be used, at least in part, for Federal election activity, Congress could have decided that the purchase or construction of such facility was for the purpose of influencing a Federal election. Instead, it took the affirmative step of deleting the receipt and disbursement of funds for such activity from the specific proscriptions of

the Act. In addition, there is no indication that Congress envisioned any sort of limitation on its preemption to some allocable portion of the costs of purchasing or constructing a building. See Report of the Committee on House Administration, Federal Election Campaign Act Amendments of 1979, H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 8-10 (1979) (specifically sanctioning allocation of expenses for certain exempt party activities).^{2/} Advisory Opinion 1991-5. The Commission concludes, therefore, that the Act and Commission regulations preempt the application of Michigan State law with respect to the prohibitions on corporate donations to the MRSC building fund.

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,

(signed)

Scott E. Thomas
Chairman

Enclosures (AOs 1991-5, 1986-40, and 1983-8)

ENDNOTES

1/ You state that your client is not seeking guidance as to the reporting requirements for building funds under State or local law, "since this issue has been squarely addressed by the Commission." See Advisory Opinion 1991-5.

2/ The Commission has carried forward the expression of Congressional intent to allocate certain party activities. See 11 CFR 100.7(b)(9), (b)(15)(ii), and (b)(17)(ii), and 100.8(b)(10), (16)(ii), and (18)(ii).