



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 12, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2010-02

Chairman Douglas E. McKinney, M.D.
West Virginia Republican Party, Inc.
636 Rivendell Drive
Bridgeport, West Virginia 26330-1358

Dear Dr. McKinney:

We are responding to your advisory opinion request, on behalf of the West Virginia Republican Party, Inc. (the "State Party Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the use of a building fund account containing non-Federal funds either (1) to make payments on a lease with an option to buy an office building, or (2) to make payments on a land sale contract for that office building.

The Commission concludes that the State Party Committee may use a building fund account containing non-Federal funds to purchase the office building if it enters into a land sale contract with the building's owner. Because the State Party Committee does not yet know the key terms of the eventual contract, the Commission does not have sufficient information to determine if the contract will constitute a land sale contract.

Background

The facts presented in this advisory opinion are based on your letter received on December 1, 2009, supplementary materials received on January 6, 2010 and reports filed with the Commission.

The State Party Committee is a political committee, and is registered with the Commission as a State committee of a political party. *See* 2 U.S.C. 431(15); 11 CFR 100.14. The State Party Committee rents its current party headquarters under a lease with

an option to purchase. To pay the rent on this building, it uses funds derived from the sale of its previous headquarters.

Shortly before November 6, 2002, the effective date of the Bipartisan Campaign Reform Act¹ (“BCRA”), the West Virginia State Republican Executive Committee (“the State Executive Committee”), the predecessor committee to the current State Party Committee, received corporate contributions that it deposited in a Building Fund Account to be used to purchase an office building to be used as the State Party’s headquarters. In January 2003, the State Executive Committee purchased an office building for \$187,000. At closing, the sellers received \$120,000 in cash and a promissory note for the \$67,000 balance, which was carried as a Deed of Trust by the seller to be paid off monthly over a ten-year period. In late 2005, the State Executive Committee conveyed the property to the State Party Committee, which continued to make monthly payments. All payments on the Deed of Trust were made from the Federal accounts of the State Executive Committee or the State Party Committee.

In February 2008, the State Party Committee sold the building for \$140,000. The sale proceeds were used to pay off the promissory note and realtor’s fees, and the balance of the proceeds was placed in a bank account and certificates of deposit (collectively “building fund account”). The building fund account is segregated from the State Party Committee’s Federal account. The State Party Committee occupied the building until August 2009 and used funds from its Federal account to pay rent on the building.

On September 1, 2009, the State Party Committee began to lease a different office building located in Charleston, West Virginia. The lease includes an option to purchase the building for \$750,000. Pursuant to the lease, the State Party Committee has been paying \$2,500 per month.² The requestor indicates that \$2,500 is the “usual and customary” monthly rental amount, without a purchase option, for a comparable office building in this location. None of the rent is for the purpose of keeping the purchase option available, and the State Party Committee is making no extra payment in return for that option.³ The current lease ends on December 31, 2010, and is automatically renewable for an additional two-year period (that is, until December 31, 2012). Under the lease, any rental payments made before the exercise of the option would be applied to the purchase price for the building. Although the lease does not state so explicitly, the requestor indicates that the State Party Committee may exercise the option to purchase at any time before the expiration of the current lease or the renewed lease up to December 31, 2012. The building may not be sold to a third party so long as the State Party Committee makes its monthly payments until December 31, 2010, and, if the lease is

¹ Pub. L. No. 107-155, 116 Stat.81 (2002)

² As of January 13, 2010, the State Party Committee had paid a total of \$12,500 for the security deposit and four months’ rent. At that point, \$77,500 remained from the proceeds of the sale of the previous headquarters building.

³ During preliminary negotiations over the lease, the State Party Committee made a one-time \$500 payment from its Federal account to preserve the opportunity to enter into the lease.

renewed, until December 31, 2012. If the State Party Committee exercises the option to buy, the current owner will decline third party offers to purchase.

State Party Committee's Proposal

The State Party Committee proposes to use the proceeds from the sale of its previous headquarters building (plus the accrued interest on the proceeds) to pay the rent on the current lease. If the Commission decides that the State Party Committee may not use solely non-Federal funds from the sales proceeds to pay for such rent, the State Party Committee would exercise the option to purchase and enter into a land sales contract with the building's owner. The State Party Committee would use the remaining proceeds in the building fund account to make payments on the land sales contract.

Under the land sale contract, the State Party Committee would hold the equitable title to the property, and the seller would retain legal title to the property until the final payment on the contract is made. The State Party Committee would forfeit the equitable title and all rights to the property if it fails to make a payment, and the building would revert to the seller. The State Party Committee cannot provide additional information about the possible land sale contract because the terms of the contract have not yet been negotiated with the owner of the building.

Questions Presented

1. *May the State Party Committee use only the proceeds from the sale of its previous office building, which consist of non-Federal funds, to make payments on its lease with an option to buy its current office building?*
2. *May the State Party Committee use only the proceeds from the sale of its previous office building, which consist of non-Federal funds, to make the payments on a land sales contract on the current office building?*

Legal Analysis and Conclusions

1. *May the State Party Committee use only the proceeds from the sale of its previous office building, which consist of non-Federal funds, to make payments on its lease with an option to buy its current office building?*

The Commission could not approve a response by the required four affirmative votes regarding Question 1.

2. *May the State Party Committee use only the proceeds from the sale of its previous office building, which consists of non-Federal funds, to make the payments on a land sales contract on the current office building?*

Yes, the State Party Committee may use the building fund account, containing non-Federal funds, to make the payments required on a land sales contract on the current

office building. The Act and Commission regulations permit a State party committee to use exclusively non-Federal funds to purchase an office building, provided that the use of such funds is permitted under State law. *See* 2 U.S.C. 453(b) and 11 CFR 300.35. Although the word "purchase" is not defined in the Act or Commission regulations, in Advisory Opinion 1993-09 (Michigan Republican State Committee), the Commission treated a land sale contract as a contract to purchase a building.

Here, the State Party Committee has not yet entered into a contract. In the absence of a specific contract or more details, the Commission cannot make a definitive conclusion as to whether an eventual contract between the current owner and the State Party Committee would qualify as a purchase for the purposes of 2 U.S.C. 453(b) and 11 CFR 300.35.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law. The cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Matthew S. Petersen
Chairman