

E. Elliott Johnson

MAY 12 11 33 AM '98



FEDERAL ELECTION COMMISSION
Washington, DC 20463

OK

May 12, 1998

MEMORANDUM

AGENDA ITEM
For Meeting of: 5-21-98

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 1998-08

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 21, 1998.

Attachment

DRAFT

1 **ADVISORY OPINION 1998-8**

2
3 **Michael Peterson, Chairman**
4 **Iowa Democratic Party**
5 **5661 Fleur Drive**
6 **Des Moines, Iowa 50321**

7
8 **Dear Mr. Peterson:**
9

10 **This responds to your letter dated April 7, 1998, on behalf of the Iowa Democratic**
11 **Party ("IDP"), requesting an advisory opinion concerning the application of the Federal**
12 **Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to**
13 **the preemption of Iowa State law relating to donations for the establishment of a State**
14 **party facility building fund.**

15 **Beginning in September 1997, the IDP has received donations that were solicited**
16 **specifically for purchasing a State party office building in accordance with 2 U.S.C.**
17 **§431(8)(B)(viii). On January 12, 1998, the IDP purchased an office building. It paid a**
18 **portion of the cost of the building with such funds and has obtained a 20-year mortgage**
19 **to defray the balance of the purchase costs. The IDP intends to solicit donations for the**
20 **purpose of paying the balance of the mortgage and intends to establish a separate building**
21 **fund account for the receipt of such donations.**

22 **Thus far, the donations received for the purpose of defraying the costs of**
23 **purchasing the office building have been in compliance with the prohibitions of Iowa**
24 **election law, including the prohibitions against contributions from corporations. The IDP**
25 **intends to solicit donations into the building fund account from sources that do not**
26 **comply with the State law. The Iowa Code, §56.15, generally prohibits political**
27 **contributions by corporations.¹**

¹ **The Iowa Code, §56.15, subsections 1 and 2, provides, in pertinent part:**

1. [I]t is unlawful for ... [a] corporation ... to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or for the purpose of influencing the vote of an elector ...

2. [I]t is unlawful for a member of a committee, or its employee or representative, ... or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from ... [a] corporation ... any money, property, or

1 You cite a declaratory ruling issued on July 15, 1997, by the Iowa Ethics and
2 Campaign Disclosure Board ("the Iowa Board") to the Republican Party of Iowa. The
3 Iowa Board concluded, in essence, that Federal law would not preempt the Iowa Code
4 when applied to the solicitation and receipt of donations for the construction of a party
5 office facility. You note previous advisory opinions in which the Commission has
6 preempted the application of State law prohibitions with regard to such donations, and
7 you ask for an advisory opinion confirming that the Act preempts Iowa law with respect
8 to the solicitation of corporate funds into a depository set up to defray the purchase cost
9 of the IDP's office facility.²

10 Under the Act and Commission regulations, a gift, subscription, loan, advance, or
11 deposit of money or anything of value made to a national committee or a State committee
12 of a political party, that is specifically designated to defray the costs incurred for
13 construction or purchase of an office facility, is not considered to be a contribution or
14 expenditure, provided that the facility is not acquired for the purpose of influencing the
15 election of any candidate in any particular election for Federal office. 2 U.S.C.
16 §431(8)(B)(viii); 11 CFR 100.7(b)(12), 100.8(b)(13), and 114.1(a)(2)(ix). The
17 Commission has applied these provisions to permit a number of State party committees
18 and a national party committee to accept corporate donations to building funds set up for
19 the purpose of purchasing or constructing an office facility for those party committees.
20 Advisory Opinions 1997-14, 1993-9, 1991-5, 1986-40, and 1983-8; see also Advisory
21 Opinion 1996-8. The donations in question will be used to pay off the mortgage obtained
22 by the IDP to purchase the building. Moreover, the donations will not be used for the
23 purpose of influencing a particular Federal election, but instead will be deposited in a
24 separate building fund account. Assuming the specific designation by the donors for the
25 building fund, the Act permits the proposed activity. Advisory Opinion 1993-9.

thing of value belonging to the ... corporation for campaign expenses, or for the purpose
of influencing the vote of an elector ...

² You state that the IDP acknowledges that the Act does not preempt the State's ability to regulate the disclosure of building fund contributions and thus does not seek an opinion regarding disclosure requirements. See Advisory Opinions 1997-14, n.1 and 1991-5.

1 The Act states that its provisions and the rules prescribed thereunder “supersede
2 and preempt any provision of State law with respect to election to Federal office.” 2
3 U.S.C. §453. Congress intended that the Federal law should be “construed to occupy the
4 field with respect to elections to Federal office and would be the sole authority under
5 which such elections would be regulated.” H.R. Rep. No. 93-1239, 93d Cong., 2d Sess.
6 10 (1974). It specifically defined this field as covering “limitations on campaign
7 expenditures, the sources of campaign funds used in Federal races, the conduct of Federal
8 campaigns, and similar offenses” but not the States’ rights as to other areas such as voter
9 fraud and ballot theft. H.R. Rep. No. 93-1438, 93d Cong. 2d Sess. 69 (1974).³
10 Commission regulations rely on this legislative history and embody the explicit
11 Congressional intent to preempt. They provide that the Act supersedes State law with
12 respect to the organization and registration of political committees supporting Federal
13 candidates, the disclosure of receipts and expenditures by Federal candidates and political
14 committees, and the limitations on contributions and expenditures regarding Federal
15 candidates and political committees. 11 CFR 108.7(a) and (b). See Federal Election
16 Commission Regulations, Explanation and Justification, House Document No. 95-44, at
17 51 (1977).

18 In all four of the opinions that were issued to State parties, the Commission
19 concluded that the Act and Commission regulations preempted the application of State
20 law with respect to the prohibitions on corporate donations to a State party office building
21 fund. Advisory Opinions 1997-14, 1993-9, 1991-5, and 1986-40. Two of the opinions
22 noted that, in addressing the building fund donations and the entities receiving them, the
23 Act spoke to a subject matter involving the areas set out in the regulations, and that
24 Congress explicitly decided not to place restrictions on the subject, even though it could
25 have determined that the purchase of such a facility was for the purpose of influencing a
26 Federal election. The opinions stated that Congress, instead, took the affirmative step of
27 deleting the receipt and disbursement of funds for such activity from the specific
28 proscriptions of the Act, and that there is no indication of Congressional intent to limit

³ The first report cited is the report of the House Committee that drafted section 453 as part of the 1974 amendments. The second report is the Conference Committee report on the 1974 amendments.

1 the preemptive effect to some allocable portion of the purchase costs. Advisory Opinions
2 1993-9 and 1991-5; see also Advisory Opinion 1997-14 and 1986-40.

3 The IDP's situation is materially indistinguishable from those described in the
4 four cited opinions. See 2 U.S.C. §437f(c)(1)(B). Consistent with these opinions, the
5 Commission concludes that the Act and Commission regulations preempt the application
6 of Iowa State law with respect to the prohibitions on corporate donations to the IDP
7 building fund. The IDP is not prohibited from accepting corporate donations for the
8 purpose of paying the mortgage on its purchase of a building that is used as its office
9 facility.⁴

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

13 Sincerely,

14
15 Joan D. Aikens
16 Chairman
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18 Enclosures (AOs 1997-14, 1996-8, 1993-9, 1991-5, 1988-12, 1986-40, and 1983-8)
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⁴ 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. Advisory Opinions 1991-5 and 1983-8; see also Advisory Opinion 1988-12.