



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 9, 2004

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-28

W. Charles Smithson, Esq.  
Executive Director and Legal Counsel  
Iowa Ethics and Campaign Disclosure Board  
510 East 12<sup>th</sup>, Suite 1A  
Des Moines, Iowa 50319

Dear Mr. Smithson:

This responds to your letter dated July 14, 2004, on behalf of the Iowa Ethics and Campaign Disclosure Board (the "Board") requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to potential State disclosure requirements regarding donors to State party committee non-Federal office building funds.

### ***Background***

The Board administers the campaign finance laws in Iowa as those laws pertain to State and local elections. You state that both the Iowa Democratic and Republican Parties have non-Federal office building funds. These accounts were established after the Commission issued Advisory Opinion 1998-8 to the Iowa Democratic Party ("IDP"). This advisory opinion concluded that the Act and Commission regulations preempted the Iowa State law that had sought to prohibit corporate donations to State party committee non-Federal office building funds. Although Advisory Opinion 1998-8 did not directly address the issue of whether Federal law would also prohibit Iowa from requiring disclosure of building fund donations, the advisory opinion noted that the IDP had acknowledged Iowa's ability to regulate such disclosure.<sup>1</sup>

You state that while the Board does not wish to prohibit corporate donations to State party non-Federal office building funds, the Board seeks guidance as to whether Iowa is prohibited from requiring disclosure of donors to such office building funds, in light of the passage of the Bipartisan Campaign Reform Act of 2002 ("BCRA") and amended Commission regulations.

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<sup>1</sup> Advisory Opinion 1998-8 at n. 2 (citing Advisory Opinions 1997-14 and 1991-5).

***Question Presented***

Is the Board prohibited by either the Act, as amended by BCRA, or Commission regulations from requiring disclosure of donors to a State party committee non-Federal office building fund?

***Legal Analysis and Conclusions***

No, the Act and regulations do not prohibit the Board from requiring disclosure of donors to a State party committee non-Federal office building fund. The Act and Commission regulations now specifically allow a State to require disclosure of donors to State party non-Federal office building funds. *See* 2 U.S.C. 453 and 11 CFR 300.35.

In BCRA, Congress amended 2 U.S.C. 453 such that a State party may, subject to State law, “use exclusively funds that are not subject to the prohibitions, limitations, and reporting requirements of the Act” (*i.e.*, non-Federal funds) for the purchase or construction of its office building.

Consistent with this amendment to the Act, Commission regulations at 11 CFR 300.35(a) and (b)(1) provide that if a State party committee uses non-Federal funds to purchase or construct its office building, then the sources, uses and disclosure of those funds are subject to State law (so long as funds are not donated by foreign nationals).<sup>2</sup>

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 requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Bradley A. Smith  
Chairman

Enclosures (AOs 1998-8, 1997-14, and 1991-5)

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<sup>2</sup> The Commission noted in the *Explanation and Justification* implementing 11 CFR 300.35 that pre-BCRA advisory opinions, including Advisory Opinion 1998-8, were partially superseded inasmuch as those advisory opinions concluded that Federal law preempted State laws regarding certain donations to State party non-Federal office building funds. *See* 67 *Fed. Reg.* 49064, 49191 (July 29, 2002). Note, however, that if a State party uses Federal funds for the purchase or construction of its office building, disclosure is subject to Federal law. *See* 2 U.S.C. 453 and 11 CFR 300.35.