

Levin



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

July 22, 1993

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *[Signature]*
General Counsel

N. Bradley Litchfield *[Signature]*
Associate General Counsel

Jonathan M. Levin *[Signature]*
Senior Attorney

SUBJECT: Draft AO 1993-9

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for July 29, 1993

Attachment

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3 **ADVISORY OPINION 1993-9**

4 **Eric E. Doster**
5 **Foster, Swift, Collins & Smith, P.C.**
6 **313 South Washington Square**
7 **Lansing, MI 48933-2193**

DRAFT

8 **Dear Mr. Doster:**

9 **This responds to your letters dated June 15 and July 6,**
10 **1993, on behalf of the Michigan Republican State Committee**
11 **("the MRSC") concerning application of the Federal Election**
12 **Campaign Act of 1971, as amended ("the Act"), and Commission**
13 **regulations to the acceptance of corporate funds by a**
14 **building fund of the MRSC.**

15 **The MRSC is the State committee of the Michigan**
16 **Republican Party and is engaged in both Federal and**
17 **non-Federal election activity. The MRSC plans to undertake**
18 **one or all of the following activities:**

- 19 (1) **Establish a building fund to purchase or construct a**
20 **building to serve as new headquarters for its Federal**
21 **and non-Federal activities.**
- 22 (2) **Establish a building fund to pay off the balance of its**
23 **land contract on the building which presently serves as**
24 **headquarters for its Federal and non-Federal activities.**
- 25 (3) **In order to raise money for the building fund described**
26 **in #1 above, the MRSC may sell its land contract**
27 **interest (i.e., an equitable interest in the real**
28 **property covered by the contract) in its existing**
29 **headquarters and apply the proceeds to the building fund**
30 **established to purchase or construct a new headquarters.**

31 **You state that, as with any headquarters, the MRSC uses**
32 **the facility to influence Federal and non-Federal elections,**
33 **but creating the building funds is not done for the purpose**
34 **of influencing any elections. You state that "[i]n its**
35 **capacity as a committee registered with the Commission," MRSC**

3 plans to take the following actions and observe the following
4 conditions: (1) it will solicit and accept corporate
5 contributions designated for the building fund(s); (2) it
6 will advise all potential corporate contributors that all
7 corporate contributions will be used for the building
8 fund(s); (3) it will establish a "separate segregated" bank
9 account in which only corporate contributions designated for
10 the building fund(s) will be deposited; (4) it will disburse
11 the corporate funds deposited in such separate account(s)
12 to either purchase or construct a new headquarters, or to pay
13 off the balance of its land contract on its existing
14 headquarters; (5) it will not use any corporate funds
15 received for the purpose of influencing particular Federal,
16 State, or local elections, or transfer such corporate funds
17 to a bank account used to influence particular Federal,
18 State, or local elections; (6) it will not have to limit,
19 other than on a voluntary basis, the amount of the corporate
20 contributions, individually or collectively, to the building
21 fund(s); and (7) it will not have to report the corporate
22 contributions to the building fund(s), other than on a
23 voluntary basis, to the Commission. Furthermore, the MRSC
24 plans to apply the funds only for construction or purchase of
25 an office facility and not to pay such ongoing costs as
26 property taxes and assessments. See Advisory Opinions 1991-5
27 and 1983-8.

28 In a letter sent by the Michigan Department of State to
29 you last July, the State asserted that Michigan law
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3 prohibited the donation of corporate funds to be used to
4 purchase or construct a party headquarters. The letter
5 relied on an interpretive statement issued by the Michigan
6 Department of State in 1984 which cited Michigan Compiled
7 Laws §§169.254 and 169.255 and stated that an office used
8 even occasionally for campaign purposes, such as soliciting
9 support for a candidate or fundraising, "may not be purchased
10 or rented with funds commingled with corporate money."

11 You state that the MRSC's intended actions and
12 conditions are substantially identical to those set forth in
13 Advisory Opinion 1991-5 where the Commission approved the
14 establishment of a party building fund and stated that any
15 Tennessee State law prohibiting such a building fund under
16 those conditions would be preempted. You state that the only
17 "major difference" is that the MRSC may create a building
18 fund to pay off the balance of its land contract on its
19 existing headquarters facility. You wish to know whether, on
20 the terms and conditions described above, the MRSC may accept
21 corporate contributions either to pay off the balance of its
22 land contract on the existing building or to purchase or
23 construct a new headquarters facility. You also ask whether
24 Federal law preempts any Michigan law prohibitions on
25 corporate contributions to the building fund(s).^{1/}

26 Under the Act and Commission regulations, a gift,
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^{1/} You state that your client is not seeking guidance as to
29 the reporting requirements for building funds under State or
30 local law, "since this issue has been squarely addressed by
the Commission." See Advisory Opinion 1991-5.

3 subscription, loan, advance, or deposit of money or anything
4 of value to a national or state committee of a political
5 party, which is specifically designated to defray the costs
6 incurred for construction or purchase of an office facility,
7 is not considered to be a contribution or expenditure,
8 provided that the facility is not acquired for the purpose of
9 influencing the election of any candidate in any particular
10 election for Federal office. 2 U.S.C. §431(8)(B)(viii); 11
11 CFR 100.7(b)(12), 100.8(b)(13), and 114.1(a)(2)(ix). Raising
12 funds to pay off the land contract on the existing building
13 enables the party to complete its purchase of the building
14 and obtain legal title, and thus is a permissible purpose for
15 the exemption. In addition, raising funds for a new
16 headquarters by selling the MRSC's interest in the existing
17 headquarters is materially indistinguishable from the receipt
18 of donations for the new headquarters. Under the conditions
19 set out, conditions indicating specific designation by the
20 contributors for the fund and indicating that the funds will
21 not be used for the purpose of influencing a Federal
22 election, the MRSC may accept corporate donations to the
23 building fund as a part of any or all of the three activities
24 described in your request. See Advisory Opinions 1991-5 and
25 1986-40.

26 The Act states that its provisions and the rules
27 prescribed thereunder, "supersede and preempt any provision
28 of State law with respect to election to Federal office." 2
29 U.S.C. §453. The House committee that drafted this provision
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3 intended "to make certain that the Federal law is construed
4 to occupy the field with respect to elections to Federal
5 office and that Federal law will be the sole authority under
6 which such elections will be regulated." H.R. Rep. No.
7 93-1239, 93d Cong., 2d Sess. 10 (1974). According to the
8 Conference Committee report on the 1974 Amendments to the
9 Act, "Federal law occupies the field with respect to criminal
10 sanctions relating to limitations on campaign expenditures,
11 the sources of campaign funds used in Federal races, the
12 conduct of Federal campaigns, and similar offenses but does
13 not affect the States' rights" as to other areas such as
14 voter fraud and ballot theft. H.R. Rep. No. 93-1438, 93d
15 Cong., 2d Sess. 69 (1974). The Conference report also states
16 that Federal law occupies the field with respect to reporting
17 and disclosure of political contributions to and expenditures
18 by Federal candidates and political committees. Id. at
19 100-101.

20 When the Commission promulgated regulations at 11 CFR
21 108.7 on the effect of the Act on state law, it stated that
22 the regulations follow section 453 and that, specifically,
23 Federal law supersedes state law with respect to the
24 organization and registration of political committees
25 supporting Federal candidates, disclosure of receipts and
26 expenditures by Federal candidates and political committees,
27 and the limitations on contributions and expenditures
28 regarding Federal candidates and political committees.
29 Federal Election Commission Regulations, Explanation and
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3 Justification, House Document No. 95-44, at 51. 11 CFR
4 108.7(b). The regulations provide that the Act does not
5 supersede state laws concerning the manner of qualification
6 as a candidate or political party organization, dates and
7 places of elections, voter registration, voting fraud and
8 similar offenses, or candidates' personal financial
9 disclosure. 11 CFR 108.7(c). The Commission explained that
10 "[t]hese types of electoral matters are interests of the
11 states and are not covered in the act." House Document No.
12 95-44, at 51.

13 The Act and Commission regulations specifically address
14 building fund donations and clearly permit them. In
15 addressing such donations and the entities receiving them,
16 i.e., political committees or organizations specifically not
17 attaining such status, the Act speaks to subject matter
18 involving the organization of political committees,
19 limitations and prohibitions under the Act, and the
20 disclosure of receipts and expenditures. Congress explicitly
21 decided not to place restrictions upon this subject - the
22 cost of construction and purchase of an office facility by a
23 national or state political party committee - which it might
24 otherwise have chosen to treat as election influencing
25 activity. Because such a facility would be used, at least in
26 part, for Federal election activity, Congress could have
27 decided that the purchase or construction of such facility
28 was for the purpose of influencing a Federal election.
29 Instead, it took the affirmative step of deleting the receipt
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3 and disbursement of funds for such activity from the specific
4 proscriptions of the Act. In addition, there is no
5 indication that Congress envisioned any sort of limitation on
6 its preemption to some allocable portion of the costs of
7 purchasing or constructing a building. See Report of the
8 Committee on House Administration, Federal Election Campaign
9 Act Amendments of 1979, H.R. Rep. No. 96-422, 96th Cong., 1st
10 Sess. 8-10 (1979) (specifically sanctioning allocation of
11 expenses for certain exempt party activities).^{2/} Advisory
12 Opinion 1991-5. The Commission concludes, therefore, that
13 the Act and Commission regulations preempt the application of
14 Michigan State law with respect to the prohibitions on
15 corporate donations to the MRSC building fund.

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

20 Sincerely,

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23 Scott E. Thomas
24 Chairman

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26 Enclosures (AOs 1991-5, 1986-40, and 1983-8)

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28 ^{2/} The Commission has carried forward the expression of
29 Congressional intent to allocate certain party activities.
30 See 11 CFR 100.7(b)(9), (b)(15)(ii), and (b)(17)(ii), and
100.8(b)(10), (16)(ii), and (18)(ii).