



THE PENNSYLVANIA DEMOCRATIC PARTY

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FEDERAL ELECTION
COMMISSION
OFFICE OF THE
GENERAL COUNSEL

March 27, 1998

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

Re: Request for a Federal Election Commission Advisory Opinion

Dear Mr. Lichfield:

I am writing on behalf of the Pennsylvania Democratic Party to request an advisory opinion pursuant to 2 U.S.C.A. § 437(f) concerning the application and scope of 2 U.S.C.A. § 431(8)(B)(viii) of the Federal Election Campaign Act and regulations promulgated thereunder, with respect to the specific activities set forth below.

I. Statement of Facts

The Pennsylvania Democratic Party (hereinafter "PDP") is a state political committee within the meaning of 2 U.S.C.A. § 431(15) and is engaged in both federal and non-federal election activities. The PDP is a registered committee with the Federal Election Commission (hereinafter "the Commission") (FEC No. C00167130) and the Pennsylvania Election Bureau. The PDP presently contemplates undertaking some or all of the following actions, subject to Commission advice:

- 1) The establishment and maintenance of a building fund to satisfy the existing mortgage loan debt on the PDP headquarters facility;
- 2) The establishment and maintenance of a building fund to purchase or construct a new building to serve as the new headquarters for the PDP;
- 3) The establishment and maintenance of a building fund to purchase or construct three (3) new buildings to serve as new regional headquarters for the PDP in Pittsburgh, Harrisburg and Philadelphia, Pennsylvania;



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- 4) The establishment and maintainance of a building fund to pay for necessary repairs and improvements to the existing PDP headquarters — such as the construction of a new roof, the installation of new electrical wiring and the expansion of the size of the building and number of rooms within the building; and/or
- 5) The establishment and maintainance of a building fund to purchase or construct a parking lot, adjacent to the PDP headquarters, for the primary use of party employees and members, with extra space being offered to the general public at a usual and normal rate.

The PDP uses its headquarters facility to influence federal and non-federal elections and other campaign purposes. However, the headquarters facility is not used for the exclusive purposes of influencing the election of a particular candidate for office. The PDP anticipates taking the following measures and observing the following limitations associated with the establishment and maintainance of a building fund:

- 1) The PDP will only solicit and accept corporate, union and individual contributions that are exclusively designated for the building fund(s);
- 2) The PDP will advise all potential corporate, union and individual contributors that all contributions will be used exclusively for the building fund(s);
- 3) The PDP will established a separate and segregated account for the deposit of all corporate, union and individual contributions designated for the building fund(s);
- 4) The PDP will only use the funds deposited in the building fund(s)' separate and segregated account: (a) to pay off the existing mortgage loan debt on the PDP headquarters; (b) to pay for necessary building repairs or improvements on the existing PDP headquarters, such as construction of a new roof, installation of new electrical wiring and/or expansion of the size of the building; (c) to pay for the purchase or construction of a new headquarters facility for the PDP; (d) to pay for the purchase or construction of new regional headquarters for the PDP in Pittsburgh, Harrisburg and Philadelphia; and/or (e) to pay for the purchase or construction of a parking facility, adjacent to the headquarters, for the primary use of party members, but also available to the general public at a usual and nominal rate;

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- 5) The PDP will not use any corporate, union or individual funds received, or any funds deposited in the building fund, for the purpose of influencing any particular federal or non-federal election, or transfer such funds to any account that is used for the purpose of influencing any particular federal or non-federal election;
- 6) The PDP is not legally mandated to limit, other than on a voluntary basis, the amount of the corporation, union or individual contributions, individually or collectively, to the building fund(s); and
- 7) The PDP is not legally mandated to report corporate, union or individual contributions to the building fund(s), other than on a voluntary basis, to the Commission.

Federal election law specifically permits state political parties to accept corporate, union and individual contributions exclusively designated for the purpose of purchasing or constructing a state party's headquarters facility. 2 U.S.C.A. § 431(8)(B)(viii); 11 CFR 100.7(b)(12); 11 CFR 100.8(b)(13); 11 CFR 114.1(a)(2)(ix); FEC Advisory Opinions 1997-14, 1996-8, 1993-9, 1991-5, 1988-12, 1986-40 and 1983-8. It should be noted that the Pennsylvania State Election Code specifically states that no corporation may make a contribution for "any political purpose whatever." *See*, 25 P.S. § 3253(a). However, based on prior Commission opinions, it is the understanding of the PDP that state prohibitions regarding corporate contributions to a state party committee's building fund are superseded and preempted by federal law. 2 U.S.C.A. § 453; 11 CFR 108.7(a) and (b); FEC Advisory Opinions 1997-14, 1996-8, 1993-9 and 1991-5. Furthermore, based on prior Commission opinions, it is the understanding of the PDP that a state political party is under no federal legal obligation to report donations, exclusively designated to a building fund, to the Federal Election Commission. 11 CFR 100.5; FEC Advisory Opinions 1991-5 and 1986-40.

We believe the PDP's proposed actions are consistent with the Federal Election Commission's prior advisory opinions concerning the establishment and operation of a building fund. The PDP's consideration of creating a building fund to receive corporate, union and individual contributions in order to fully pay an existing mortgage loan on the headquarters facility is analogous with the purchase of a new facility. Because the Commission has consistently stated that ongoing fund-raising activities for non-political purposes, such as the building fund, are not contributions within the meaning of sections 431(a) or 441(b) of the Federal Election Campaign Act, the PDP has assumed that the use of building fund contributions to pay-off a mortgage debt would be consistent with section 431(8)(B)(viii) of the Federal Election Campaign Act. FEC Advisory Opinions 1981-53 and 1986-14.

II. Discussion of Issues

The issues not directly addressed by previous Commission opinions include: the proposed use of building fund contributions for the construction or installation of improvements to the existing PDP headquarters; the proposed use of a building fund to purchase or construct multiple buildings to serve as regional PDP headquarters; and the proposed use of building fund contributions for the purchase or construction of an adjacent parking facility that would primarily be used for the members and employees of the PDP but that would also be made available to the general public at a usual and normal rate.

The PDP seeks to establish three regional headquarters that would serve its members in the western, central and eastern sections of the Commonwealth. Section 431 of the Federal Election Campaign Act expressly permits state political committees to solicit and accept corporate contributions “to purchase or construct a state party headquarters facility.” Due to the unique demographic and geographic makeup of the state, the PDP desires to construct three buildings to serve each region of the Commonwealth as part of a facility of separate buildings. The Federal Election Campaign Act does not limit the purchase or construction of a headquarters to a single building. The PDP’s proposed construction would create a system of buildings that would function as a facility (with western, central and eastern divisions) to support the membership and the political activities of the PDP. There does not appear to be a legal federal bar to the use of a building fund to construct or purchase multiple buildings to constitute regional headquarters.

The PDP is also contemplating the use of a building fund to pay for the renovation, repair and expansion of the existing headquarters facility in Harrisburg. This initiative would include the installation of new electrical wiring, the construction of a new roof and the expansion of the building in order to accommodate additional office space. Each of these proposed actions would be permissible if done as part of the construction of a new facility. However, instead of fully constructing a new building, the PDP would like to have the option of renovating the existing building through the use of a building fund.

Finally, the PDP proposes to include a parking facility as part of the construction of a new headquarters building. The primary purpose of the parking facility would be for the use of PDP members, however, it would be available to the general public at a usual and normal charge for parking in the municipality in which would be located. The construction of the parking facility would either be contained within the headquarters building, or adjacent to the structure. It is reasonable to construe the Federal Election Campaign Act’s use of the term “facility” to include those items commonly associated with real estate — such as the grounds, the building lot, fixtures, driveways, and parking facilities. The building fund’s use is not statutorily limited to

“buildings” but rather is given a broader use — “facilities.” In this case, the parking facility would be developed for its own use, not as an item to be sold as a campaign fund-raising activity, with leftover spaces being made to the general public at a usual and normal charge. *See*, FEC Advisory Opinions 1988-12, 1985-1 and 1979-24.

III. Questions Presented for Commission Review

The PDP requests an advisory opinion from the Federal Election Commission on whether the proposed actions may be taken pursuant to applicable federal law. The primary questions that are presented for Commission review are as follows:

- 1) May the PDP solicit and accept, without monetary limitation, corporate, union and individual contributions, as part of a separate building fund, even though the Pennsylvania Election Code explicitly prohibits corporations from making any contribution for any political purpose?**
- 2) May the PDP solicit and accept corporate, union and individual contributions, as part of a separate building fund, to pay-off any existing mortgage debt on the PDP’s headquarters facility?**
- 3) May the PDP solicit and accept corporate, union and individual contributions, as part of a separate building fund, to purchase or construct a new building to serve as the new headquarters for the PDP?**
- 4) May the PDP solicit and accept corporate, union and individual contributions, as part of a separate building fund, to purchase or construct new buildings to serve as regional PDP headquarters in Pittsburgh, Harrisburg and Philadelphia?**
- 5) May the PDP solicit and accept corporate, union and individual contributions, as part of a separate building fund, to pay for necessary repairs and improvements to the PDP headquarters facility?**
- 6) May the PDP solicit and accept corporate, union and individual contributions, as part of a separate building fund, to purchase or construct a parking facility, adjacent and connected to the PDP headquarters, for the primary use of the employees and members of the PDP and of the general public at a usual and normal rate?**

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The PDP is very anxious to initiate reorganization efforts in the near future, of which a building fund would be a part, and receipt of a prompt Commission Advisory Opinion that addresses these questions would be sincerely appreciated. Please do not hesitate to contact me if I may provide any additional information.

Sincerely,

A handwritten signature in black ink, reading "Christine M. Tartaglione". The signature is written in a cursive, flowing style.

Christine M. Tartaglione
Acting Chairman