



THE PENNSYLVANIA DEMOCRATIC PARTY

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AOR 1998-07

April 3, 1998

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FEDERAL ELECTION COMMISSION
OFFICE OF THE CLERK

Via Facsimile Transmission & First Class Mail

N. Bradley Litchfield, Esquire
Associate General Counsel, Policy Development
Federal Election Commission
999 "E" Street, NW
Washington, D.C. 20463

Re: Supplemental Information - Request for Advisory Opinion

Dear Mr. Lichfield:

The purpose of this letter is to supplement the Pennsylvania Democratic Party's (hereinafter "PDP") letter of March 27th proposing the establishment of a building fund to purchase or construct a new PDP headquarters that would include a parking facility. Though the primary purpose of the facility would be for the use of PDP employees, members officers and visitors, excess capacity would be available to the general public at a usual and normal rate. It is hoped that this supplement clarifies information previously provided to the Federal Election Commission (hereinafter "the Commission") in this matter.

I. Supplemental Facts

The PDP has proposed the establishment and maintenance of a building fund, pursuant to 2 U.S.C.A. § 431(8)(B)(viii) of the Federal Election Campaign Act, to purchase or construct a new headquarters building, which would include parking facilities. The PDP anticipates taking the following measures and observing the following limitations associated with the construction and operation of a parking facility:

- 1) The PDP proposes the purchase or construction of a parking lot, as part of the normal course of obtaining a new headquarters facility, for the primary use of PDP employees, officers, members or visitors;



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- 2) The PDP would permit excess parking capacity to be made available to the general public, at a price not to exceed the usual and normal rate for parking — said rate to be based on an independent market value of parking spaces in the metropolitan area in which the proposed parking facility is located;
- 3) The PDP will establish a separate and segregated “parking fund” account for the deposit of all funds generated from the general public’s use of the parking facilities;
- 4) The PDP will only use the funds deposited in the “parking fund” to: (a) defray the ordinary and necessary capital expenses associated with the operation and maintenance of the headquarters facility and parking lot, (e.g., utility and property tax costs), and/or (b) pay for the cost of constructing or purchasing a new headquarters facility (e.g., transfer to the building fund); and,
- 5) The PDP will not use the funds deposited in the “parking fund” for the purpose of influencing any federal or non-federal election, nor transfer such funds to any account that is used for the purpose of influencing any federal or non-federal election.

II. Supplemental Discussion

The PDP is aware that the Commission views the use of political committee assets in commercial ventures as a form of fund-raising for political purposes that result in contributions subject to Federal election law. FEC Advisory Opinions 1991-34, 1990-26, 1990-3, 1989-4, 1988-12 and 1983-2. However, the Commission has permitted such ventures which involve a Committee asset developed during the normal course of operations for its own primary use. FEC Advisory Opinions 1991-34, 1989-4, 1986-14, 1981-53 and 1979-24. The PDP’s proposed inclusion of parking facilities as part of its construction of a new headquarters building is intended for the primary use and convenience of PDP employees, officers, members and visitors. The creation of the parking facility would occur in conjunction with the construction or purchase of a new headquarters, or the renovation of the existing headquarters. The PDP would like to have the ability to offer excess parking capacity to the general public at an independently ascertainable market rate for parking spaces in the metropolitan area in which the facility is located.

The PDP is aware that the Commission has clearly stated that an ongoing business venture involving a political committee’s assets would be considered a contribution unless it were “deposited in a separate non-Federal account and used only for purposes other than influencing any Federal election.” *See*, 11 CFR 102.5(a)(1); FEC Advisory Opinions 1991-34, 1986-40. The PDP submits that the proposed disposition of excess parking places is not a contribution within

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the meaning of the federal election law if said fee does not exceed a normal and usual rate for similar parking spaces in the area which the facility is located. It is significant to note that payment for parking privileges is an ordinary commercial transaction involving the exchange of goods or services of equal value. In this case, neither the payer, nor the payee gains an uncompensated benefit — each party benefits equally from the proposed arms-length transaction. FEC Advisory Opinion 1986-14.

The PDP would prefer to have the flexibility of using any proceeds resulting from possible public use of the proposed parking lot to defray the capital expenses associated with the routine operation and maintenance of the headquarters facility — such as utility service, property taxes and routine structural maintenance repairs. As an alternative, the PDP is considering the use of any proceeds from the parking lot for purposes consistent with the building fund (the purchase or construction of a new headquarters facility). Under no circumstances would funds be used for federal or state political purposes. *See*, FEC Advisory Opinion 1988-12. The PDP believes its proposed use of the parking facility is consistent with the most recent pronouncements and guidelines articulated by the Commission.

The PDP looks forward to the Commission's favorable consideration of its proposed activities. Should you have any questions or if you need any additional information, please do not hesitate to contact Christopher B. Craig, Esq., at (717) 787-5662, whom I have directed to handle this inquiry.

Sincerely,



Christine M. Tartaglione
Acting Chairman

cc: Christopher B. Craig, Esq.