FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 3, 1991

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1991-5

Todd Campbell
Gullett, Sanford, Robinson & Martin
230 Fourth Avenue, North
Third Floor
P.O. Box 2757
Nashville, TN 37219-0757

Dear Mr. Campbell:

This responds to your letter dated February 19, 1991, requesting an advisory opinion on behalf of the Tennessee Democratic Party ("TDP") concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the acceptance and reporting of corporate funds by a TDP building fund.

TDP is a political party engaged in both Federal and non-federal election activity. In addition to having a committee registered with the Commission, TDP has various non-federal committees registered with the Tennessee Registry of Election Finance ("the Tennessee Registry"), and county election commissions in Tennessee. TDP maintains separate bank accounts for its Federal and non-federal activity.

TDP intends to raise funds to purchase a building to serve as headquarters for its Federal and non-federal activity. Based on the exception in the Act and regulations to the definition of "contribution" for donations to defray costs of construction or purchase of a party office facility under certain conditions, TDP intends to accept corporate contributions to the building fund. You state that, "in its capacity as a committee registered with the [Commission]," TDP plans to take the following actions and observe the following conditions: (1) it will solicit and accept corporate contributions designated for the building fund; (2) it will advise all potential corporate contributors that all corporate contributions will be used exclusively for the building fund; (3) it will establish a "separate segregated" bank account in which only corporate contributions designated for the building fund will be deposited; (4) it will disburse the corporate funds

deposited in that separate account only to purchase or construct a headquarters, or refund contributions if a facility is not acquired; (5) it will not use any corporate funds received for the purpose of influencing particular Federal, State, or local elections, or transfer such corporate funds to a bank account used to influence particular Federal, State, or local elections; (6) it will not have to limit, other than on a voluntary basis, the amount of the corporate contributions, individually or collectively, to the building fund; and (7) it will not have to report the corporate contributions to the building fund, other than on a voluntary basis, to the Commission, to the Tennessee Registry, or to county commissions.

You inform us that Tennessee election law prohibits corporate contributions to political parties in certain circumstances, and that it requires the reporting of certain contributions and expenditures used in State and local elections to the Tennessee Registry and to county election commissions. T.C.A. §2-19-132; §2-10-101 et seq.

You ask whether TDP may accept corporate contributions to purchase or construct a headquarters facility on the terms and conditions described above. You also ask whether Federal law preempts Tennessee prohibitions and reporting requirements pertaining to corporate contributions to the building fund.

Under the Act and Commission regulations, a donation to a national or 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). Under the conditions set out, conditions indicating specific designation by the contributors for the fund and indicating that the funds will not be used for the purpose of influencing a Federal election, TDP may accept corporate donations to the building fund.[1] See Advisory Opinion 1986-40.

The regulations also provide that the amount of such a donation made to a committee which is not a political committee under 11 CFR 100.5 need not be reported. If such donation is made to a political committee, it shall be reported in accordance with 11 CFR 104.3(g), as a memo entry on Schedule A. 11 CFR 100.7(b)(12) and 100.8(b)(13). See 11 CFR 114.1(a)(2)(ix).

The donations to be solicited by TDP will not meet any of the conditions for deposit in a Federal account, i.e., an account making expenditures for the purpose of influencing Federal elections. Such donations will not be designated for the Federal account, will not result from a solicitation which expressly states that the contributions will be used in connection with a Federal election, and will not be from contributors who are informed that their donations are subject to the limitations and prohibitions of the Act. 11 CFR 102.5(a)(2).[2] Therefore, any donations received for the building fund would have to be deposited in an account separate from any Federal account maintained by TDP, as you have indicated will be done with the corporate donations. Since the separate account for building funds will not be a political committee under 11 CFR 100.5(g), the donations need not be reported to the Federal Election Commission. Advisory Opinion 1986-40.[3]

You indicate that Tennessee State law may prohibit the making of corporate donations for the construction or purchase of a party office facility or corporate donations to a fund set up for such a purpose. You also indicate that Tennessee law may require the reporting of these donations and disbursements. You ask whether the Act would preempt the application of State law to the use and reporting of funds for the stated purpose.

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

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

The Act and Commission regulations specifically address building fund donations and clearly permit them. In addressing such donations and the entities receiving them, i.e., political committees or organizations specifically not attaining such status, the Act speaks to subject matter involving the organization of political committees, limitations and prohibitions under the Act, and the disclosure of receipts and expenditures. Congress explicitly decided not to place restrictions upon a subject, the cost of construction and purchase of an office facility by a national or state political party committee, which it might otherwise have chosen to treat as election influencing activity. Because such a facility would be used, at least in part, for Federal election activity, Congress could have decided that the purchase or construction of such facility was for the purpose of influencing a Federal election. Instead, it took the affirmative step of deleting the receipt and disbursement of funds for such activity from the specific proscriptions of the Act. In addition, there is no indication that Congress envisioned any sort of limitation on its preemption to some allocable portion of the costs of purchasing or constructing a building. See

Report of the Committee on House Administration, Federal Election Campaign Act Amendments of 1979, H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 8-10 (1979) (specifically sanctioning allocation of expenses for certain exempt party activities).[4] The Commission concludes, therefore, that the Act and Commission regulations preempt the application of Tennessee State or local law with respect to the prohibitions on corporate donations to the TDP building fund.

The Commission concludes that any reporting responsibility imposed by the State of Tennessee regarding building fund receipts and disbursements of the TDP would not be preempted. The Commission has construed the Act and congressional intent as requiring disclosure at the Federal level of building fund activity of the national party committees only. See 11 CFR 104.8(f) and 104.9(d). A state level disclosure requirement regarding a state party building fund would not encroach upon a regulatory area occupied by the Act. Further, there is no indication that Congress intended to preempt the disclosure authority of states with regard to state party building fund activity.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request.

Sincerely,

(signed)

John Warren McGarry
Chairman for the Federal Election Commission

Enclosures (AOs 1986-40 and 1983-8)

1/ The Commission notes that the building fund exception extends only to donations to defray costs incurred for construction or purchase of an office facility and does not extend to donations to pay such ongoing operating costs as property taxes and assessments. See Advisory Opinion 1983-8.

2/ The regulations provide exceptions to these restrictions in some specific circumstances not relevant here, e.g., the allocation of certain expenses for mixed Federal and non-federal activities. See 11 CFR 106.5(g) and 106.6(e).

3/ The Commission notes that its recently amended regulations regarding allocation of expenditures by national party committees specifically require that these committees report the receipts and disbursements of their building fund account(s). 11 CFR 104.8(f) and 104.9(d). There is no similar provision applicable to state party committees.

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