



Douglas E. McKinney, M.D., Chairman

WV Republican Party, Inc.

636 Rivendell Drive
Bridgeport, West Virginia 26330-1358

November 18, 2009

OFFICE OF GENERAL
COUNSEL

2009 DEC 31 AM 9:55

RECEIVED
FEDERAL ELECTION
COMMISSION

AOR 2010-02

Jonathan Levin, Esq.
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Request for Advisory Opinion

Dear Mr. Levin:

On behalf of the Executive Committee of the West Virginia Republican Party, please consider this request, filed under provisions of 2 U.S.C.437f(a)(1) and 11 CFR 122.1(b) and (c), for an Advisory Opinion on the use of proceeds from the sale of a building owned by the State Party to "lease with an option to buy" an office building to be used as headquarters for the State Party.

The relevant facts are as follows:

1. Prior to November 5, 2002, the West Virginia Republican Party received corporate contributions into a Building Fund Account to be used to purchase an office building to be used as an office headquarters for the West Virginia State Republican Executive Committee. No funds were received from any foreign nationals.
2. By contract dated January 15, 2003, the Republican State Executive Committee purchased an office building in South Charleston, WV, for a fair market value of \$187,000 from a local trade union, USWA Local #14614. At closing, the sellers received \$120,000 in cash and a promissory note for the balance of \$67,000 carried as a first deed of trust by the seller to be paid over 10 years at \$743.84 per month.

The property was thereafter transferred, by quitclaim deed dated November 28, 2005, from the Republican State Executive Committee to the West Virginia Republican Party, Inc., which made monthly payments to the seller for the balance owed.

3. By deed dated February 12, 2009, the West Virginia Republican Party, Inc., sold the building for a fair market value of \$140,000 to a local family trust. The sales proceeds were used to pay off the remaining promissory note and the balance of the proceeds were placed in a certificate of deposit and kept separate from the remaining assets of the West Virginia Republican Party, Inc.. No other funds were used in the purchase of the certificate of deposit.

The proceeds are currently in a certificate of deposit in a bank account which is a segregated "Building Fund Account" and are not part of any Federal Account.

The present balance of the certificate of deposit is approximately \$76,000.00 and the bank account is \$13,500. Since the original inquiry, \$12,500 has been paid to William Currey for security deposit and for lease of the building, which is being used as the State Party headquarters, for a period of four months.

4. The previous and the current West Virginia Secretaries of State have opined that the West Virginia Code does not address this situation. All transactions in regard to the headquarters have been reported to the State of West Virginia.
5. The attached "lease with option to purchase is the only document governing the use of the building. The lease amount is the "usual and customary" amount for such an office property in its location in this area of Charleston, West Virginia.

The West Virginia Republican Party, Inc., desires to enter into this lease agreement with an option to purchase with an unrelated third party to lease a building to be used as a headquarters for the West Virginia Republican Party, Inc., in Charleston, West Virginia, and would like to use the funds held in the certificate of deposit from the sale of the old office building to make payments on the lease option. It is agreed by the West Virginia Republican Party, Inc., and the owner of such building that the option to purchase could be exercised at any time prior to December 31, 2012. It is an exclusive agreement.

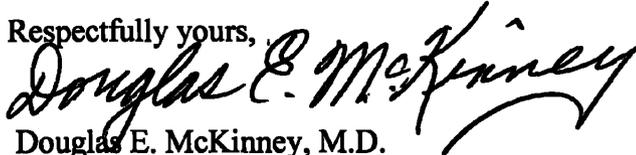
Accordingly, the West Virginia Republican Party, Inc., seeks an Advisory Opinion on the permissibility of using the funds held in a certificate of deposit for such purpose.

In the event that it is not permissible to use the funds held in the certificate of deposit for such purpose, the West Virginia Republican Party, Inc., seeks an Advisory Opinion on the permissibility of entering into a land sale contract for the office building, and using the funds held in the certificate of deposit to make payments under such a land sale contract under which West Virginia Republican Party, Inc., holds the equitable title to the property while the seller retains legal title to the property until the final payment is made. Under such a contract buyer forfeits the equitable title and all rights to the property if it fails to make a payment and the building reverts to the seller.

It is our position, that this same situation pertained with the sold building for its occupancy from December, 2003, through August, 2009, by the West Virginia Republican Executive Committee and later by the West Virginia Republican Party, Inc..

Thank you for your time, advice and help in preparing this request.

Respectfully yours,



Douglas E. McKinney, M.D.

Chairman, West Virginia Republican Party, Inc.

cc: Beth Elmore, Esq., Counsel WVGOP
Lynn Staton, Co-Chair WVGOP

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Mat Currey

304-342-8879

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Mat Currey

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COPY

REAL ESTATE LEASE

This Lease Agreement (this "Lease") with option to purchase said property at a value of \$750,000 is dated September 1, 2009, by and between William R. Currey ("Landlord"), and WV GOP, Inc. ("Tenant"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant 2600 Square foot office building located at the corner of Greenbrier Street and Kanawha Boulevard (The "Premises") Located at #5 Greenbrier Street, Charleston, WV 25311

TERM. The lease term will begin on September 1, 2009 and will terminate on December 31, 2010.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly installments of \$2,500 (Two Thousand Five Hundred Dollars) payable in advance on the first day of each month, for a total lease payment of \$ 40,000 (Forty Thousand Dollars). Lease payments shall be made to the Landlord at #7 Greenbrier St. Charleston, WV 25311, which address may be changed from time to time by the Landlord. If purchase option is exercised, all payments will be applied to purchase price of \$ 750,000 (Seven Hundred Fifty Thousand Dollars).

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant shall pay to Landlord, in trust, a security deposit of \$ 2,500 (Two Thousand Five Hundred Dollars) to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

USE OF PREMISES. Tenant may use the Premises only for the operation of a Political Party. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence. **SIGNS:** Tenant shall only erect permanent signs which meet the City of Charleston and East End Historic Society standards. No temporary banners or signs are to be placed on the property or building unless approved by the Landlord and in no case shall such temporary signs remain for longer than one week.

PROPERTY INSURANCE. Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Premises and property located on the Premises. Landlord shall be named as an additional insured in such policies. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Premises. Tenant is responsible for maintaining casualty insurance on its own property.

RENEWAL TERMS. This Lease shall automatically renew for an additional period of Two Year per renewal term unless either party gives written notice of termination no later than 60 days prior to the end of the term or renewal term. The lease terms during any such renewal term shall be the same as those contained in this Lease except that the lease installment payments shall remain \$ 2,500 (Two Thousand Five Hundred Dollars), per month.

MAINTENANCE.

Landlord's obligations for maintenance shall include:

- the roof, outside walls, and other structural parts of the building
- the parking lot, driveways
- the sewer, water pipes and other matters related to plumbing (unless caused by tenant negligence)
- Landlord will repair both upstairs bathrooms to restore full functionality.

Tenant's obligations for maintenance shall include:

- the HVAC SYSTEM
- Maintain interior of building plus all maintenance of yard and shrubs.
- All other items of maintenance not specifically delegated to Landlord under this lease.
- All snow and ice removal from sidewalks, steps and porches.

UTILITIES AND SERVICES. Tenant shall be responsible for all utilities and services incurred in connection with the Premises. (Includes all city fees for garbage collection, sewer, fire, etc.)

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments which are assessed against the Premises during the time of this Lease. Payments to be paid monthly and to be based on the prior year's assessment.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed by fire or other casualty to an extent that prevents the conduction of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$5,000.00, Landlord shall repair the Premises and a just proportion of the lease payments shall abate during the period of the repair according to the extent to which the Premises have been rendered untenable. However, if the damage is not repairable within sixty days, or if the cost of repair is \$5,000.00 or more, or if Landlord is prevented from repairing the damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party and any unearned rent paid in advance by Tenant shall be apportioned and refunded to it. Tenant shall give Landlord immediate notice of any damage to the Premises.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 5 days after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice and without prejudicing Landlord's right to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's obligation under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges...

DOM
W.P.

Or charges are designated as "additional rent". The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

LATE PAYMENTS. For any payment that is not paid within 10 days after its due date, Tenant shall pay a late fee of \$50.00.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

REMODELING OR STRUCTURAL IMPROVEMENTS. Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Premises as specified above. Tenant may also construct such fixtures on the Premises (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. Tenant shall not install awnings or advertisements on any part of the Premises without Landlord's prior written consent. At the end of the lease term, Tenant shall be entitled to remove (or at the request of Landlord shall remove) such fixtures, and shall restore the Premises to substantially the same condition of the Premises at the commencement of this Lease.

ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. However, Landlord does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent. During the last three months of this Lease, or any extension of this Lease, Landlord shall be allowed to display the usual "To Let" signs and show the Premises to prospective tenants.

INDEMNITY REGARDING USE OF PREMISES. To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate

Insurance protection is provided by Tenant to Landlord.

COMPLIANCE WITH REGULATIONS. Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

MECHANICS LIENS. Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics liens or any other kind of lien on the Premises and the filing of this Lease constitutes notice that such liens are invalid. Further, Tenant agrees to (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid, and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

ARBITRATION. Any controversy or claim relating to this contract, including the construction or application of this contract, will be settled by binding arbitration under the rules of the American Arbitration Association, and any judgment granted by the arbitrator(s) may be enforced in any court of proper jurisdiction.

SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

William R. Currey

7 Greenbrier St.

Charleston, WV 25311

TENANT:

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Mat Currey
Mat Currey

304-342-8879
304-342-8879

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Such addresses may be changed from Time to time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of West Virginia.

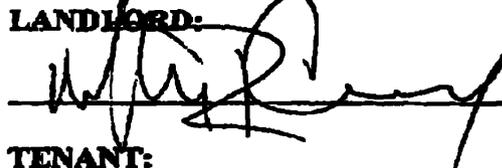
ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of parties and their respective legal representatives, successors and assigns.

LANDLORD:


_____ Date:

TENANT:


Douglas @ M. Kinney
WKGO P, Inc. _____ Date:

ORIGINAL BUILDING PURCHASE

COPY

ALL BLANKS NOT APPLICABLE SHOULD BE MARKED "N/A"

11. DATE. Date of this Agreement: November 4, 2002
12. PURCHASER'S NAME: Kristina E Warner in designee's
SELLER'S NAME: USWA Local # 14614
13. EARNEST MONEY AND DESCRIPTION. Received from Purchaser (\$120,000) as earnest money evidenced by cash note check payable to Old Colony Title Broker, to be held uncashed until acceptance of this offer, as deposit and part of this purchase price of the following described property: Lots 8-9-10 Black & Spring Hill
Street Address: 5019 MacCorkle Ave S.W. S. Club, NW
14. PRICE. The purchase price for said property shall be One hundred eighty seven thousand Dollars (\$ 187,000.00) with the balance of the purchase price being payable as follows: \$120,000.00 cash at closing and seller to carry First Deed of Trust for \$67,000.00 @ 6% (year) at # 120.00 monthly \$44,880.00
15. ALL CASH TRANSACTION. N/A Dollars (\$ N/A)
In cash payable to Seller by Purchaser on delivery of the Deed.
 ASSUMPTION. (See Addendum)
 LOAN CONTINGENCY: This agreement is subject and contingent upon Purchaser being able to obtain a N/A loan in an amount not less than \$ N/A, with an interest rate not in excess of N/A %, secured by a deed of trust on the subject property, payable in not less than N/A regular monthly installments not exceeding \$ N/A (exclusive of any escrow amounts for taxes and insurance). Purchaser agrees to immediately make application for such loan and to continue with due diligence and in good faith to make every reasonable effort to secure such loan or any other loan the purchaser applies for from any source found by Purchaser or to whom Purchaser may be directed by Broker. If, having complied with the foregoing, Purchaser is unable to obtain either loan, or some other loan, then this agreement may be cancelled in writing at the option of the Seller or Purchaser and all earnest money paid hereunder by Purchaser shall be refunded to Purchaser.
16. Type of Inspection Party Paying for Inspection Time Period Obtained By Repair Amount Not to Exceed
- | | | | | |
|--|---|-----------------------|---|--------------------|
| <input checked="" type="checkbox"/> Termite/Pest | <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller | <u>Before Closing</u> | <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller | \$ <u>2,500.00</u> |
| <input type="checkbox"/> Septic/Water | <input type="checkbox"/> Buyer <input type="checkbox"/> Seller | | <input type="checkbox"/> Buyer <input type="checkbox"/> Seller | \$ _____ |
| <input type="checkbox"/> Home Inspection | <input type="checkbox"/> Buyer <input type="checkbox"/> Seller | | <input type="checkbox"/> Buyer <input type="checkbox"/> Seller | \$ _____ |
| <input checked="" type="checkbox"/> Structural | <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller | <u>Before Closing</u> | <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller | \$ <u>1,000.00</u> |
| <input checked="" type="checkbox"/> Radon/Asbestos | <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller | <u>Before Closing</u> | <input checked="" type="checkbox"/> Buyer <input type="checkbox"/> Seller | \$ <u>250.00</u> |
| <input type="checkbox"/> SEE ADDENDUM # _____ | | | | |
- The inspections listed above are all the inspections required by this contract. If the Purchaser elects not to obtain a structural/engineering report for radon/pest, asbestos, lead based paint inspection or any other inspection this shall be considered waived by the parties. All the inspections listed above shall be completed within the time frame as indicated above. The results of all inspections will immediately be made known to all parties. Any inspection which is not completed and the results of said inspection not disclosed to all parties within the above time period shall be deemed to have been waived. If the above inspections reveal that any physical and mechanical components have defects which do not permit them to perform the functions for which intended, or if there are termites or wood destroying insect infestation or damage, such defects shall be corrected at Seller's expense; not to exceed the dollar amount as stated above. If the cost of correcting the conditions exceeds the dollar amount set out in the preceding paragraph:
a. The Seller may refuse to pay the additional monies. If the Seller so refuses, the Purchaser, if permitted by the lender or investor, may elect to pay the additional monies necessary to correct the conditions, or PURCHASER MUST APPROVE ADDITIONAL REPAIR MONIES.
b. The Seller and the Purchaser may agree to each pay a portion of the cost of correcting the conditions; if permitted by the lender or investor. Said agreement would be by separate writing made an addendum to this contract.
c. If the Seller and the Purchaser are both unwilling (or the Purchaser is precluded from paying the cost by his lending institution) to pay the additional money necessary to correct the conditions, then this agreement may be cancelled in writing at the option of the Purchaser or the Seller and any earnest money paid hereunder by Purchaser shall be refunded to the Purchaser. Should Purchaser or Seller request the Brokers to obtain any inspections, surveys or title examination in furtherance of this contract, the Purchaser and Seller shall hold the Brokers harmless and bring no action against them for any negligence of the party performing the inspections, survey or title examination.
17. CLOSING. This sale shall be completed and all necessary papers executed and delivered within 10 days from the date of acceptance hereof. Time shall NOT be of the essence in this agreement. The closing officer closing this sale is hereby directed and authorized to collect and disburse all commissions at closing.
18. ACTUAL PHYSICAL possession of the property will be delivered to the purchaser At Closing.
 Possession is subject to the rights of tenants.
19. FURTHER AGREEMENTS. (If no further agreements, say "None") This agreement is subject to a satisfaction of the search and survey of the subject property prior to closing. The pre-purchase survey by an mortgage institution. All funds to be held in escrow prior to closing. Escrow to be held in escrow is \$100,000.00 and to be applied to transaction at closing.
20. SELLERS PROPERTY DISCLOSURE. Will will not be provided to Purchasers upon acceptance of this contract.
21. SELLING COMPANY is acting as a Buyers Agent Seller Dual Agent
22. BROKER COMMISSION IS 5.1% % OF GROSS SELLING PRICE. 5.1%
23. EXPIRATION OF OFFER. This offer to purchase shall expire and become void if notice of acceptance by Seller is not received by the Purchaser before _____ am / pm on the _____ day of _____.

WITNESS, the following signatures of the Purchasers:

Kristina E Warner
Purchaser's Signature

John A Spade
Purchaser's Signature

The foregoing offer to purchase is hereby accepted by the Seller 2:00 am (pm) this 5th day of November 2002

John A Spade, Pres USWA 14614
Seller's Signature

John A Spade
Seller's Signature

DATA FOR CLOSING AGENT. This information is not part of the purchase contract; it is intended for use by the closing agent.

Old Colony Title
Listing Company

Wendie McLaughlin
Listing Agent

Paul D. Cook Real Estate
Selling Company

John A Spade
Selling Agent

Seller and Purchaser acknowledges reading additional terms on reverse side of purchase agreement. JS (Initials) KW (Initials)
Seller Purchaser

Memo

June 24, 2009

To: Doug, Craig, Jonathan, Marti

From: Gary

Re: Building fund

Overview

West Virginia is, by state law, a “non corporate” state, meaning that neither candidates nor the state party can raise or spend donations from corporations. Conversely, some states do permit corporate money in politics.

However, prior to passage of the McCain-Feingold Act (aka the Bipartisan Campaign Reform Act, or BCRA), which took effect the day after the 2002 General Election, even non-corporate states like West Virginia were permitted, under federal law, to raise and spend corporate money for the express purpose of purchasing a headquarters. The West Virginia Republican Party did exactly that in the fall of 2002, prior to the enactment of McCain-Feingold. Once McCain-Feingold took effect, state parties in non-corporate states like West Virginia lost their ability to use corporate money even for the purchase of a headquarters.

Sometime within the last year or two (Doug or Marti would have the exact date), the WVGOP sold the headquarters which was purchased in 2002. The profit from the sale, roughly \$90,000, was placed in a CD until such time as its legal disposition can be determined.

Given that the original source of the funds used to purchase the headquarters in 2002 was corporate in nature, the proceeds from the sale of the headquarters are also corporate in nature. The WVGOP understands that these proceeds cannot be used for the day-to-day operations of the party, salaries, or candidate support. However, the WVGOP believes that the funds – since they were legally raised when originally obtained – remain legal in nature and can again be used for the same legal purpose, i.e., the purchase (or lease?) of a different headquarters.

April 2009 actions

In April 2009, acting in my capacity as Executive Director of the WVGOP, I discussed this issue with Heather Sidwell, Deputy Counsel of the Republican National Committee. Ms. Sidwell suggested that I meet with the West Virginia Secretary of State to determine what the attitude of the WVSOS office would be on this issue.

On Wednesday, April 22, 2009, I met with Secretary of State Natalie Tennant, her chief of staff, Cedric Greene, and her chief legal counsel, Elizabeth Summitt, at the WVSOS office in Charleston. They agreed that West Virginia law does not address this specific issue. Secretary Tennant suggested that she would be willing to consider supporting passage of a law that would allow both parties to raise corporate and/or union funds for the express purpose of purchasing or leasing a party headquarters. She also said that while the WVGOP could proceed with using the proceeds from the sale of the headquarters, it might be challenged by someone in court, with an unknown result. She did not indicate whether she, in her capacity as Secretary of State, would challenge such a move.

Recommended action

I reported the results of this meeting to Ms. Sidwell of the RNC, who suggested that we bring Tom Josefiak into the discussion. Mr. Josefiak is former Chief Counsel of the RNC and former Chairman of the Federal Election Commission. It is my recommendation that this be the course next taken by the WVGOP.

Ms. Sidwell's office number is 202-863-8638, and her email is hsidwell@rnchq.org. Contacting her and reminding her of this chain of events would be the best way to bring Mr. Josefiak into the mix.

Jonathan Levin/FEC/US
01/06/2010 12:49 PM

To "Dr. Doug McKinney" <wvgop1@wvgop.org>
cc Robert Knop/FEC/US@FEC
bcc

Subject Additional and Clarifying Information

I have added your amended information in a new footnote 1. If you believe that this document is accurate, please send an e-mail confirming that it is accurate. Upon receipt of your confirmation, your advisory opinion request will be considered complete.



WVa Republicans-Supplemental Facts to Party Chair2.doc

West Virginia Republican Party – Additional and Clarifying Information

Subsequent to the receipt, on December 1, 2009, of a letter from Dr. Douglas E. McKinney, Chairman of the West Virginia Republican Party (“the Party”), Robert M. Knop and Jonathan M. Levin of the Commission’s Office of General Counsel engaged in phone conversations with Dr. McKinney to clarify certain points and to obtain some additional facts. The additional and clarifying information obtained is as follows:

1. The monthly rental amount in the current lease with an option to buy is the usual and normal rental charge for a lease payment without a purchase option. No extra rental charge is added to pay for the purchase option.¹
2. There are no other arrangements for a payment by the Party to retain the option to purchase, such as an up-front payment or periodic payments.
3. Other than the one-month rental payment for a security deposit and the monthly rental payments, the only payment by the Party in connection with the current lease was a one-time \$500 payment (made from the Federal account) during preliminary negotiations with the owner to leave open the opportunity to enter into the lease with an option to buy.
4. Currently, the proceeds from the Party’s sale of its previous headquarters in 2008 are in CDs and a bank account that are not part of any Federal account. Prior to the payment of the security deposit and four months’ rent (totaling \$12,500), there were \$76,000 in a CD and \$13,500 in a bank account. All of these sums came from the proceeds of the \$140,000 sale minus the payments for the remaining five years on the Deed of Trust for the previous headquarters and realtor’s fees on the sale. Currently, there is approximately \$1,500 remaining in the bank account, \$20,000 in one CD, and \$56,000 in another CD. The Party is using these funds to pay the rent on the lease and would use these funds to make the payments on a land sales contract.
5. Thus far, the Party has not reported any of the transactions related to the previous and current headquarters in reports filed with the West Virginia Secretary of State. The FEC reports of the predecessor State committee disclosed a \$10,000 payment from the Federal account on the principal for the previous headquarters in 2003, and the FEC reports of the predecessor and current State committees disclosed periodic payments from the Federal account on the Deed of Trust until early 2006.² In the next report due to the West Virginia Secretary of State, the

¹ Dr. McKinney represents that the current owner of the building says that he has entered into several prior leases with options to buy and has never asked for a separate payment to secure the option, nor has he ever divided the payment to allot a portion for the option.

² The Party’s reports filed with the FEC also disclosed rental payments on the previous headquarters in 2008 and 2009 which were paid to the new owners to allow the Party to continue to occupy the building.

Party will disclose the proceeds of the sale of the previous headquarters and the rental payments that the Party has made on the current headquarters.

- 6. If the Commission concludes that the exemption for the purchase or construction of a party office building does not apply to the lease with an option to buy, the Party might exercise the option to buy. The purchase would entail entering into a land sales contract on the same property with the owner. The monthly rental payments already made on the lease prior to the exercise of the option to buy would apply to the Party's installment payments on the land sales contract.**
- 7. The Party is unable to give any more details on the attributes of any possible land sales contract it may enter. That would be up to the owner, and the Party has not negotiated with the owner over such a contract.**
- 8. The contract for the Party's purchase of its previous headquarters in late 2002 (submitted with the letter received on December 1) was not a land sales contract. Dr. McKinney submitted it to show that, like a land sales contract, the 2002 agreement entailed the Party obtaining equitable title upon entering the agreement and not gaining legal title until it had made all of the payments on the Deed of Trust.**



"McKinney, Douglas"
<Douglas.McKinney@va.gov
>

01/13/2010 11:56 AM

To <jlevin@fec.gov>

cc

bcc

Subject Followup e-mail

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FEDERAL ELECTION
COMMISSION

2010 JAN 13 PM 12: 05

OFFICE OF GENERAL
COUNSEL

I apologize. I sent a reply immediately but my server at home has been acting strangely.
Everything you sent is correct and satisfactory.