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FEDERAL ELECTION COMMISSION
Washington, DC 20463

MAY 13 12 55 PM '96

May 11, 1996

AGENDA ITEM

For Meeting of: MAY 16 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan Levin
Senior Attorney

SUBJECT: Revised Draft Advisory Opinion 1996-8

Attached is a revised draft of the subject opinion for the Commission's consideration and approval on the May 16 agenda.

The changes in this draft are made pursuant to the Commission's discussion and the revised draft proposals presented by this office during the May 9 meeting which considered Agenda Document #96-50

The revised and new language are noted on each page of the draft with marginal references.

Attachment

9706075436

DRAFT

1 **ADVISORY OPINION 1996-8**

2
3 **Pamela Rochester, Counsel**
4 **Jefferson County Democratic Executive Committee**
5 **1250 Bardstown Road**
6 **Louisville, KY 40204-1333**

7
8 **Dear Ms. Rochester:**

9 **This responds to your letter dated February 29, 1996, requesting an advisory**
10 **opinion on behalf of the Jefferson County Democratic Executive Committee ("JCDEC")**
11 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
12 **("the Act"), and Commission regulations to the establishment of a building fund for a**
13 **local party committee's headquarters. By letter dated April 3, 1996, the Kentucky**
14 **Democratic Party ("KDP") has joined in this request.**

15 **You state that the KDP is the State committee for the Democratic Party in**
16 **Kentucky as defined in 11 CFR 100.14(a), and that the JCDEC is a subordinate**
17 **committee of the KDP as defined in 11 CFR 100.14(b). The KDP is registered with the**
18 **Commission as a political committee under the name of the Kentucky State Democratic**
19 **Central Executive Committee, while the JCDEC is no longer registered as a political**
20 **committee.¹ The JCDEC wishes to establish a building fund for the purpose of**
21 **purchasing a headquarters, pursuant to the building fund exemption from the definitions**
22 **of "contribution" and "expenditure" in the Act and Commission regulations. This fund**
23 **would be established as a bank account separate from other accounts of the JCDEC, and**
24 **the money expended from the fund would be used "only for building fund purposes in**
25 **conformance with federal law."²**

26 **Your request cites previous advisory opinions concluding that the exemption**
27 **provision in the Act preempts application of State law prohibiting corporate donations to**
28 **State party building funds. Kentucky election statutes prohibit the acceptance of**
29 **corporate contributions by committees, including committees such as the JCDEC.**

¹ The JCDEC was registered with the Commission as a political committee on October 26, 1992, as the Louisville-Jefferson County Democratic Party. The Commission accepted the JCDEC's termination as a political committee on July 22, 1994.

² The KDP notes that the building fund will be "wholly owned and maintained" by the JCDEC.

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1 Kentucky Revised Statutes §§121.150(21) and 121.015(3).³ You ask specifically
2 whether the JCDEC, as a subordinate committee of a State party committee, may
3 establish a separate building fund which may receive donations that are not subject to the
4 prohibitions and limitations of the Act. As part of this query, you ask whether a
5 “subordinate committee” would be included in the definition of “state party committee.”
6 In the event that the Commission concludes that a subordinate committee may not
7 establish a building fund in reliance on the Act’s exemption, you ask whether the KDP
8 may establish such a building fund specifically designated for the purpose of building a
9 JCDEC headquarters. The essence of your inquiry seems to be aimed at determining
10 whether the JCDEC may rely on the Act’s building fund exemption and accept corporate
11 contributions into such a fund without being subject to Kentucky State law.

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12 Under the Act and Commission regulations, a gift, subscription, loan, advance, or
13 deposit of money or anything of value made to a national committee or a State committee
14 of a political party, that is specifically designated to defray the costs incurred for
15 construction or purchase of an office facility, is not considered to be a contribution or
16 expenditure, provided that the facility is not acquired for the purpose of influencing the
17 election of any candidate in any particular election for Federal office. 2 U.S.C.
18 §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13), and 114.1(a)(2)(ix). The
19 Commission has applied these sections to permit a number of State party committees and
20 a national party committee to accept corporate donations to building funds set up for the
21 purpose of purchasing or constructing a headquarters for those party committees.
22 Advisory Opinions 1993-9, 1991-5, 1986-40, and 1983-8.

23 As noted above, the Commission, in the three most recent of the above-cited
24 opinions (the opinions applying to State party committees), also addressed whether the
25 Act’s exemption would preempt State laws that appeared to prohibit corporate donations
26 to State party organizations for any purpose, including the acquisition of a State party’s
27 office building. Advisory Opinions 1993-9, 1991-5, and 1986-40. The Act states that its
28 provisions and the rules prescribed thereunder “supersede and preempt any provision of

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³ This opinion makes no interpretation as to the full scope of the cited Kentucky statutes.

1 State law with respect to election to Federal office.” 2 U.S.C. §453. Commission
2 regulations repeat this language and, more specifically, provide that the Act supersedes
3 State law with respect to the organization and registration of political committees
4 supporting Federal candidates, the disclosure of receipts and expenditures by Federal
5 candidates and political committees, and the limitation on contributions and expenditures
6 regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b). See
7 Federal Election Commission Regulations, Explanation and Justification, House
8 Document No. 95-44, at 51 (1977). The opinions noted that, in addressing the building
9 fund donations and the entities receiving them, the Act spoke to subject matter involving
10 the areas set out in the regulations, and Congress explicitly decided not to place
11 restrictions on the subject, even though it could have treated it as Federal activity. Thus,
12 the building fund exemption preempted State law with respect to prohibitions on
13 contributions to the State party building funds. Advisory Opinions 1993-9 and 1991-5.

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14 You propose that the JCDEC, as a subordinate committee of a State committee,
15 would be eligible for the building fund exemption. The Act and Commission regulations
16 define “State committee” as “the organization which by virtue of the bylaws of a political
17 party, is responsible for the day-to-day operation of the political party at the State level,
18 as determined by the Commission.” 2 U.S.C. §432(15); 11 CFR 100.14(a). Commission
19 regulations, however, separately define a “subordinate committee of a State committee”
20 as “any organization which is responsible for the day-to-day operation of the political
21 party at the level of city, county, neighborhood, ward, district, precinct, or any other
22 subdivision of a State, or any organization under the control or direction of the State
23 committee.” 11 CFR 100.14(b). Moreover, the Commission has stated that the building
24 fund exemption was inapplicable to the Erie County Democratic Committee (in New
25 York) because it was a local, rather than a State or national, committee of a political
26 party. Advisory Opinion 1988-12. The building fund exemption in the Act and
27 regulations is a specific and narrow exception to the definition of contribution explicitly
28 provided for the benefit of national and State party committees. It is therefore applicable
29 neither to the purchase of a headquarters by the JCDEC nor to the establishment of a
30 building fund by the KDP for purchasing or constructing a JCDEC headquarters.

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1 Accordingly, the preemptive effect of the building fund exemption in the Act and
2 Commission regulations for national and State party committees would not apply to your
3 proposal and thus would not protect against the application of the Kentucky State
4 prohibition on corporate contributions.

5 The Commission notes that the JCDEC, as a political party entity, is subject to
6 Commission regulations on allocation of expenses between its Federal and nonfederal
7 activities and the related accounting procedures for organizations that are not political
8 committees. See 11 CFR 106.5(a)(1) and (2), (d), (f), and (g), and 102.5(b). The
9 receipts and disbursements of JCDEC for the Federal election activities that are permitted
10 under the Act's specific exemptions for local party committees, along with an allocable
11 portion of its receipts and disbursements to purchase or construct an office building for all
12 JCDEC operations, may trigger the registration and reporting requirements of the Act.
13 See 2 U.S.C. §§431(4)(C), 433, and 434; 11 CFR 100.5(c), and Parts 102 and 104.

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14 This response constitutes an advisory opinion concerning the application of the
15 Act, or regulations prescribed by the Commission, to the specific transaction or activity
16 set forth in your request. See 2 U.S.C. §437f.

17 Sincerely,

18
19 Lee Ann Elliott
20 Chairman

21 Enclosures (AOs 1993-9, 1991-5, 1988-12, 1986-40, and 1983-8)

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