

FEDERAL ELECTION COMMISSION

MAY 2 2 42 PM '96



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 2, 1996

AGENDA ITEM
For Meeting of: 5-9-96

MEMORANDUM

TO: The Commission

THROUGH John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1996-8

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 9, 1996.

Attachment

0705754270

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 Kentucky Democratic Party is the State committee for the
16 Democratic Party in Kentucky as defined in 11 CFR 100.14(a), and that the JCDEC is a
17 subordinate committee of the KDP as defined in 11 CFR 100.14(b).¹ The JCDEC wishes
18 to establish a building fund for the purpose of purchasing a headquarters, pursuant to the
19 exception to the definitions of "contribution" and "expenditure" in the Act and
20 Commission regulations. This fund would be established as a bank account separate
21 from other accounts of the JCDEC, and the money expended from the fund would be
22 used "only for building fund purposes in conformance with federal law."²

23 You ask whether the JCDEC, as a subordinate committee of a State party
24 committee, may establish a separate building fund which may receive donations that are
25 not subject to the prohibitions and limitations of the Act. As part of this query, you ask
26 whether a "subordinate party committee" would be specifically included in the definition
27 of "state party committee." In the event that the Commission concludes that a
28 subordinate committee may not establish a building fund that may receive such
29 donations, you wish to know whether a State party committee (i.e., the KDP) may

¹ The Kentucky State Democratic Central Executive Committee is a political committee registered with the Commission. 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.

1 establish such a building fund specifically designated for the purpose of building a
2 JCDEC headquarters.

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

14 You propose that the JCDEC, as a subordinate committee of a State committee,
15 would be eligible for the same exemption. The Commission concludes that the JCDEC
16 could not avail itself of the exemption and, if it becomes a political committee, could not
17 take contributions outside the limits and prohibitions of the Act for the purposes of
18 building or purchasing a headquarters.³ The Act and Commission regulations define
19 “State committee” as “the organization which by virtue of the bylaws of a political party,
20 is responsible for the day-to-day operation of the political party at the State level, as
21 determined by the Commission.” 2 U.S.C. §432(15); 11 CFR 100.14(a). Commission
22 regulations separately define a “subordinate committee of a State committee as “any
23 organization which is responsible for the day-to-day operation of the political party at the
24 level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a
25 State, or any organization under the control or direction of the State committee.” 11 CFR

³ Assuming its lawful disbursements for permissible Federal election activity would not cause JCDEC to become a “political committee,” as defined in the Act, the funds it receives and spends for the purchase or construction of an office facility would not be subject to the limits and most of the prohibitions of the Act. 2 U.S.C. §431(4)(C), 11 CFR 102.5(b); see 2 U.S.C. §§441a, 441b, 441c, 441f, and 441g. The JCDEC is, however, barred from accepting any donations from foreign nationals, from national banks, or from any corporation organized by a law of Congress. 2 U.S.C. §§441b(a) and 441e.

1 100.14(b). The Commission has explicitly stated that the building fund exemption was
2 inapplicable to the Erie County Democratic Committee (in New York) because it was a
3 local, rather than a State or national, committee of a political party. Advisory Opinion
4 1988-12.

5 The building fund exemption in the Act and regulations is a specific and narrow
6 exception to the definition of contribution explicitly provided for the benefit of national
7 and State party committees. As indicated in the above-cited advisory opinion and the
8 Commission regulations, the exemption is not applicable with respect to financing the
9 purchase or construction of a local party committee's headquarters. The Commission
10 therefore concludes that the building fund exemption applicable to the KDP may not be
11 used for the purposes of financing the construction or purchase of a JCDEC
12 headquarters.

13 This opinion does not address the possible application of Kentucky statutes to the
14 described activity, and does not address any issues that may arise under the Federal
15 preemption provisions of 2 U.S.C. §453 and 11 CFR 108.7.

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

19 Sincerely,

20

21 Lee Ann Elliott
22 Chairman

23

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

25