



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 20, 1996

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-8

Pamela Rochester, Counsel
Jefferson County Democratic Executive Committee
1250 Bardstown Road
Louisville, KY 40204-1333

Dear Ms. Rochester:

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

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

Your request cites previous advisory opinions concluding that the exemption provision in the Act preempts application of State law prohibiting corporate donations to State party building funds. Kentucky election statutes prohibit the acceptance of corporate contributions by committees, including committees such as the JCDEC. Kentucky Revised Statutes 121.150(21) and 121.015(3).³ You ask specifically whether the JCDEC, as a subordinate committee of a State

party committee, may establish a separate building fund which may receive donations that are not subject to the prohibitions and limitations of the Act. As part of this query, you ask whether a "subordinate committee" would be included in the definition of "state party committee." In the event that the Commission concludes that a subordinate committee may not establish a building fund in reliance on the Act's exemption, you ask whether the KDP may establish such a building fund specifically designated for the purpose of building a JCDEC headquarters. The essence of your inquiry seems to be aimed at determining whether the JCDEC may rely on the Act's building fund exemption and accept corporate contributions into such a fund without being subject to Kentucky State law.

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a 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). The Commission has applied these sections to permit a number of State party committees and a national party committee to accept corporate donations to building funds set up for the purpose of purchasing or constructing a headquarters for those party committees. Advisory Opinions 1993-9, 1991-5, 1986- 40, and 1983-8.

As noted above, the Commission, in the three most recent of the above-cited opinions (the opinions applying to State party committees), also addressed whether the Act's exemption would preempt State laws that appeared to prohibit corporate donations to State party organizations for any purpose, including the acquisition of a State party's office building. Advisory Opinions 1993-9, 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. Commission regulations repeat this language and, more specifically, provide that the Act supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitation on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b). See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977). The opinions noted that, in addressing the building fund donations and the entities receiving them, the Act spoke to subject matter involving the areas set out in the regulations, and Congress explicitly decided not to place restrictions on the subject, even though it could have treated it as Federal activity. Thus, the building fund exemption preempted State law with respect to prohibitions on contributions to the State party building funds. Advisory Opinions 1993-9 and 1991-5

You propose that the JCDEC, as a subordinate committee of a State committee, would be eligible for the building fund exemption. The Act and Commission regulations define "State committee" as "the organization which, by virtue of the bylaws of a political party, is responsible for the day- to-day operation of such political party at the State level, as determined by the Commission." 2 U.S.C. 431(15); 11 CFR 100.14(a). Commission regulations, however, separately define a "subordinate committee of a State committee" as "any organization which is

responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State, or any organization under the control or direction of the State committee." 11 CFR 100.14(b). Moreover, the Commission has stated that the building fund exemption was inapplicable to the Erie County Democratic Committee (in New York) because it was a local, rather than a State or national, committee of a political party. Advisory Opinion 1988-12. The building fund exemption in the Act and regulations is a specific and narrow exception to the definition of contribution explicitly provided for the benefit of national and State party committees. It is therefore applicable neither to the purchase of a headquarters by the JCDEC nor to the establishment of a building fund by the KDP for purchasing or constructing a JCDEC headquarters. Accordingly, the preemptive effect of the building fund exemption in the Act and Commission regulations for national and State party committees would not apply to your proposal and thus would not protect against the application of the Kentucky State prohibition on corporate contributions.

The Commission notes that this opinion does not address any issues concerning application of its allocation and related regulations to JCDEC because those questions were not posed in your request. See generally, 2 U.S.C. 431(4)(C), 433, and 434; 11 CFR 100.5(c), 102.5(b), and 106.5.

This response constitutes an advisory opinion concerning the 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)

Lee Ann Elliot
Chairman

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

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.

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