



FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 15, 2001

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-01

Scott R. Falmlen, Executive Director
North Carolina Democratic Party
220 Hillsborough Street
Raleigh, NC 27603

Dear Mr. Falmlen:

This refers to your letter dated January 4, 2001, on behalf of the North Carolina Democratic Party ("the Party") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of an office building fund, maintained by the Party, for various purposes related to the renovation of the Party's office building.

You state that the Party is preparing to embark on a wholesale restoration and renovation of its historic headquarters building in Raleigh, NC.¹ You believe, based on past policy and opinions of the Commission, that the actual expenditures for the restoration and renovation, machinery and equipment, furniture and fixtures, and other similar property may be made from the Party's office building fund.² However, you seek clarification on whether the office building fund can be used for spending in several specific areas.

You ask whether expenditures such as construction management and architectural fees, directly and solely related to the restoration and renovation project, may be paid

¹ You state that the renovation will be extensive, requiring external and interior work of both a structural and cosmetic nature. The anticipated cost of the project is \$1.5 to 2.5 million necessitating a full-time fundraising effort. The Party headquarters is housed in a building it owns, the Goodwin House, built in 1903 and designated as a Raleigh Historic Site in 1980.

² You cite to the Commission's conclusions in Advisory Opinion 1998-7 to support your position.

from the Party's office building fund. You explain that a construction manager is the equivalent of a general contractor. This is an individual or firm that, while not actually doing any of the actual renovation work, would oversee and manage the work of the various subcontractors involved in the renovation project. You also ask whether, based on the funds received method of allocating expenses, fundraising expenses may be paid from the Party's office building fund. Specifically, you wish to know whether the office building fund could be used to pay the salary or fees and other expenses of an employee or consultant whose sole responsibility is to raise funds for the office building fund.³

ACT AND COMMISSION REGULATIONS

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 provisions to permit State party committees and national party committees to accept corporate and labor union donations to office building funds (or accounts) established and used for the purpose of purchasing or constructing an office facility by the cited party committees. Advisory Opinions 1997-14, 1993-9, 1991-5, 1986-40, and 1983-8; *see also* Advisory Opinions 1998-8, 1998-7 and 1996-8.

Commission regulations at 11 CFR 106.5 provide that party committees that make disbursements in connection with Federal and non-Federal elections "shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5," which provides for the establishment of Federal and non-Federal accounts. 11 CFR 106.5(a) and 102.5(a). Party committees that establish separate Federal and non-Federal accounts shall allocate specific categories of expenses between those two accounts according to section 106.5.

When one fundraising program or event is held to collect Federal funds (i.e., funds to be used in Federal elections) and non-Federal funds (i.e., funds to be used in nonfederal elections), the sponsoring committee must allocate the direct costs of the activity, including planning, administrative and solicitation costs. 11 CFR 106.5(a)(2)(ii). Party committees must use the funds received allocation method for these fundraising expenses. 11 CFR 106.5(f)

Under this approach, the costs are allocated according to the ratio of Federal funds received to total receipts for the program or event. The allocation ratio is estimated before making payments for the program or event. The committee has up to 60 days after the ending date of the program or event to: (1) adjust the ratio based on the actual funds

³ In a phone conversation with Commission staff you identified the other expenses as the health insurance benefits, travel expenses and the employer's portion of the withholding tax associated with this employee.

received; and (2) transfer funds from the non-Federal account to the Federal (or allocation) account based on the adjusted allocation percentage. 11 CFR 106.5(f)(2).⁴

APPLICATION TO PARTY PROPOSAL

Construction management and architectural fees

In the Commission's consideration of what constitutes the proper use of the office building fund, the Commission has drawn a parallel between permissible uses of the office building fund and the description and treatment of capital expenditures found in the Internal Revenue Code and related IRS regulations. Under the IRS regulations, a capital expenditure includes the cost of the acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures and similar property. 26 CFR 1.263(a)-1 and 1.263(a)-2. The Commission has concluded that items that would fall under the category of capital expenditures would also be considered the type of expenditures that are legitimately part of the construction of a political party's office facility. See Advisory Opinion 1998-7. In this instance, the Commission notes that "the amount expended for architect's services" are explicitly listed in IRS regulations as an example of a capital expenditure. See 26 CFR 1.263(a)-2(d). The Commission concludes that the office building fund may be used to pay for architectural fees directly and solely related to the restoration and renovation project for Party headquarters.

With regard to construction management expenses, the Commission notes that the expenses relating to the construction manager directly relate to the actual renovation of the Party's headquarters. These are direct construction costs. Therefore, the office building fund may be used to pay for these expenses as well.

Fund raising costs

The Commission notes your statement that fundraising is necessary to cover the costs of the renovation, and therefore concludes that these fundraising costs are directly related to the construction of the Party headquarters.⁵ Again, you have stated that these

⁴ Should additional Federal receipts come in after the 60-day period, further ratio adjustments and reimbursements from the Federal account to the non-Federal account will be necessary. However, while the Federal account may pay more than its share of an allocable expense, overpayments by the non-Federal account are illegal. *Id.*

⁵ Your situation is distinguishable from past situations where the Commission has determined that the building fund exception was unavailable. For example, in Advisory Opinion 1983-8, the Commission concluded that the office building fund exception did not apply to donations to pay for the costs of the property taxes, assessments, charges and other expenses incurred by a trust that administered a party's office facilities. In Advisory Opinion 1988-12, the Commission similarly concluded that the office building fund exception did not cover rent, building maintenance, utility, office equipment expenses and other administrative expenses of a party headquarters. In contrast to these opinions, the fundraising expenses at issue would directly relate to the construction of the party office building rather than its administration.

Of some relevance is Advisory Opinion 1993-9 where the Commission concluded that a Party could establish an office building fund to pay off the land contract on its current headquarters so that it could sell

costs are to cover the salary or fee of an employee whose sole responsibility is raising funds for the office building fund. The Commission concludes that the salary and other related fundraising expenses solely related to the raising of funds for the office building fund are also covered by 2 U.S.C. §431(8)(B)(viii).

You have also asked that the Commission permit you to use the funds received method of allocation for the expenses of paying this individual's salary. The Commission notes, however, that the funds received method of allocation is used with multi-purpose fundraising events that are intended to collect contributions for the Party's Federal and non-Federal activities. This is not the situation presented in your request. Instead, where the fundraising is solely for the building fund, there is no need to allocate the expenses. Consequently, the full amount of the salary, fees and other related expenses of the employee or consultant who is working exclusively to raise money for the restoration and renovation project may be paid from the building fund.⁶

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)

Karl J. Sandstrom
Commissioner

Enclosures (AOs 1998-8, 1998-7, 1997-14, 1996-8, 1993-9, 1991-5, 1986-40 and 1983-8)

the property and use the proceeds toward the purchase or construction of new office facilities. However, this opinion did not address whether fundraising costs could also be paid out of the office building fund.

⁶ The Commission notes that you have not asked whether any law of North Carolina would be pre-empted by 2 U.S.C. §431(8)(B)(viii) if that law impeded the ability to raise funds for the Party's headquarters. Accordingly, while this opinion does not consider any issue relating to the laws of North Carolina, other opinions have examined the extent to which State laws were pre-empted by the operation of section 431(8) and 2 U.S.C. §453. *See* Advisory Opinions 1998-8, 1998-7, 1997-14, 1993-9, 1991-5 and 1986-40. However, while the Commission has construed the Act and Congressional intent to require disclosure of office building fund activity by the national party committees in reports they file with the Commission (*see* 11 CFR 104.8(f) and 104.9(d)), it has also concluded that any State level disclosure requirements regarding a State party office building fund are not pre-empted or superseded by the Act or Commission regulations. *See* Advisory Opinions 1997-14 and 1991-5.