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FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

AUG 6 4 03 PM '97

August 6, 1997

AGENDA ITEM
For Meeting of: 8-14-97

MEMORANDUM

TO: The Commission

THROUGH: John C. Sumina
Staff Director *[Handwritten initials]*

FROM: Lawrence M. Noble
General Counsel *[Handwritten initials]*

N. Bradley Litchfield *NBL/SSP*
Associate General Counsel

Michael G. Marinelli *[Handwritten initials]*
Staff Attorney

SUBJECT: Draft AO 1997-14

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 14, 1997.

Attachment

2
3 Robert F. Wood
4 Holcomb Dunbar
5 111 East Capitol Street
6 Suite 290
7 PO Box 2990
8 Jackson, MS 39207-2990

9
10 Dear Mr. Wood:

11
12 This responds to your letter dated July 9, 1997, on behalf of the Mississippi
13 Republican Party ("MRP"), concerning the application of the Federal Election Campaign
14 Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of
15 a building fund by the MRP.

16 The MRP proposes to solicit contributions and donations from individuals and
17 corporations for the acquisition and/or construction of a building to be used as a party
18 headquarters within the State of Mississippi. You state that the building and headquarters
19 will be used to influence Federal and non-Federal elections but the building fund, itself,
20 will not be used to influence elections. In connection with this project, the MRP proposes
21 to establish a separate building fund for individual and corporate contributions so that
22 contributions are: (a) made to a building fund established exclusively for the purchase
23 and/or construction of a building to serve as a new headquarters for its Federal and non-
24 Federal activities; (b) used exclusively for the building project; (c) clearly designated as
25 contributions or donations to the building fund; and (d) not used for the purpose of
26 influencing particular Federal, State or local elections or transferred to accounts used for
27 such purposes.

28 You note that Section 97-13-15 of the Mississippi Code of 1972, as annotated and
29 amended, provides as follows:

30
31 It shall be unlawful for any corporation, incorporated company or
32 incorporated association, by whatever name it may be known,
33 incorporated or organized under the laws of this state, or doing business in
34 this state, or for any servant, agent, employee or officer thereof, to give,
35 donate, appropriate or furnish directly or indirectly, any money, security,
36 funds or property of said corporation, incorporated company or
37 incorporated association, in excess of one thousand dollars (\$1,000.00) for

1 the purpose of aiding any political party or any candidate for any public
2 office, or any candidate for any nomination for any public office of any
3 political party, or to give, donate, appropriate or furnish, directly or
4 indirectly, any money, security, funds or property of said
5 corporation, incorporated company or association in excess of one
6 thousand dollars (\$1,000.00) to any committee or person as a contribution
7 to the expense of any political party or any candidate, representative or
8 committee of any political party or candidate for nomination by any
9 political party, or any committee or other person acting in behalf of such
10 candidate. The limit of one thousand dollars (\$1,000.00) for contributions
11 to political parties shall be an annual limitation applicable to each calendar
12 year.
13

14 Under the Act and Commission regulations, a gift, subscription, loan, advance, or
15 deposit of money or anything of value made to a national committee or a State committee
16 of a political party, that is specifically designated to defray the costs incurred for
17 construction or purchase of an office facility, is not considered to be a contribution or
18 expenditure, provided that the facility is not acquired for the purpose of influencing the
19 election of any candidate in any particular election for Federal office. 2 U.S.C.
20 §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13), and 114.1(a)(2)(ix). The
21 Commission has applied these provisions to permit a number of State party committees
22 and a national party committee to accept corporate donations to building funds set up for
23 the purpose of purchasing or constructing a headquarters for those party committees.
24 Advisory Opinions 1996-8, 1993-9, and 1991-5:

25 In the three opinions noted above, which involved State party committees, the
26 Commission also addressed whether the Act's exemption would preempt State laws that
27 appeared to prohibit corporate donations to State party organizations for any purpose,
28 including the acquisition of a State party's office building. The Act states that its
29 provisions and the rules prescribed thereunder "supersede and preempt any provision of
30 State law with respect to election to Federal office." 2 U.S.C. §453. Commission
31 regulations repeat this language and, more specifically, provide that the Act supersedes
32 State law with respect to the organization and registration of political committees
33 supporting Federal candidates, the disclosure of receipts and expenditures by Federal
34 candidates and political committees, and the limitation on contributions and expenditures

1 regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b). See
2 Federal Election Commission Regulations, Explanation and Justification, House
3 Document No. 95-44, at 51 (1977). The opinions noted that, in addressing the building
4 fund donations and the entities receiving them, the Act spoke to subject matter involving
5 the topics set out in the regulations, and Congress explicitly decided not to place
6 restrictions on the subject, even though it could have treated it as Federal activity. Thus,
7 the building fund exemption of the Act preempted State law with respect to prohibitions
8 on contributions to the State party building funds. Advisory Opinions 1996-8, 1993-9
9 and 1991-5.

10 As you note in your request, your client's situation is substantially identical to
11 those set forth in Advisory Opinions 1993-9 and 1991-5. Consistent with these opinions,
12 the Commission concludes that the Act and Commission regulations preempt the
13 application of Mississippi State or local law with the respect to the prohibitions on
14 corporate or individual donations to the MRP building fund. The MRP is not prohibited
15 from accepting corporate contributions in any amount for the purpose of purchasing or
16 constructing a building to be used as its office headquarters.¹

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

20 Sincerely,

21
22 John Warren McGarry
23 Chairman
24

25 Enclosures (AOs 1996-8, 1993-9, 1991-5, and 1983-8)
26
27

¹ The Commission reminds you that while the building fund exception extends to donations to defray costs incurred for the construction or purchase of an office facility, it does not extend to donations to pay such ongoing operating costs as property taxes and assessments. See Advisory Opinions 1991-5 and 1983-8. Further, while the Commission has construed the Act and Congressional intent as requiring disclosure at the Federal level of building fund activity of the national party committees only (See 11 CFR 104.8(f) and 104.9(d)), the Commission has concluded that any State level disclosure requirement regarding a State party building fund is not pre-empted by the Act. See Advisory Opinion 1991-5.