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10/22/03

Date

2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2403

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/06/03

Tape Number	Side A	Side B	Meter #
Tape 2	x		3750 to end
Tape 2		x	0-2680
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

Senator Karen Krebsbach, Chairman opens SB 2403. All senator present.

Cory Fong, Deputy Secretary of State (Testimony attached)

Senator Brown: Is the chart the bill as purposed?

Fong: yes, and I put subscript 1 where this would be under new law.

Senator Nelson: So our dues will be going up with the Senate Democratic Caucus?

Fong: The registration fees are going up, the management of our office has increased and the increasing of fees will have improvements with them.

Senator Fairfield : Expenditures made , committees are required to report an excess of \$200 then why not...

Senator Dever : My district party is not required to register but, if formed a "Friends of Dick Dever" I would have to register that?

Fong: Yes

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Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 02/06/03

**Senator Dever :** Do out of state political action committees that contribute to instate candidates required to register and report?

**Fong:** No they still have quote.

**Representative Boucher:** Remains in Neutral to bill but goes over different parts of bill he is weary about. Senator Krebsbach then tells him that SB 2063 that has passed the Senate already has taken care of his concerns.

He passed out an amendment that show what his concerns are. Cory Fong states that he will go over the two bills and make sure that all is covered.

**Senator O'Connell:** He is in support of bill as long as it is made equal for both parties on building terms.

The amendments that were passed out have been shown to sponsors and they all believe that those will take care of the needs of all but advises committee to take a close look at it.

**Dan Traynor, State Chairman of the Republican Party** testifies that they are in support of Sb 2403.

**Senator Wardner :** You don't have a problem with Section 7?

**Traynor:** Under the federal campaign finance law the building fund accounts were allowed because it was not viewed as a contribution for federal election purposes but viewed as a donation. State parties consisting of both Republicans and Democrats that usually forbid contributions for political purposes set up building fund accounts but were not subjected to any kind of reporting requirements. Some of that has now been changed. It is important to have a reporting status for these.

**Senator Wardner :** If we amended Section 7 out does it affect it?

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 02/06/03

Traynor: In the respect of one we feel that it should be regulated and reported under state law.

the other thing it does it allows our party and the other to establish these accounts for the purpose of having a building and maintaining the building.

Senator Krebsbach :this process has been in effect only the reportable part has not been there?

Traynor: Building accounts have existed under an exemption in the federal law, this makes building funds a state law provision and provides a very stringent reporting requirement. It is every penny that is received and spent whether it is a dollar or ten dollars.

Senator Wardner : If we take it out then there is no reporting?

Traynor: Yes, assuming that they will be recreated I think it is better to have these reportable.

Senator Krebsbach :Because of law the contributions could still be done if we take out this section but the reporting would be gone.

Closed 2403

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10/22/03  
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/18/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		0-3700
Committee Clerk Signature			

Minutes:

Senator Karen Krebsbach, Chairman reopens SB 2403. All senators present.

Cory Fong, Deputy Secretary of State hands out new amendments. Mostly just handle grammatical changes. He explains new amendments.

Senator Fairfield : Page 12 Subsection 2, Your amendments eliminate furnishing and equipment.

Is that the only change?

Fong: No, ours stay exactly the same. Their was another amendment by Rep. Boucher that completely remove that section though.

Senator Fairfield : When you were going through the bill talking about major changes of the bill. this is a substantial change to our current law correct?

Fong: Section 2 which would allow corporations to make contributions to the state parties would be considered a substantial change in the sense of state law.

Senator Fairfield : The fact that it is in law, Mr. Traynor testified and he talked about federal law

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 02/18/03

but was a little clear as to the current status. My understanding is that this has been prohibited in federal law? this would be the opening to that.

Fong: I can't pretend to be an expert in federal law but if I can recall Mr. Traynor's testimony is was that the federal law was going to in sense prohibit state parties doing what they have been doing for awhile which has been setting up these funds for building funds. Now it would be something they would have to accomplish through state law.

Senator Fairfield : That is something we have never had in ND which is allowing corporate contributions.

Fong: State law has never specified this allowance. the state parties and those who have taken corporate contribution for that purpose has been allowed in federal law. Now it is being eliminated by federal.,

Senator Fairfield : From ND state law we have prohibited corporate contributions, regardless of federal law. So this would represent that we are opening our state law to except corporate contribution which is a significant change from previous practice

Fong: Right, the allowance that would accept corporate dollars would now be designated by state law because the federal allowance is going away. Again I am not an expert in campaign finance.

Senator Dever : I think you are referring to a bill that Cory's amendment dont' address but mine do.

Fong: You are right it is a change in the sense that previous state law does not designate state parties to take building fund contributions. the previous federal law is allow state parties to do

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 02/18/03

that though, that is being eliminated by the new campaign finance law. This would allow the state to do that.

Senator Krebsbach : Were we as a political party in the state either party allowed to operate under the federal law.

Fong: Yes, it was the federal law that allowed those contributions.

Senator Fairfield : I thought I was clear now but, I thought we were prohibited under state law even though federal law allowed it the state prohibited it.

Senator Krebsbach : According to the note I made under federal campaign law which supersedes state law.

Senator Dever hands out his amendments and explains. these amendments do a couple of things.

I wanted this to be equal to all parties. My understanding with this and report to the Secretary of State and also report the Federal Election Commission.

Senator Nelson : Back on page 2 with definition, it says corporation and to find out what a corporation is was one complete volume in the code. How many loopholes are in that book that can be used here. I don't think the people of ND want to see corporate America get into politics. I have a whole problem with that section. it is the same as Rep. Boucher has amended to get out.

Senator Dever : I think our party would be fine with that if it had not committed to buying a new building based on what was legally allowable.

Senator Fairfield : I have questions about how this would be reported?

Fong: To comment on Senator Nelson's there is nothing in that section that we have to have.

The testimony indicated it was allowed under federal law and none of it got reported anyway.

They were allowed to take those contributions. If state law designates these funds to be set up to

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Page 4  
Senate Government and Veterans Affairs Committee  
Bill/Resolution Number SB 2403  
Hearing Date 02/18/03

take corporate dollars for the purpose of building and maintaining a building then they have to report each year all contributions whether it is a dollar or ten thousand dollars. Plus each expenditure made from that fund. Also, the cash on hand on the start and close of the reporting period. According to Dever's amendment it would remove furnishings and equipment.

Senator Krebsbach : We were trying to get away from was copying machines and computers etc.

Senator Dever : That is correct.

Senator Fairfield : Under this bill, I guess if you look at this unamended, would a political party be able to organize a trade association and allowing them to bring in any amount of corporate contribution from anywhere, funnel that into the building fund but then all that would be reportable would be expended from that entity in to building fund of the political party there by never having any recording of who is contributing to that body.

Fong: Only the state political party would be able to do this. I suppose that is possible but I am not an expert on this.

Senator Krebsbach : It would be limited to the usage of what is spelled out in this section.

Fong: The corporate structure could set up a subsidiary.

Discuss of the same matter continues.

Senator Brown moves for adoption of Secretary of State's new amendments

Senator Wardner 2nd

6 Yes 0 No

Senator Brown moves to adopt Senator Dever's amendment

Senator Wardner

Senator Fairfield : WE have not allowed corporate contributions for campaign purposes.

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 02/18/03

Fong: Yes that is correct. Corporate contributions are currently prohibited under ND state law.

Senator Brown: This does not change campaigns though.

6 Yes 0 No

Senator Nelson moves to adopt Rep. Boucher's amendment

Senator Fairfield 2nd

2 yes 4 No

Motion fails

Senator Brown moves for a Do Pass as amended

Senator Dever 2nd

Senator Fairfield : Because of that section that we are basically opening the door to corporate contributions in this state I can not support it. I think there are many good points of this bill.

Senator Nelson: I agree, I also have received emails from voters in ND that agree with not allowing corporate contributions . I think there is some really good things in there but because of that one section I can't have it.

Senator Wardner : There is no change with this bill. To go on the record we are not allowing the direct contributions to candidates from corporation if that is what it did I would be against it.

Senator Fairfield : On record I would like to say that this is a significant change and I think we will see that.

4 Yes 2 No

Carrier: Senator Wardner

**FISCAL NOTE**  
Requested by Legislative Council  
04/16/2003

Amendment to: SB 2403

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$3,500	\$0	\$3,500	\$0
Expenditures	\$0	\$0	\$40,000	\$0	\$19,000	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The amendments adopted by the conference committee do not change the fiscal information related to this bill.

The purpose of this bill pertains to the filing of campaign finance statements on the part of candidates, political parties, political action committees, measure committees, etc.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Revenues will be deposited in the state's general fund and will be generated from registration fees and penalty fees.

**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The major expenditure for the 2003-2005 biennium will be for the programing necessary to develop and implement a user friendly and efficient filing and reporting system.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The agency is not requesting any additional appropriation to implement the provisions of this bill.

<b>Name:</b>	Al Jaeger	<b>Agency:</b>	Secretary of State
<b>Phone Number:</b>	328-2900	<b>Date Prepared:</b>	04/16/2003

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10/22/03  
Date

**FISCAL NOTE**  
Requested by Legislative Council  
04/01/2003

Amendment to: SB 2403

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$3,500	\$0	\$3,500	\$0
Expenditures	\$0	\$0	\$40,000	\$0	\$19,000	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

The amendments proposed by the majority report do not change the fiscal information related to this bill.

The purpose of this bill pertains to the filing of campaign finance statements on the part of candidates, political parties, political action committees, measure committees, etc.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Revenues will be deposited in the state's general fund and will be generated from registration fees and penalty fees.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

The major expenditure for the 2003-2005 biennium will be for the programing necessary to develop and implement a user friendly and efficient filing and reporting system.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The agency is not requesting any additional appropriation to implement the provisions of this bill.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	04/01/2003

**FISCAL NOTE**  
Requested by Legislative Council  
01/28/2003

Bill/Resolution No.: SB 2403

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$3,500	\$0	\$3,500	\$0
Expenditures	\$0	\$0	\$40,000	\$0	\$19,000	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The purpose of this bill pertains to the filing of campaign finance statements on the part of candidates, political parties, political action committees, measure committees, etc.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenues will be deposited in the state's general fund and will be generated from registration fees and penalty fees.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The major expenditure for the 2003-2005 biennium will be for the programming necessary to develop and implement a user friendly and efficient filing and reporting system.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The agency is not requesting any additional appropriation to implement the provisions of this bill.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	02/03/2003

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10/22/03  
Date

Cory Fong  
2/18/03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2403

- Page 5, line 23, remove ". and"
- Page 5, line 24, remove "expenditures made for political purposes."
- Page 5, line 28, after "expenditure" insert "or expenditures"
- Page 5, line 29, after "dollars" insert "separately or" and replace "made and" with "."
- Page 6, line 17, remove "state"
- Page 10, line 9, after "dollars" insert "separately or"
- Page 17, line 18, after "candidates" insert "or candidate committees"
- Page 17, line 20, replace "for" with "committee for a"
- Page 17, line 21, replace "county." with "candidate, and a candidate for a county"
- Page 17, line 23, after "candidate" insert "or candidate committee"
- Page 17, line 30, replace "The candidate" with "A candidate committee for a judicial district candidate shall file a statement with the secretary of state no later than the thirtieth day following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write in votes. Any other candidate required to file a statement according to this section"
- Page 18, line 1, replace "appears" with "appeared"
- Page 18, line 2, replace "seeks" with "sought" and after "candidate" insert "or candidate committee"
- Page 18, line 4, after "candidate" insert "or candidate committee"
- Page 18, line 5, replace "county auditor" with "appropriate filing officer"
- Page 18, line 6, replace "county auditor" with "appropriate filing officer"
- Page 18, line 8, replace "county auditor" with "appropriate filing officer"
- Page 18, line 9, replace "county auditor" with "appropriate filing officer"
- Page 18, line 10, replace "county auditor" with "appropriate filing officer"
- Page 18, line 12, replace "county auditor" with "appropriate filing officer"
- Page 18, line 14, replace "county auditor's office" with "appropriate filing officer"
- Page 18, line 20, after the first comma insert "that"
- Renumber accordingly

Page 1

amendments (sb 2403) 020103

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Date

Date: 2/18/03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 24003

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken adopt see of states #2

Motion Made By Brown Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson	✓	
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Ballin 10/22/03  
Operator's Signature Date

38366.0102  
Title.

Prepared by the Legislative Council staff for  
Senator Dever  
February 14, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2403

Page 7, line 2, after the period insert "The statement also must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made."

Page 7, line 30, after "received" insert "and expenditures made"

Page 8, line 1, after "received" insert "and expenditures made"

Page 12, line 19, after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 12, line 20, after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 12, line 21, remove "furnishings."

Page 12, line 22, remove "and equipment" and after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Renumber accordingly



Date: 2/18/03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2403

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken adopt Sen. Dever's amendment

Motion Made By Brown Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson	✓	
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Date

38366.0101  
Title.

Prepared by the Legislative Council staff for  
Representative Boucher  
February 5, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2403

Page 11, line 28, remove "1."

Page 12, remove lines 18 through 28

Renumber accordingly

Page No. 1

38366.0101

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10/22/03

Date

Date: 2/18/03  
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2403

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Rep Boucher amendment

Motion Made By Nelson Seconded By Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.		✓	Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.		✓	Senator Carolyn Nelson	✓	
Senator Richard Brown		✓			
Senator Rich Wardner		✓			

Total (Yes) 2 No 4

Absent 0

Floor Assignment \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Date

38366.0103  
Title.0200

Adopted by the Government and Veterans  
Affairs Committee  
February 14, 2003

*JEB*  
2-19-03  
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2403

Page 5, line 23, remove ". and"

Page 5, line 24, remove "expenditures made for political purposes."

Page 5, line 29, replace "made and" with an underscored comma

Page 5, line 30, after "expenditure" insert an underscored comma and replace "it" with "the expenditure"

Page 6, line 17, remove "state"

Page 7, line 2, after the period insert "The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made."

Page 7, line 30, after "received" insert "and expenditures made"

Page 8, line 1, after "received" insert "and expenditures made"

Page 12, line 19, after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 12, line 20, after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 12, line 21, remove ", furnishings."

Page 12, line 22, remove "and equipment" and after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 17, line 18, after "candidates" insert "or candidate committees"

Page 17, line 20, after the second "candidate" insert "committee" and after "for" insert "a"

Page 17, line 21, replace the first underscored comma with "candidate and a candidate for a" and remove the second underscored comma

Page 17, line 23, after "candidate" insert "or candidate committee"

Page 17, line 30, replace "The" with "A" and after "candidate" insert "committee for a judicial district candidate shall file a statement with the secretary of state no later than the"

2 of 2  
thirtieth day following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Any other candidate required to file a statement under this section"

Page 18, line 1, replace "appears" with "appeared"

Page 18, line 2, replace "seeks" with "sought" and after the second "candidate" insert "or candidate committee"

Page 18, line 4, replace "must" with "or candidate committee shall"

Page 18, line 5, replace "county auditor" with "appropriate filing officer"

Page 18, line 6, replace "county auditor" with "appropriate filing officer"

Page 18, line 8, replace "county auditor" with "appropriate filing officer"

Page 18, line 9, replace "county auditor" with "filing officer"

Page 18, line 10, replace "county auditor" with "filing officer"

Page 18, line 12, replace "county auditor" with "filing officer"

Page 18, line 14, replace "county auditor's office" with "filing officer"

Page 18, line 20, after the first underscored comma insert "which"

Renumber accordingly

Date: 2/18/04  
Roll Call Vote #: 4

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2403

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as amended

Motion Made By Brown Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield		✓
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson		✓
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Wardner

If the vote is on an amendment, briefly indicate intent:

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Deanna Dally  
Operator's Signature

10/22/03

Date

REPORT OF STANDING COMMITTEE (410)  
February 19, 2003 4:35 p.m.

Module No: SR-32-3347  
Carrier: Wardner  
Insert LC: 38366.0103 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2403: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2403 was placed on the Sixth order on the calendar.**

Page 5, line 23, remove ". and"

Page 5, line 24, remove "expenditures made for political purposes."

Page 5, line 29, replace "made and" with an underscored comma

Page 5, line 30, after "expenditure" insert an underscored comma and replace "it" with "the expenditure"

Page 6, line 17, remove "state"

Page 7, line 2, after the period insert "The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made."

Page 7, line 30, after "received" insert "and expenditures made"

Page 8, line 1, after "received" insert "and expenditures made"

Page 12, line 19, after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 12, line 20, after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 12, line 21, remove ", furnishings."

Page 12, line 22, remove "and equipment" and after "party" insert "or nonprofit entity affiliated with or under the control of a state political party"

Page 17, line 18, after "candidates" insert "or candidate committees"

Page 17, line 20, after the second "candidate" insert "committee" and after "for" insert "a"

Page 17, line 21, replace the first underscored comma with "candidate and a candidate for a" and remove the second underscored comma

Page 17, line 23, after "candidate" insert "or candidate committee"

Page 17, line 30, replace "The" with "A" and after "candidate" insert "committee for a judicial district candidate shall file a statement with the secretary of state no later than the thirtieth day following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write-in votes. Any other candidate required to file a statement under this section"

Page 18, line 1, replace "appears" with "appeared"

Page 18, line 2, replace "seeks" with "sought" and after the second "candidate" insert "or candidate committee"

REPORT OF STANDING COMMITTEE (410)  
February 19, 2003 4:35 p.m.

Module No: SR-32-3347  
Carrier: Wardner  
Insert LC: 38386.0103 Title: .0200

Page 18, line 4, replace "must" with "or candidate committee shall"  
Page 18, line 5, replace "county auditor" with "appropriate filing officer"  
Page 18, line 6, replace "county auditor" with "appropriate filing officer"  
Page 18, line 8, replace "county auditor" with "appropriate filing officer"  
Page 18, line 9, replace "county auditor" with "filing officer"  
Page 18, line 10, replace "county auditor" with "filing officer"  
Page 18, line 12, replace "county auditor" with "filing officer"  
Page 18, line 14, replace "county auditor's office" with "filing officer"  
Page 18, line 20, after the first underscored comma insert "which"  
Renumber accordingly

(2) DESK, (3) COMM

Page No. 2

SR-32-3347

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10/22/03

Date



2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2403

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10/22/03

Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 3-21-03

Tape Number	Side A	Side B	Meter #
1	x		0-end
1		x	0-43.9
Committee Clerk Signature <i>Jay Burke</i>			

Minutes: Chairman Klein; called the hearing to order on SB 2403. All committee members were present.

Cory Fong, Deputy, Secretary of State; appeared in support of SB 2403 and provided a written statement (SEE ATTACHED TESTIMONY).

Representative Kasper; definition of candidate, does this clear up the problem when a person is a candidate and your already an incumbent in office, I don't see how it does.

Cory Fong; as I referred to in the beginning we have another bill that specifically deals with the litigation issues from the 2002 defining what a candidate is, and what a contribution is and that bill has passed in both chambers and now it will move on to the Governor.

Representative Klein; if your incumbent and your not up for reelection how does that fit in.

Cory Fong; yes, if you are an office holder you will have a yearly reporting requirement, which is different then what it is now.

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*Deanna Wallis*  
Operator's Signature

10/22/03  
Date

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 3-21-03

Representative Winrich: when we increase the recording thresholds from \$100 to \$200, one of the reasons was sighted for doing that was that mirrored some conditions in federal law, so that there will be more uniformed recording requirements, do these new changes reflect federal restrictions or are they unique for North Dakota.

Cory Fong: I cannot speak for Federal law, I think some are throughout the country if your referring to the building fund, I believe one of the motives for the building fund is because finance law is going through a change.

Representative Klemm: are we talking about individual contributions?

Cory Fong: the language that is taken out right now, would allow the candidate to tax that on, so it would be my understanding that taking that language out would be on a individual basis.

It would only have to be recorded by the district party from the original contributor.

Representative Amerman: page 12, section 2, line 18 would this allow foreign corporations to donate money for a building fund and that would be allowed under this.

Cory Fong: there is no distinction between foreign and domestic, what do you mean by foreign, in our office we also register cooperation and we consider any corporation out of state foreign.

Al Jaeger, Secretary of State: we have gone baby steps quite a few sessions, some of your questions refer to the audit process, right now none of this will do any good if you leave the law the way it is now. We will probably struggle with this a little bit and will probably be back next session, but what we have now is nothing, if we are going to have some type of system it has to be recorded. We need some type of documentation.

Jason Styerak, Executive Director, Republican Party: appeared in support of SB 2403 and provided a written statement (SEE ATTACHED TESTIMONY).

Page 3  
House Government and Veterans Affairs Committee  
Bill/Resolution Number SB 2403  
Hearing Date 3-21-03

Sue Tohm, League of Women Voters of North Dakota: appeared in opposition of SB 2403 and provided a written statement (SEE ATTACHED TESTIMONY).

Representative Amerman: can you explain it again what is happening with the Federal law?

Jason Styerak: the building fund isn't new, it is not being introduced in North Dakota, it has been in place under Federal law for a decade, and it is no secret the Republican party has had a building fund, and we have had to get rid of it under the new campaign finance reform act was passed and went into effect November 6. And that is why we are asking that to stay in the bill and essentially putting it into law because if it goes back the way it was under federal law, you don't know who is making the contribution, and how the disbursements are being made, we believe pure absolute transparency money in, who it came from and money going out and you know how it is spent.

Vern Thompson, Bismarck: appeared neutral I want to applaud Secretary of State Jaeger for moving forward, with the concept of campaign finance reform, I'm disappointed with what could be a really good bill, and the citizens of North Dakota would really like to see and is long over due to be employed by political parties, specifically where this bill is from, lets be clear about this North Dakota has not allowed corporate contributions for building for political parties in the past and I don't think North Dakota wants that, but that is in this section of the bill on page 12. I would hope that we keep that door closed, regard less what Jason said earlier about McCain Finegold, you don't need to allow corporate contributions for this building fund you can set up a building fund but you don't have to have corporate contributions for it. If this section stays in the bill I wouldn't call it campaign reform, I would call it campaign finance deform. I support SB 2403 and its concept of accountability.

Page 4

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 3-21-03

Representative Kasper: does the Democrat Party in North Dakota have a building fund established under any type of North Dakota law?

Vern Thompson: no,

Representative Kasper: there is no building fund for the Democrat party, is there a building fund that someone else's owns.

Vern Thompson: the Democratic party does not have a building fund, the Democrat Party in North Dakota does not own a building.

Representative Kasper: is there some other entity that owns the building that the Democrat Party occupies?

Vern Thompson: yes.

Vern Thompson: the Democratic Party rents office space, we rent that from a private group.

Representative Kasper: does that private group own the building, does that private group accept corporate contributions?

Vern Thompson: that private group accepts private and corporate contributions.

Representative Kasper: do you know who is on the board of directors of this non profit organization, that you rent your space from?

Vern Thompson: all that information would be filed with the Secretary of States office.

Representative Kasper: are you on the board?

Vern Thompson: I'm not on the board.

Representative Sittler: what is the name of the organization that owns the building?

Vern Thompson: the Kennedy Memorial foundation, that where the North Dakota Democratic Party rents space from.

Page 5

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 3-21-03

Representative Sitte: what is the rent?

Vern Thompson: I don't think that is privy to this piece of legislation, if you want to ask a board member that is fine.

Hearing closed.

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Deanna Hall  
Operator's Signature

10/22/03

Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 3-27-03

Tape Number	Side A	Side B	Meter #
1	x		44.2-end
1		x	0
Committee Clerk Signature <i>Gray Bank</i>			

Minutes: Chairman Klein: lets take up SB 2403. All committee members were present.

Representative Devlin: presented amendments made by the newspaper association, what this does is exempts the identifiable person applying for an absentee ballot from the open record law, no longer will political parties be able to go to the court house and find out who has an absentee ballot. **(SEE ATTACHED TESTIMONY).**

Representative Devlin: **Moved the AMENDMENT** for SB 2403.

Representative Grande: **SECOND** the motion.

**VOTE: 11-YES 2-NO 1-ABSENT (KLEMIN).**

Representative Amerman: presented amendments for SB 2403, page 12, remove lines 18 through 30.

Representative Kasper: the amendment removes the ability to make a campaign contribution for a building fund, and what this part does if you keep it in is it requires full disclosure and nontax deductibility of campaign contributions and a requirement to report to the Secretary of Sate.

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*Deanna Walker*  
Operator's Signature

10/22/03  
Date

Page 2  
House Government and Veterans Affairs Committee  
Bill/Resolution Number SB 2403  
Hearing Date 3-27-03

Representative Winrich: I disagree with Kasper, this does not prohibit a political party from having a building fund the political party can still have the building fund what this does is to allow something that has never been allowed in North Dakota before and that is contributions by the corporations, cooperatives, or associations. What has changed and why this is so important to one of the political parties is that although that building fund has existed for a number of years it can no longer accept unlimited soft money contributions from national contributors because the McCain Finegold Act has eliminated soft money.

Representative Amerman: **MOVED THE (2nd) AMENDMENT.**

Representative Winrich: **SECOND** the Amerman amendment.

**VOTE: 5-YES 8-NO 1-ABSENT (KLEMIN).**

Representative Winrich: Mr. Chairman, I want to let you know my intent to file a **MINORITY REPORT** on that amendment.

Representative Klein: that will be no problem.

Representative Grande: **MOVED TO (3rd) AMEND** SB 2403 as presented by the Secretary of State (page 2, line 17, and page 2, line 19.)

Representative Devlin: **SECOND** the motion to amend SB 2403 as presented by the Secretary of State.

**All in favor 1-ABSENT (KLEMIN).**

Representative Haas: made a motion to **DO PASS AS AMENDED.**

Representative Meier: **SECOND** the motion to DO PASS AS AMENDED on SB 2403.

**VOTE: 10-YES 3-NO 1-ABSENT (KLEMIN).**

**Motion carried.**

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Operator's Signature

10/22/03

Date



Page 3

House Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 3-27-03

Representative Kasper will carry the bill to the floor.

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Deanna Waller  
Operator's Signature

10/22/03

Date

Wednesday, March 26, 2003 19/

**PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2403** Devlin

Page 1, line 3, after "sections" insert "16.1-07-05"

Page 1, line 5, after "to" insert "absentee ballot applications and"

Page 1, after line 6, insert:

**SECTION 1. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**§ 16.1-07-05. Time for applying for ballot.** At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election. The identity of voters applying for absentee ballots and the applications are exempt records pursuant to section 44-04-17.1(5).

Page 1, line 7, delete "1" and insert "2"

Page 4, line 3, delete "2" and insert "3"

Page 5, line 18, delete "3" and insert "4"

Page 6, line 19, delete "4" and insert "5"

Wednesday, March 26, 2003  
Proposed Amendments  
Engrossed SB 2403  
Page 2 of 2

Page 8, line 7, delete "5" and insert "6"

Page 8, line 22, delete "6" and insert "7"

Page 11, line 25, delete "7" and insert "8"

Page 13, line 1, delete "8" and insert "9"

Page 13, line 14, delete "9" and insert "10"

Page 14, line 16, delete "10" and insert "11"

Page 14, line 29, delete "11" and insert "12"

Page 16, line 12, delete "12" and insert "13"

Page 17, line 18, delete "13" and insert "14"

Page 18, line 24, delete "14" and insert "15"

Page 19, line 6, delete "15" and insert "16"

Renumber accordingly

Roll Call Vote #: 3-27-03  
1<sup>st</sup> Amendment

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE  
SENATE BILL/RESOLUTION NO. 2403

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move to Amend as Presented by Rep. Devlin

Motion Made By Rep. Devlin Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman	X	
Vice Chairman B.B. Grande	X		L. Potter	X	
W.R. Devlin	X		C. Williams	X	
C.B. Haas	X		L. Winrich		X
J. Kasper	X				
L.R. Klemin	A	A			
L. Meier	X				
M. Sitte		X			
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 11 No 2

Absent 1 (Rep. Klemin)

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall 10/22/03  
Operator's Signature Date

38366.0202  
Title.

Prepared by the Legislative Council staff for  
Representative Amerman  
March 11, 2003

*2nd*

*Amerman* PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

Page 11, line 28, remove "1."

Page 12, remove lines 18 through 30

Renumber accordingly

Page No. 1

38366.0202

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*Deanna Hall*  
Operator's Signature

*10/22/03*  
Date

Roll Call Vote #: 2<sup>nd</sup> Amendment Date: 3-27-03

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE  
SENATE BILL/RESOLUTION NO. 2403

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38366 0203

Action Taken Move to amend as presented by Amerman

Motion Made By Rep. Amerman Seconded By Rep. Winnich

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein		X	B. Amerman	X	
Vice Chairman B.B. Grande		X	L. Potter	X	
W.R. Devlin	X		C. Williams	X	
C.B. Haas		X	L. Winnich	X	
J. Kasper		X			
L.R. Klemin	A	A			
L. Meier		X			
M. Sitte		X			
W.W. Tieman		X			
R.H. Wikenheiser		X			

Total (Yes) 5 No 8

Absent 1 Rep. Klemin

Floor Assignment Rep. Winnich

If the vote is on an amendment, briefly indicate intent:

Winnich requested a Minority Report  
(divided committee report)

Sec. of State

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

3rd  
amendment

Page 2, line 17, after "exchange" insert "for fair market value"

Page 2, line 19, after "reimbursed" insert "by payment of money"

Renumber accordingly

Page 1

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Deanna Hall  
Operator's Signature

10/22/03  
Date

Roll Call Vote #: 3rd Amendment Date: 3-27-03

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE  
SENATE BILL/RESOLUTION NO. 2403

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move to Amend as presented by Secretary of State

Motion Made By Rep. Grande Seconded By Rep. Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein			B. Amerman		
Vice Chairman B.B. Grande			L. Potter		
W.R. Devlin			C. Williams		
C.B. Haas			L. Winrich		
J. Kasper					
L.R. Klemin	A	A			
L. Meier					
M. Sitte					
W.W. Tiernan					
R.H. Wikenheiser					

Total (Yes) 13 No 0

Absent 1 (Rep Klemin)

Floor Assignment Voice vote

If the vote is on an amendment, briefly indicate intent:

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Deanna Waller  
Operator's Signature

10/22/03  
Date



Roll Call Vote #: 4<sup>th</sup> last Date: 3-27-03

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE  
SENATE BILL/RESOLUTION NO. 2403

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38366.0204

Action Taken Do Pass As Amended on bill page 2 Sec. of State Office

Motion Made By Rep. Haas Seconded By Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman		X
Vice Chairman B.B. Grande	X		L. Potter	X	
W.R. Devlin	X		C. Williams		X
C.B. Haas	X		L. Winrich		X
J. Kasper	X				
L.R. Klemin	A	A			
L. Meier	X				
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 10 No 3

Absent 1 (Rep Klemin)

Floor Assignment Rep. Kasper

If the vote is on an amendment, briefly indicate intent:

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Deanna Waller  
Operator's Signature

10/22/03  
Date

REPORT OF STANDING COMMITTEE-DIVIDED (430)  
March 31, 2003 8:48 a.m.

Module No: HR-57-6137  
Carrier: Kasper  
Insert LC: 38366.0204 Title: .0400

**REPORT OF STANDING COMMITTEE (MAJORITY)**

SB 2403, as engrossed: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman) A MAJORITY of your committee (Reps. Devlin, Grande, Haas, Kasper, M. Klein, Meier, Potter, Sitte, Tieman, Wikenheiser) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS**.

Page 1, line 3, after "sections" insert "16.1-07-05,"

Page 1, line 5, after "to" insert "absentee ballot applications and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-05. Time for applying for ballot.** At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election. The identity of voters applying for absentee ballots and the applications are exempt records under section 44-04-17.1."

Page 2, line 17, after the second "a" insert "fair market value"

Page 2, line 19, after "reimbursed" insert "by a payment of money"

Page 16, line 11, replace "13" with "14"

Page 18, line 27, replace "13" with "14"

Renumber accordingly

The reports of the majority and the minority were placed on the Seventh order of business on the calendar for the succeeding legislative day.

REPORT OF STANDING COMMITTEE-DIVIDED (430)  
March 31, 2003 8:56 a.m.

Module No: HR-57-6142  
Carrier: Winrich  
Insert LC: 38386.0203 Title: .0300

**REPORT OF STANDING COMMITTEE (MINORITY)**

SB 2403, as engrossed: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman) A MINORITY of your committee (Reps. Amerman, Williams, Winrich) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS**.

Page 1, line 3, after "sections" insert "16.1-07-05,"

Page 1, line 5, after "to" insert "absentee ballot applications and"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**16.1-07-05. Time for applying for ballot.** At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine or is a qualified elector living outside the United States may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election. The identity of voters applying for absentee ballots and the applications are exempt records under section 44-04-17.1.

Page 2, line 17, after the second "a" insert "fair market value"

Page 2, line 19, after "reimbursed" insert "by a payment of money"

Page 11, line 28, remove "1."

Page 12, remove lines 18 through 30

Page 16, line 11, replace "13" with "14"

Page 18, line 27, replace "13" with "14"

Renumber accordingly

The reports of the majority and the minority were placed on the Seventh order of business on the calendar for the succeeding legislative day.

2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

CONFERENCE COMMITTEE

SB 2403

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Deanna Halliwell  
Operator's Signature

10/22/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans Affairs Committee

☒ Conference Committee

Hearing Date 04/10/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		0-1782
Committee Clerk Signature <i>Lisa Hays</i>			

Minutes:

Senator Wardner calls conference committee on SB 2403 to order. Senators Wardner, Dever and Fairfield and Representatives Kasper, Tieman, and Amerman are present.

Senator Wardner ask Rep. Kasper to explain what the house did with the bill. He also states what the senates concerns with the changes are which are in Section 1 of the engrossed house bill.

Rep. Kasper states that they are open for discussion on that issue and that they would also like to talk about the building fund. He has amendments for that portion. Committee goes over the engrossed version of the bill iwht the house majority amendments.

Senator Fairfield asks wha tthe rational for the amendment purposed was.

Rep. Kasper explains that it was from a member of the house GVA that had a discomfort with that section and so when it was purposed their amendment prevailed. But, they do not have a problem taken that portion out of the bill.

Senator Warder asks if they are in agreement on that part and Rep. Kasper states that they are.

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*Deanna Ballantyne*  
Operator's Signature

10/22/03  
Date

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 04/10/03

Representative Amerman is concerned with the constitutionality of the section that talks about foreign corporations and they ask Cory Fong, Deputy Secretary of State to address this question.

He states out of state corporations would be considered foreign corporations.

Rep. Amerman asks if foreign corporations could make contributions and Fong answered he thought it might be allowed but, wasn't positive. Senator Wardner states he will have the Attorney General's office look at it.

Senator Wardner calls the committee in recess until a further time.

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*Deanna Waller*  
Operator's Signature

10/22/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans Affairs Committee

☒ Conference Committee

Hearing Date 04/11/03

Tape Number	Side A	Side B	Meter #
Tape 1		x	370-3225
Committee Clerk Signature			

Minutes:

Senator Wardner calls conference committee on SB 2403 to order. Senators Wardner, Dever and Fairfield and Representatives Kasper, Tieman, and Amerman are all present.

Senator Wardner asks Rep. Kasper to explain the amendment that is before all of them and states he has asked Jon Bjornson from Legislative Council to be there in case there are any questions. Rep. Kasper goes over amendments and makes a motion to move the amendment.

Rep. Tieman 2nds. The committee goes through the amendment line by line. Senator Fairfield asks if the amendments say that the money can't be used for any other purposes? Rep. Kasper states it can only be used for maintenance of the building and must be fully reported. Senator Fairfield asks if it is other than a political candidate that the renters payments can be used for political purposes. Rep. Kasper answers no. Senator Fairfield asks if any income and financial gain must be reported but used toward any reason. Rep. Kasper remarks that he does not believe that is what it says and reads the last part of the amendment again. Senator Fairfield thought the

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Deanna Waller  
Operator's Signature

10/22/03

Date

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 04/11/03

language could be changed and hands out a amendment. (attached) Senator Fairfield goes through her amendments and would like to go through with the other amendment made.

Cory Fong with the Secretary of States states that both amendments make a good strive in what his office is trying to accomplish.

Rep. Kasper agrees with the amendments. A voice vote is taken to agree with the last 2 lines stated in Senator Fairfield's amendments. all concur. Senator Fairfield then goes over the first statement in her amendment. Cory Fong from the Sec. of State's office feels that this might conflict with SB 2063. Senator Fairfield said she is review that bill but, would like to include this statement anyway.

Senator Wardner wants the committee to recess for time to look over this section but would like to leave the motion open and the 2nd.

Recessed until further notice.

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Deanna Waller  
Operator's Signature

10/22/03

Date



2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans Affairs Committee

☒ Conference Committee

Hearing Date 04/14/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		0-1900
Committee Clerk Signature			

Minutes:

Senator Wardner begins conference committee on SB 2403. Senator Wardner, Dever, and Fairfield and Representatives Kasper, Tieman, and Amerman are present. Senator Wardner reminds committee that there is a motion on the table that the house recedes and further amends with amendments offered by Rep. Kasper. 6 Yes 0 No.

The discussion begins on Senator Fairfield's amendments that she handed out last meeting.

Senator Fairfield explains she has new amendment to replace the old. She hands them out and goes through the amendment. Senator Fairfield moves the top half of her new amendments .0211 the portion that begins with Page 1 and Page 2 only.

Representative Kasper thinks these will show disarray and uncertainty and will oppose the motion.

Senator Fairfield asks if his concern of Page 2 is removing Line 16 through 19. How would that change from policy when it is just moving the exclusion to an inclusion?

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10/22/03  
Date

Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2403

Hearing Date 04/14/03

Rep. Kasper: I am not going to support Page 1 either. Page 2 Line 18 and 19 on the previous amendment just adopted by adding by payments of money, clears up this problem anyway.

Senator Fairfield: I would agree Lines 15 to 19 are important, we are just putting them in the inclusions. I feel we are clarifying if we can't determine fair market value meets the test.

Rep. Kasper: Page 1 amendments is very ambiguous. I feel it throws the bill into a gray area. I just feel we are trying to make it very clear.

Rep. Tieman: I agree with Rep. Kasper. It is black and white and I would like to leave it.

Rep. Amerman: I think this shows our citizens we are trying to do the right thing. The tighter this is the better off we are. If we leave it in the exclusion I don't think I could explain this to anyone.

Senator Fairfield: On the house floor, who did you determine makes the fair market value? Or is it different every time?

Rep. Kasper: Fair Market Value is arrived at between the buyer and seller. You negotiate and come up with a price. Whatever the number is you report it.

Senator Fairfield: Can you as a citizens dispute this?

Senator Dever: Yes, the opponent can dispute this and call for an audit from the Secretary of State.

Senator Fairfield: I think this is absolutely essential that we have this.

Senator Dever: If fair market value can't be determined how can you put it on the report?

Rep. Kasper: The full disclosure is the key. The public can make that decision because it is on the public report. The candidate will pay for it by the vote if they don't like this.

Senator Fairfield: I think it will be left to the Attorney General then and I feel there is no clarity here if we don't put this on.

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10/22/03  
Date

Page 3  
Senate Government and Veterans Affairs Committee  
Bill/Resolution Number SB 2403  
Hearing Date 04/14/03

Vote Yes: Senator Fairfield, Representative Amerman

Vote No: Sen. Wardner, Dever Rep. Kasper, Tieman

Senator Fairfield motions to adopt the second half of her amendment pertaining to Page 12

Senator Dever 2nd

Vote 6 Yes 0 No

Carrier: Senator Wardner

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Deanna Hall  
Operator's Signature

10/22/03  
Date

38366.0206  
Title.

Prepared by the Legislative Council staff for  
Representative Kasper  
April 9, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

That the Senate accede to the House amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be further amended as follows:

Page <sup>13</sup>~~12~~ line ~~20~~, after the underscored period insert "Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection."

Renumber accordingly

Deanna Hall  
Operator's Signature

10/22/03

Date

38366.0207  
Title.

Prepared by the Legislative Council staff for  
Senator Wardner  
April 10, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

That the House recede from its amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be amended as follows:

Page 2, line 17, after the second "a" insert "fair market value"

Page 2, line 19, after "reimbursed" insert "by a payment of money"

Page 12, line 30, after the underscored period insert "Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection."

Renumber accordingly

Motion made: 4/4/03

Vote Date: 04/14/03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans' Affairs Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number 38366.0207

Action Taken house recedes and further amend

Motion Made By Kasper Seconded By Tieman

Senators	Yes	No	Senators	Yes	No
Senator Wardner	✓		Representative Kasper	✓	
Senator Dever	✓		Representative Tieman	✓	
Senator Fairfield	✓		Representative Amerman	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Waller  
Operator's Signature

10/22/03  
Date

38366.0209  
Title.

Prepared by the Legislative Council staff for  
Senator Fairfield  
April 10, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

That the House recede from its amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be amended as follows:

Page 1, line 20, overstrike "or" and after "money" insert ", or anything of value, including products, services, property, rents, advertising, or sponsorships for which reimbursement is not made or for which the actual cost or fair market value cannot be determined"

Page 12, line 21, replace "to" with "Money in the fund must" and after "used" insert "exclusively"

Page 12, line 29, replace "expenses paid" with "expenditures made"

Renumber accordingly

Page No. 1

38366.0209

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Deanna Waller  
Operator's Signature

10/22/03  
Date

38366.0211  
Title.

Prepared by the Legislative Council staff for  
Senator Fairfield  
April 14, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

That the House recede from its amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be amended as follows:

Page 1, line 20, overstrike "or" and after "money" insert ", or anything of value, including products, services, property, rents, advertising, or sponsorships for which reimbursement by payment of money is not made or for which the actual cost or fair market value cannot be determined"

Page 2, line 10, overstrike "d."

Page 2, line 15, remove "Money or anything of value received for"

Page 2, remove lines 16 through 19

Page 12, line 21, replace "to" with ", Money in the fund must" and after "used" insert "exclusively"

Page 12, line 29, replace "expenses paid" with "expenditures made"

Renumber accordingly



Date: 04/10/03  
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans' Affairs Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Further amend (38366.0211 bottom half Page 12)

Motion Made By Sen. Fairfield Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Wardner	✓		Representative Kasper	✓	
Senator Dever	✓		Representative Tieman	✓	
Senator Fairfield	✓		Representative Amerman	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment Wardner

If the vote is on an amendment, briefly indicate intent:

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Deanna Hall  
Operator's Signature

10/22/03  
Date

38366.0212  
Title.0500

Adopted by the Conference Committee  
April 14, 2003

*JS*  
4-15-03

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403

That the House recede from its amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be amended as follows:

Page 2, line 17, after the second "a" insert "fair market value"

Page 2, line 19, after "reimbursed" insert "by a payment of money"

Page 12, line 21, replace "to" with "Money in the fund must" and after "used" insert "exclusively"

Page 12, line 29, replace "expenses paid" with "expenditures made"

Page 12, line 30, after the underscored period insert "Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection."

Renumber accordingly

Date: 04/14/03  
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2403

Senate Government and Veterans' Affairs Committee

☒ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken further amend (top 1/2 of 38366.0211 parts Page 1+2)

Motion Made By Sen. Fairfield Seconded By Rep. Amerman

Senators	Yes	No	Senators	Yes	No
Senator Wardner		✓	Representative Kasper		✓
Senator Dever		✓	Representative Tieman		✓
Senator Fairfield	✓		Representative Amerman	✓	

Total (Yes) 2 No 4

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

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Deanna Hallmark  
Operator's Signature

10/22/03  
Date

REPORT OF CONFERENCE COMMITTEE (420)  
April 15, 2003 11:19 a.m.

Module No: SR-68-7740

Insert LC: 38366.0212

**REPORT OF CONFERENCE COMMITTEE**

SB 2403, as engrossed: Your conference committee (Sens. Wardner, Dever, Fairfield and Reps. Kasper, Tieman, Amerman) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1065, adopt amendments as follows, and place SB 2403 on the Seventh order:

That the House recede from its amendments as printed on page 1065 of the Senate Journal and pages 1150 and 1151 of the House Journal and that Engrossed Senate Bill No. 2403 be amended as follows:

Page 2, line 17, after the second "a" insert "fair market value"

Page 2, line 19, after "reimbursed" insert "by a payment of money"

Page 12, line 21, replace "to" with "Money in the fund must" and after "used" insert "exclusively"

Page 12, line 29, replace "expenses paid" with "expenditures made"

Page 12, line 30, after the underscored period insert "Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection."

Renumber accordingly

Engrossed SB 2403 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

SB 2403

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Operator's Signature

10/22/03  
Date

ALVIN A. JAEGER  
SECRETARY OF STATE  
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February 6, 2003

**TO:** Senator Karen Krebsbach and Members of the Senate Government and Veteran's Affairs Committee

**FR:** Cory G. Fong, Deputy Secretary of State

**RE:** Senate Bill No. 2403 - Comprehensive Campaign Finance and Disclosure

Senate Bill No. 2403 makes numerous key and comprehensive changes to North Dakota's present campaign finance and disclosure laws contained in chapter 16.1-10. The bill is intended to be a companion to Senate Bill No. 2063, which clarifies the definitions of a contribution and a candidate. Together, the two bills offer comprehensive improvements and reforms to North Dakota's present campaign finance and disclosure laws. In some areas, this bill is reliant upon the campaign disclosure bill (SB 2063) that defines what constitutes a contribution and a candidate.

Before I explain the highlights of Senate Bill No. 2403, the Secretary of State's office is proposing a few minor technical amendments to the bill.

The bill with the proposed amendments accomplishes the following:

- Restores the requirement that a legislative candidate must report a contribution received in excess of \$200 even if the contribution will immediately be signed over to the candidate's district party. Likewise, the district party must report a contribution in excess of \$200, which has been signed over to the district party by a candidate. (Section 1)
- Excludes from the definition of contribution any commercial transactions and contributions of products and services for which the actual cost or fair market value are reimbursed. (Section 1)
- Makes the definition of expenditure consistent, where possible and practical, with the updated definition of contribution, which is being changed in Senate Bill No. 2063, that defines candidates and contributions. (Section 1 and SB 2063)
- Establishes distinct categories of political committees to include political action committees, candidate committees, multi-candidate political committees, and measure committees, all of which would be required to register and report with the Secretary of State. (Sections 1, 4, and 5)
- Clarifies the reporting requirements for statewide candidates, whether or not they have registered a candidate committee with the Secretary of State. (Sections 2 and 5)
- Raises the political committee registration fee with the Secretary of State from \$5 each calendar year to \$25 each calendar year. (Section 5)

If you want to choose your own future, VOTE! - Tuesday Zwetow - 2000-2002 Get Out the Vote Slogan Winner - Bismarck Vo Tech

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*Deanne Wallis*  
Operator's Signature

10/22/03

Date

- Requires political committees to register with the Secretary of State within 15 business days of receiving any contribution or making any expenditure. The present law requires political committees to register with the Secretary of State within five days of the receiving any contribution. (Section 5)
- Requires Year-End reporting by January 31 of each calendar year for all filer types. (Sections 2, 3, 4, 6, 9, and SB 2063)
- Requires disclosure of gross contributions received and "cash-on-hand" for:
  - o Statewide candidates or their registered candidate committees;
  - o State political parties;
  - o Registered political action committees;
  - o Registered multi-candidate committees; and
  - o Registered measure committees. (Sections 2, 3, 4, 6 and 9)
- Requires disclosure of expenditures made in excess of \$200 and gross expenditure reporting for state political parties and political action committees. (Sections 3 and 6)
- Requires disclosure of occupation, employer, and principle place of business of persons and political committees, not already registered with the state or the FEC, who contribute \$5,000 or more for all filer types. (Sections 2, 3, 4, 6 and 9)
- Allows state political parties to establish separate and segregated funds for the purpose of receiving donations from corporations, cooperative corporations, limited liability companies, and associations for the purpose of purchasing, maintaining, or renovating a building and for purchasing fixtures, furnishings, and equipment for the building. State political parties establishing a building fund shall disclose all contributions made to and from the fund during the previous calendar year, along with cash-on-hand in the fund at the start and close of the reporting period, by January 31 of each calendar year. (Section 7)
- Establishes a more comprehensive and meaningful process for the Secretary of State to follow when arranging an audit of a statement or when requested to arrange an audit of a statement filed according to the chapter. An audit may result in penalty fees assessed by the Secretary of State. (Section 11)
- Allows the Secretary of State to charge and collect late fees for any statement, registration, or report, or for any amended statement, registration, or report, that is not filed within the prescribed time.
  - o 6 days late - \$25
  - o 11 days late - \$50
  - o 12 days late or more - \$100 (Section 14)

SB 2403 - Comprehensive Campaign Finance and Disclosure  
Senate Government and Veteran's Affairs  
February 6, 2003  
Page three

- Requires the Secretary of State to provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to the law. (Section 15)
- Requires candidates for judicial district, county, and city candidates, in cities with a resident population of 5,000 or more as determined by the most recent federal decennial census, to disclose all contributions received in excess of \$200 within 30 days following an election. Judicial district candidates covered under this provision would be required to report to the Secretary of State. County and city candidates covered under this provision would be required to report to the county auditor. (Section 13 and amendments)

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Deanna Baller  
Operator's Signature

10/22/03

Date



PROPOSED AMENDMENTS TO SENATE BILL NO. 2403

2/6/03

Sec 9  
State

Page 5, line 23, remove "and"

Page 5, line 24, remove "expenditures made for political purposes."

Page 5, line 28, after "expenditure" insert "made"

Page 5, line 29, remove "made"

Page 6, line 17, remove "state"

Page 17, line 18, after "candidates" insert "or candidate committees"

Page 17, line 20, replace "for" with "committee for a"

Page 17, line 21, replace "county," with "candidate, and a candidate for a county"

Page 17, line 23, after "candidate" insert "or candidate committee"

Page 17, line 30, replace "The candidate" with "A candidate committee for a judicial district candidate shall file a statement with the secretary of state no later than the thirtieth day following the date of the election in which the candidate's name appeared on the ballot or in which the candidate sought election through write in votes. Any other candidate required to file a statement according to this section"

Page 18, line 1, replace "appears" with "appeared"

Page 18, line 2, replace "seeks" with "sought" and after "candidate" insert "or candidate committee"

Page 18, line 4, after "candidate" insert "or candidate committee"

Page 18, line 5, replace "county auditor" with "appropriate filing officer"

Page 18, line 6, replace "county auditor" with "appropriate filing officer"

Page 18, line 8, replace "county auditor" with "appropriate filing officer"

Page 18, line 9, replace "county auditor" with "appropriate filing officer"

Page 18, line 10, replace "county auditor" with "appropriate filing officer"

Page 18, line 12, replace "county auditor" with "appropriate filing officer"

Page 18, line 14, replace "county auditor's office" with "appropriate filing officer"

Page 18, line 20, after the first comma insert "that"

Renumber accordingly

Page 1

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10/22/03  
Date

**NORTH DAKOTA REPUBLICAN PARTY**

Friday, March 21, 2003

**TESTIMONY IN SUPPORT OF HB 2403**

1 CHAIRMAN KLEIN AND MEMBERS OF THE COMMITTEE:

2 I wish to thank this committee for allowing me to present testimony in support of  
3 Senate Bill 2403. The North Dakota Republican Party believes this legislation  
4 represents a step in the right direction for providing a more open process for political  
5 fundraising and reporting in North Dakota.

6 The political process, particularly the raising and spending of funds, must be  
7 honest, transparent and fair. Until now, North Dakota's campaign finance disclosure  
law provided an inadequate picture of the money in politics. Senate bill 2403 represents  
9 a pro-active and comprehensive reform proposal for reporting campaign contributions  
10 and expenditures, the proposed law provides reporting requirements for building fund  
11 donations that were a legal exemption under federal law but not subject to reporting  
12 requirements at the state or federal level, and, finally, this bill puts some teeth in North  
13 Dakota's campaign finance law by allowing the secretary of state to investigate  
14 irregularities.

15 The Republican Party also supports making building funds reportable under state  
16 law. Under an exemption in federal law, direct or in-kind corporate donations to state  
17 political parties were permitted for deposit in a separate, segregated account for the  
18 purpose of purchasing, maintaining, or renovating a building. Such building funds were

Page No. 1

Fifty-eighth  
Legislative Assembly

House Government and Veterans Affairs Committee

1 established by Republican and Democratic parties throughout the country, including the  
2 North Dakota Republican Party. The Republican National Committee and Democratic  
3 National Committee both had building fund accounts, accepting corporate donations. In  
4 fact the Democratic National Committee headquarters in Washington, D.C., is presently  
5 undergoing a \$30 million renovation that was paid for, in large measure, by corporate  
6 donations to their building fund. Significantly, political parties with building fund  
7 accounts were not subject to federal or state reporting requirements. So, while this  
8 money could be accepted, even in states that prohibited corporate donations, the  
9 money was not subject to any reporting requirements whatsoever. Senate Bill 2403  
10 provides full disclosure of the receipts and expenditures to building fund accounts.

11 The Republican Party also supports providing investigative authority for the  
12 secretary of state. The minimal fine schedule in Senate Bill 2403 will improve  
13 compliance with North Dakota's campaign reporting law. The integrity of the reports will  
14 be made more certain by allowing the secretary of state to seek clarification or conduct  
15 an audit when a substantial irregularity occurs.

16 The Republican Party supports SB 2403 for the above reasons. I thank the  
17 committee for the courtesy of allowing me to testify.

DATED March 21, 2003.

  
Jason W. Stverak  
Executive Director  
North Dakota Republican Party

Page No. 2

**Various Registration and Reporting Requirements of Senate Bill No. 2403**  
(Contained in Sections 2, 3, 4, 5, 6, 9, 10 and 13)

Requirement	Statewide Candidate or Registered Candidate Committee	Legislative Candidate	Judicial District, County & City Candidates <sup>1</sup>	State Party	District Party	Registered Political Action Committee	Registered Multi- Candidate Political Committee <sup>1</sup>	Registered Measure Committee
Registration Requirement with Secretary of State	Yes					Yes	Yes <sup>1</sup>	Yes
Pre-Primary and Pre-General reporting during each election year	Yes	Yes		Yes	Yes	Yes	Yes <sup>1</sup>	Yes
Year-End reporting following each calendar year	Yes <sup>1</sup>	Yes <sup>1</sup>		Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Post Election Reporting			Yes <sup>1</sup>					
Contributions received	Yes In excess of \$200	Yes In excess of \$200	Yes <sup>1</sup> In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes <sup>1</sup> In excess of \$200	Yes In excess of \$100
Gross total of all contributions received	Yes <sup>1</sup>			Yes <sup>1</sup>		Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Total cash on hand in the filer's account at the start and close of a reporting period	Yes <sup>1</sup>			Yes <sup>1</sup>		Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Expenditures made				Yes <sup>1</sup> In excess of \$200	No	Yes In excess of \$200		
Gross total of all expenditures made				Yes <sup>1</sup>	No	Yes <sup>1</sup>		
48 hour reporting of contributions received in excess of \$500	Yes	Yes	No	Yes	Yes	Yes	Yes <sup>1</sup>	Yes
Disclosure of occupation, employer, or principal place of business of any person contributing \$5,000 or more	Yes <sup>1</sup>	Yes <sup>1</sup>	No	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	No

<sup>1</sup> New requirement in SB 2403

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10/22/03

Date

To: Members of the Senate Government and Veterans Affairs Committee  
Senator Kresbach, Chairman, Senator Dever, Vice Chairman, Senator Brown,  
Senator Wardner, Senator Fairfield, Senator Carolyn Nelson

From: League of Women Voters of North Dakota

Date: February 6, 2003

Re: SB 2403

My name is Suzanne Dobbins and I am the current president of the League of Women Voters of North Dakota (LWVND). Although I cannot be in attendance at this hearing, I want to address SB 2403 on behalf of the League of Women Voters of North Dakota.

The League of Women Voters (LWV) works at the local, state and national levels, paralleling the levels of American government. Most people know us through the local League of Women Voters in their community and through the public forums held to educate voters about the candidates and issues in the next upcoming election.

At the national and state level the LWV adopts issues and holds to the position that in a healthy democracy, citizens have more influence on public policy than special interests.

Officially our position is thus: *Campaign Finance: Improve methods of financing political campaigns in order to ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office and promote citizen participation in the political process.*

Today we speak to this issue and are expressing our concern about some of the regressive language written into SB 2403 regarding contributions and allowing corporations, associations or special interest groups to have *undue influence* through "purchasing, maintaining or renovating or bartering for services".

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*Suzanne Dobbins*  
Operator's Signature

*10/22/03*  
Date

To be more specific, I refer to Section 1, number 3, d, on page 2, lines 15 - 17. This language allows loop holes and sets up the possibility for laundering of large sums of money especially in the bargained-for exchange. If a special interest group or corporation were to contribute space, meals and advertising worth \$50,000 and, in exchange a candidate gives a speech and a bookmark, we now have bartered-for exchange. Indeed, why would anyone contribute money to a campaign again when this language allow such an obvious way to circumvent the giving and reporting of actual dollars to support a campaign?

Continuing on, page 3, number 8, the definition of Political Committee, lines 9 - 21 are more inclusive and names multicandidate political committees and a measure committee among other groups. This language is more inclusive and by itself is language that can be supported by the league.

Section 2, of this bill is also more inclusive, requires additional reporting and requires detailed reporting by those contributing \$5,000 or more. Again, this language without the loopholes written into Section 1 can be supported by the League and provides additional information to voters about the amount of money spent on a campaign. The additional detailed reporting by large contributors is a step forward and provides valuable information to voters.

However, Section 4, number 1, on page 6, lines 25 - 30 sets forth a double standard. In

this section a person or measure committee is held to detailed reporting on any contribution in excess of \$100. The language targets citizen democracy by holding persons or measure committees to a higher standard than candidates for public office. The League contends the same standard should be held forth for all groups, candidates, political parties and measure committees. Democracy is about citizen participation. The more knowledge given to the voter, the more likely they are to make an informed vote. Therefore, the League recommends all entities be raised to the higher standard and all entities provide the name and mailing address of all contributors who contributed in excess of \$100, the amount of each reportable contribution, and the date each reportable contribution was received.

Some of the most troubling language of this bill is included in Section 7, number 2, page 12, lines 18 - 28. This language takes a giant step backwards in campaign finance reporting. In 1981, legislation was passed that banned "soft money" contributions by corporations, individuals or special interest groups. This language changes the scope of the law and expands the law without any monetary limits. It puts the individual voter at a great disadvantage while giving unfair advantage to corporations or associations. We object to the return of limitless "soft money" contributions. We urge the committee to strike this language from the bill or if the wording remains, give the bill a "do not pass". Although some of the other language and reporting is to be commended, we cannot in good faith support a gigantic step backwards in favor of fewer small steps forwards.

We support the additional reporting requirements written into Section 9, and the requirements, auditing and penalties included in Section 10. Section 13, adds new groups to the reporting requirements including judicial district, county or city office in cities with a resident population of five thousand or more. Again, the League supports campaign finance reporting for all candidates and commends the authors of the bill for adding this new language.

As written and without amendments, the League of Women Voters of North Dakota holds to the position of "do not pass" for Senate Bill 2403. However, the LWVND strongly urges the committee to amend out Section 1, number 3, d and Section 7, number 2, page 12, lines 18 - 28 and rewrite SB 2403. With amendments we would reconsider our position on SB 2403.

Thank you for the opportunity to testify. We look forward to the work of this committee regarding SB 2403.

Suzanne Dobbins, President, [dobbinsnd@aol.com](mailto:dobbinsnd@aol.com)  
League of Women Voters of North Dakota  
P.O. Box 295  
Fargo, North Dakota.

Local Contact  
Sue Tohm, President, [stohm1@bis.midco.net](mailto:stohm1@bis.midco.net)  
League of Women Voters of Bismarck - Mandan  
1701 East Capitol Ave. # 7  
Bismarck, ND 58501



**Testimony of Steve Tomac  
Government & Veterans Affairs Committee  
SB 2403  
February 6, 2003**

**Madam Chairman, members of the GVA Committee:**

**I wanted you to know that I have fond memories of this Committee and the work it did during the 1993 Session on the telecommunications bills. Those bills were difficult to understand and we worked together to do what we thought was best for North Dakota. Campaign finance is also difficult, but it seems is always clouded with partisan objectives. There is no doubt that this committee is capable of ignoring those partisan pressures and doing what is best for North Dakota.**

**As you know, I was part of a lawsuit during 2002, which sought to clarify the statute on corporate campaign contributions. The Court found that the present law is clear. Corporations cannot contribute, not in money, time, nor in-kind services. During the course of this lawsuit there was no one...not one person....who indicated any type of support for allowing corporations to contribute in any form. As a matter of fact, the Attorney General indicated several times that he was opposed to corporate contributions but felt obligated to interpret the law the way that he read it.**

**So I come today wondering where paragraph 2 of Section 7 (page 12) comes from. This subsection appears to contradict the current law against any type of corporate contributions. As I read and understand this subsection, it would allow corporations to donate the building or money to buy a building. It would also allow corporations to donate chairs and tables and copiers and collators and telephones and whatever equipment is necessary, or the money to buy that equipment. This new language opens a Pandora's Box, which will have endless questions, and countless opinions on what can be given or bought with the money.**

**It is my firmest belief that if we want to uphold the integrity in our public officials, we need to continue to prohibit corporations from being involved in the elections. It really doesn't matter whether a corporation donates the building, the equipment, the postage, or the advertising, or money itself....It is still an influence that casts a shadow on the process. As we consider this bill, we also need to ask the question...what problem are we trying to fix?**

**I would encourage this Committee to amend SB 2403 by deleting lines 18 thru 28 on page 12 of the bill as introduced. Thank you very much for your time!**

To: Members of the House Government and Veterans Affairs Committee,  
Chairman Klein and Representatives Grande, Devlin, Haas, Kaspar, Lemin, Meier, Sitte,  
Tieman, Wikenheiser, Amerman, Potter, Williams, Winrich

From: League of Women Voters of North Dakota

Date: February 6, 2003

Re: SB 2403

My name is Sue Tohm and I here today speaking on behalf of the League of Women  
Voters of North Dakota (LWVND).

The League of Women Voters (LWV) works at the local, state and national levels,  
paralleling the levels of American government. Most people know us through the local  
League of Women Voters in their community and through the public forums held to  
educate voters about the candidates and issues in the next upcoming election.

At the national and state level the LWV adopts issues and holds to the position that in a  
healthy democracy, citizens have more influence on public policy than special interests.  
Officially our position is thus: *Campaign Finance: Improve methods of financing  
political campaigns in order to ensure the public's right to know, combat corruption and  
undue influence, enable candidates to compete more equitably for public office and  
promote citizen participation in the political process.*

To be more specific, I am here today to speak in opposition to certain sections of this  
bill. We believe it is the best interest of voters to know the source and amount of all  
funds used to support a campaign for public office. We recommend amending SB 2403

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under Section 1, on page 2, and remove line 9, item c - Money spent by a candidate on the candidate's own behalf. Item d, lines 15 - 17 on page 2 be removed. If the term fair market value is amended into this section then who decides what is the "fair market value in a bargained for exchange. Lines 18 and 19 and page 2 are unclear. What is the intent of item c and what does the term reimbursed mean?

Continuing on, page 3, number 8, the definition of Political Committee, lines 9 - 21 are more inclusive and names multicandidate political committees and a measure committee among other groups. This language is more inclusive and by itself is language that can be supported by the league.

Section 2, of this bill is also more inclusive, requires additional reporting and requires detailed reporting by those contributing \$5,000 or more. Again, this language without the loopholes written into Section 1 can be supported by the League and provides additional information to voters about the amount of money spent on a campaign. The additional detailed reporting by large contributors is a step forward and provides valuable information to voters.

However, Section 4, number 1, on page 6, lines 25 - 30 sets forth a double standard. In this section a person or measure committee is held to detailed reporting on any contribution in excess of \$100. The language targets citizen democracy by holding persons or measure committees to a higher standard than candidates for public office.

The League contends the same standard should be held forth for all groups, candidates, political parties and measure committees. Democracy is about citizen participation. The more knowledge given to the voter, the more likely they are to make an informed vote. Therefore, the League recommends all entities be raised to the higher standard and all entities provide the name and mailing address of all contributors who contributed in excess of \$100, the amount of each reportable contribution, and the date each reportable contribution was received.

Some of the most troubling language of this bill is included in Section 7, number 2, page 12, lines 18 - 27. This language takes a giant step backwards in campaign finance reporting. This language provides an indirect method of allowing corporations or associations to support candidates. Our previous language in law bans such contributions. This language changes the scope of the law and expands the law without any monetary limits. It puts the individual voter at a great disadvantage while giving unfair advantage to corporations or associations. We urge the committee to strike this language from the bill or if the wording remains, give the bill a "do not pass". Although some of the other language and reporting is to be commended, we cannot in good faith support a gigantic step backwards in favor of fewer small steps forwards.

We support the additional reporting requirements written into Section 9, and the requirements, auditing and penalties included in Section 10. Section 13, adds new groups to the reporting requirements including judicial district, county or city office in

cities with a resident population of five thousand or more. Again, the League supports campaign finance reporting for all candidates and commends the authors of the bill for adding this new language.

Unless amended the League of Women Voters of North Dakota holds to the position of "do not pass" for Senate Bill 2403. The LWVND strongly urges the committee to amend this bill and strengthen campaign finance reporting in North Dakota.

Thank you for the opportunity to testify. We look forward to the work of this committee regarding SB 2403.

Suzanne Dobbins, President, [dobbinsnd@aol.com](mailto:dobbinsnd@aol.com)  
League of Women Voters of North Dakota  
P.O. Box 295  
Fargo, North Dakota.

Local Contact  
Sue Tohm, President, [stohm1@bis.midco.net](mailto:stohm1@bis.midco.net)  
League of Women Voters of Bismarck - Mandan  
1701 East Capitol Ave. # 7  
Bismarck, ND 58501

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10/22/03  
Date

ALVIN A. JAEGER  
SECRETARY OF STATE

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FAX (701) 328-2992

E-MAIL [sec@state.nd.us](mailto:sec@state.nd.us)

**SECRETARY OF STATE**

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

February 7, 2003

TO: Senator Krebsbach and Members of the Government and Veteran's Affairs Committee  
FR: Al Jaeger, Secretary of State  
RE: SB 2403 - Campaign Finance

Yesterday, the committee was provided with testimony related to a lawsuit (Tomac, et al. v. Jaeger, et al., Civil No. 02-C-0338) filed in the Northeast Central Judicial District Court on March 8, 2002. As one of the defendants in that lawsuit, I am compelled to set the record straight by providing the committee with a copy of the Attorney General's opinion and a copy of the Judge's decision.

As you read it, you will learn that the opinion and the lawsuit were related to only two issues. That is, what is a "candidate" and what is a "contribution" according to N.D.C.C. § 16.1-08.1-01(2) and (3).

They were not about whether or not it was lawful for a corporation, cooperative corporations, limited liability companies, and associations to contribute directly to the campaign of a candidate. In addition, contrary to the testimony presented, either the Attorney General or me have every gone on record as stating that they were.

In the opinion, the Attorney General stated that only cash-only contributions were reportable under the state's laws. The Judge ruled that the contributions to be reported by a candidate were not limited to only the reporting of contributions of money.

As to the meaning of candidate, the Attorney General stated that an individual only becomes a candidate when they filed the applicable documents with the Secretary of State to have their name placed on the ballot. In his decision, the Judge did not rule on this interpretation of the opinion because he felt to do so, "the Court would be legislating."

SB 2063, which is on the 11th order on today's Senate Calendar with an unanimous due pass, addresses both of these issues and makes it clear as to what is a contribution and when an individual becomes a candidate for campaign finance reporting purposes..

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*Deanna Waller*  
Operator's Signature

10/22/03

Date

**State of North Dakota**  
**Northeast Central Judicial District**

GRAND FORKS AND  
WILSON COUNTIES

KATHY NARLOCK  
ADMINISTRATIVE ASSISTANT

P.O. BOX 5347  
GRAND FORKS, NORTH DAKOTA 58206-5347  
PHONE (701) 795-3524

CHAMBERS OF:

BRUCE E. BOHLMAN  
DISTRICT JUDGE

DEBBIE G. KLEVEN  
PRESIDING JUDGE

JOEL D. MEDO  
DISTRICT JUDGE  
KAREN K. BRAATEN  
DISTRICT JUDGE

LAWRENCE E. JAHNKE  
DISTRICT JUDGE

September 3, 2002

Mr. Tom Dickson  
Attorney at Law  
Box 1896  
Bismarck, ND 58502-1896


Mr. Doug Bahr  
Solicitor General  
500 North 9<sup>th</sup> Street  
Bismarck, ND 58501-4509

Re: Tomac, et al. v. Jaeger, et al., Civil No. 02-C-0338

Dear Counsel:

Enclosed is a copy of my decision. The judgment will be entered by the clerk of court after Mr. Dickson submits his affidavit of costs and disbursements to be included in the judgment. Attorney's fees are not awarded.

Yours sincerely,

  
Bruce E. Bohlman

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IN DISTRICT COURT, GRAND FORKS COUNTY, NORTH DAKOTA

Steve Tomac, William  
Couchigian, and Mark  
Froemke,

Plaintiffs,

v.

Alvin A. Jaeger, Secretary of  
State of the State of North  
Dakota, Wayne Stenehjem,  
Attorney General of the State  
of North Dakota and the State  
of North Dakota,

Defendants.

Order for Declaratory Judgment &  
Declaratory Judgment

Civil No. 02-C-338

On March 8, 2002, Plaintiffs filed a Summons and Complaint seeking a declaratory judgment as to when an individual becomes a "candidate" subject to North Dakota's campaign contribution laws. Plaintiffs are also seeking a declaratory judgment as to what constitutes a "contribution" under N.D.C.C. § 16.1-08.1-01(3). Plaintiffs are represented by attorney Thomas A. Dickson. Defendants are represented by Assistant Attorney General Douglas A. Bahr. The matter comes on before the Court on a motion for summary judgment.

Factual Background

This case stems from a Letter Opinion issued by North Dakota's Attorney General, Wayne Stenehjem. (2002-L-12.) The Letter Opinion addressed "whether a luncheon fund-raising event held on a dining car owned by a railroad corporation violated the North Dakota corporate campaign contribution law." (2002-L-12.)

Plaintiffs Couchigian and Froemke, by affidavit, stated that they are residents of

DISTRICT COURT CHAMBERS  
Northeast Central Judicial District  
Grand Forks, North Dakota 58201

*Deanne Wallin*  
Operator's Signature

10/22/03

Date



North Dakota who vote and actively seek the source of candidate's campaign contributions. Plaintiff Couchigian, by affidavit, stated that he is a candidate for the Southwest Water Authority. This Court previously held the Plaintiffs have standing and are entitled to a decision as to what constitutes a "candidate" and a "contribution" under N.D.C.C. § 16.1-08.1-01(2) and (3). (Memorandum Decision & Order on Issue of Standing, May 28, 2002.)

### Conclusions of Law

#### Contribution

North Dakota Century Code § 16.1-08.1-01(3) defines "contribution" as:

a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source except as provided in subdivision d. The term does not include:

a. A loan of money from a bank or other lending institution made in the regular course of business.

b. Time spent by volunteer campaign or political party workers.

...

Defendants argue, as was opined by the Attorney General, that a contribution under N.D.C.C. § 16.1-08.1-01(3) is limited to contributions of money. Essentially, Defendants argue the words gift, subscription, loan and advance are modified by "of money." Plaintiffs argue gift, subscription, loan, and advance are not modified by "of money" and that the prohibition on corporate campaign contributions are not limited to contributions of money.

DISTRICT COURT CHAMBERS  
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Grand Forks, North Dakota 58201

*Deanna Hall*  
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10/22/03

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In District One Republican Comm'n v. District One Democrat Comm'n, the North Dakota Supreme Court held:

If statutory language is clear and unambiguous, that language cannot be disregarded under the pretext of pursuing the legislative intent because the intent is presumed to be clear from the face of the statute. However, if the statutory language is ambiguous or of doubtful meaning, we may look to extrinsic aids to interpret the statute.

466 N.W.2d 820, 824-25 (1991)(citation omitted).

The language of N.D.C.C. § 16.1-08.1-01(3) is clear and unambiguous. North Dakota Century Code § 1-02-38 sets presumptions the Court must follow when interpreting statutes. One of those presumptions is that the entire statute is intended to be effective. Id. "[Courts] interpret statutes to give meaning and effect to every word, phrase, and sentence in a statute." Treiber v. Citizens State Bank, 1999 ND 130, ¶ 17 (598 N.W.2d 96). When interpreting N.D.C.C. § 16.1-08.1-01(3), the Court must give meaning to subsection b which excludes time spent by a volunteer or political party worker. Under Defendants' interpretation of the statute, subsection b would be superfluous. In other words, there would be no reason to exclude volunteer time from the definition of "contribution" if contribution's meaning was limited to transfers of money. Therefore, under § 16.1-08.1-01(3) contributions are not limited to contributions of money.

Candidate

North Dakota Century Code § 16.1-08.1-01(2) defines "candidate" as "an individual who seeks nomination for election to public office."

Plaintiffs argue whether an individual is a candidate is a question of fact, in addition, they argue, "one singularly determinative fact [that an individual is a candidate] is the

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Northeast Central Judicial District  
Grand Forks, North Dakota 58201

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Deanna Wallin 10/22/03  
Operator's Signature Date

acceptance of a contribution."

Plaintiff Tomac is a candidate for the Southwest Water Authority as evidenced by his sworn affidavit. Defendants do not contest that Plaintiff Tomac is a candidate. Therefore, it appears Plaintiff Tomac is a candidate as defined in N.D.C.C. § 16.1-08.1-01(2). Whether an individual is a candidate under N.D.C.C. § 16.1-08.1-01(2) is clearly a question of fact dependent upon the unique circumstances of the individual case. Therefore, the Court is unwilling to declare that the Plaintiffs are correct or incorrect in their interpretation of the statute. If the Court were to declare Plaintiffs' interpretation to be the law, the Court would be legislating.

LET JUDGMENT BE ENTERED IN ACCORDANCE WITH THE JUDGMENT FORM BELOW. THE CLERK SHALL TAX COSTS AND DISBURSEMENTS IN FAVOR OF THE PLAINTIFFS.

Dated this 3<sup>rd</sup> day of September, 2002.

BY THE COURT:

*Bruce E. Bohlman*

Bruce E. Bohlman, District Judge

DISTRICT COURT CHAMBERS  
Northeast Central Judicial District  
Grand Forks, North Dakota 58201

JUDGMENT

This Court hereby DECLARES:

1. North Dakota Century Code § 16.1-08.1-01(3) is not limited to contributions of money.
2. Plaintiff Steve Tomac is a candidate under N.D.C.C. § 16.1-08.1-01(2).
3. Costs and disbursements are awarded to the plaintiffs in the amount of \$ \_\_\_\_\_.

Dated in Grand Forks County, North Dakota, this \_\_\_\_ day of \_\_\_\_\_,

2002.

REBECCA ABSEY  
CLERK OF THE DISTRICT COURT

(SEAL)

By: \_\_\_\_\_  
Deputy

DISTRICT COURT CHAMBERS  
Northeast Central Judicial District  
Grand Forks, North Dakota 58201

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*Deanna Hall*  
Operator's Signature

10/22/03

Date

**LETTER OPINION  
2002-L-12**

February 22, 2002

Honorable Aaron Krauter  
State Senator  
HC1, Box 27  
Regent, ND 58650-9721

Dear Senator Krauter:

Thank you for your letter requesting my opinion on whether a luncheon fundraising event held on a dining car owned by a railroad corporation violated the North Dakota corporate campaign contribution law. You enclosed a copy of an invitation for a fundraising event held in April of 2001 for the benefit of the Governor. Invitations to the event stated it was to be held on a railroad dining car in a Mandan location. Section 16.1-08.1-03.3(1), N.D.C.C., provides, in part:

1. A corporation, cooperative corporation, limited liability company, or association may not make a direct contribution:

....

- c. To aid any candidate for political office or for nomination to political office.
- d. For any political purpose . . . .

The statute provides criminal penalties and civil liability for violation of these provisions. N.D.C.C. § 16.1-08.1-03.3(6-8).

Certain pertinent terms in the statute are defined in N.D.C.C. ch. 16.1-08.1. Section 16.1-08.1-01(2), N.D.C.C., defines "candidate" as "an individual who seeks nomination for election or election to public office." "Contribution" is defined in N.D.C.C. § 16.1-08.1-01(3) as meaning:

... a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any

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LETTER OPINION 2002-L-12  
February 22, 2002  
Page 2

person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source except as provided in subdivision d. The term does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money spent by a candidate on the candidate's own behalf.
- d. Any money received by a candidate for legislative office which is immediately transferred or signed over to a district committee of a political party within thirty days of the candidate receiving the money. The district committee of the political party shall report a transfer of this kind as a contribution according to section 16.1-08.1-03 and shall show the origin of the contribution to the legislative candidate.

(Emphasis supplied.)

"Political purpose" is defined as meaning "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person. The term does not include activities undertaken in the performance of a duty of a state office." N.D.C.C. § 16.1-08.1-01(10) (emphasis supplied).

Applying N.D.C.C. § 16.1-08.1-03.3(1) and the related statutory definitions to the situation you present in your letter raises several issues which I will discuss below. Generally, provisions in state law preventing corporations from using corporate funds<sup>1</sup> in support of or in opposition to a candidate for state elective office have been upheld by the courts against

<sup>1</sup> However, such laws do permit some corporate political campaign contributions through the use of separate segregated funds, commonly known as PACs. See, e.g., N.D.C.C. § 16.1-08.1-03.3(2).

LETTER OPINION 2002-L-12

February 22, 2002

Page 3

First Amendment and other constitutional challenges. See, e.g., Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990). Such statutes generally are justified on the basis that they are supported by a compelling governmental interest in preventing political corruption in connection with corporate concentrations of wealth. Id. at 659. The Supreme Court of Michigan in Advisory Opinion on Constitutionality of 1975 PA 227, 242 N.W.2d 3 (Mich. 1976), in construing a provision similar to North Dakota law, noted the following:

Large aggregations of capital controlled by a few persons could have a significant impact upon the nomination or election of a candidate. The possibility of misuse of corporate assets by persons acting on behalf of uninformed or unwilling shareholders and the attempts at influence or importunity which might be exerted upon a successfully elected candidate by a contributing corporation represent abuses which the passage of the corrupt practices act sought to eliminate.

The state's interest in preserving the integrity of the elective process must be balanced against the assumed right to free expression of an artificial entity (i.e., a corporation) regarding the candidacy of persons seeking election to public office.

The railroad in question here, The Burlington Northern and Santa Fe Railway Company, is a Delaware corporation authorized to conduct business in the state of North Dakota, according to the records of the North Dakota Secretary of State's Office. The first issue that arises is whether the use of a railroad car for the purpose of holding a fundraising luncheon for the Governor constituted a direct corporate "contribution" within the meaning of N.D.C.C. § 16.1-08.1-03.3. As quoted above, "contribution" is defined to mean a "gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office . . . ." When the bill containing this definition was originally introduced into the Legislature in 1981, "contribution" also included the phrase "or anything of value." See House Bill No. 1218, 47th Legislative Assembly of North Dakota. In a hearing before the House Judiciary Committee on February 4, 1981, Representative Rosie Black, the sponsor of House Bill No. 1218, was asked whether the bill limited the definition of "contribution" to cash contributions or whether it included in-kind contributions. Representative Black testified that the definition included everything except "a loan or volunteer work." She indicated it covered everything that could be a contribution. Hearing on H.B. 1218 Before the House Comm. on the Judiciary, 1981 N.D. Leg. (Feb. 4) (Testimony of Rep. Black). However, the words "or anything of value" were ultimately deleted from the definition of "contribution." See Hearing on H.B. 1218 Before the House Comm. on the Judiciary, 1981 N.D. Leg. (Feb. 16).

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LETTER OPINION 2002-L-12

February 22, 2002

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Thus, it is apparent that by rejecting the phrase "or anything of value," the Legislature intended to restrict the definition of "contribution" to contributions of money, rather than including other property or services having a monetary value such as in-kind contributions. There was no indication either in your letter or in the subsequent press reports that I have reviewed that the railroad corporation actually contributed money to this fundraiser. What it reportedly did provide was the use of the railroad dining car or cars, the food that was served, and serving staff. While it may be reasonably argued that valuable in-kind contributions are essentially the same as contributions of cash and such contributions violate the spirit of the corporate contribution statutes, nevertheless, the letter of the law is not to be disregarded under the pretext of pursuing its spirit. N.D.C.C. § 1-02-05.

To establish a violation of N.D.C.C. § 16.1-08.1-03.3(1) it must be shown that an act was a contribution as defined in N.D.C.C. § 16.1-08.1-01(3). To be a "contribution" it must first be established that a corporate contribution was also made "for the purpose" of influencing an election or nomination for elected public office. Such a determination would have to be made by a trier of fact, however, and is beyond the scope of legal opinions issued by this office.

A second requirement that must be established to bring an act within the definition of a contribution is that the goods and services were provided by the railroad to "influence the nomination for election, or election, of any person to elective office." Therefore, to constitute a violation of the statute the corporate act of providing use of its dining car must have aided a "candidate" for nomination or election to political office or must have been provided for a "political purpose." According to a copy of an invitation you submitted with your letter, the event took place April 10, 2001. At that time, the Governor had been in office for about four months and, thus, the fundraiser occurred at least three years from the next primary and general election for the office of Governor. The definition of "candidate" as noted above means an individual who seeks nomination for election or election to public office. N.D.C.C. § 16.1-08.1-01(2).<sup>2</sup> Notwithstanding the

<sup>2</sup> Prior to 1995, the definition of "candidate" contained in former N.D.C.C. § 16.1-08-01(2) provided a little more detailed guidance. That former definition stated that a candidate "means a person whose name is presented for nomination to public office at any primary election or convention, whether the person is actually nominated or not; a person whose name is printed as a candidate on an official ballot used at any election; or a person who seeks election through write-in votes." This definition was shortened in 1995 when N.D.C.C. chs. 16.1-08, pertaining to campaign contributions, and 16.1-08.1, pertaining to campaign contribution statements, were combined for purposes of "statutory efficiency" and to merge the two definition portions of each chapter. See Hearing on S.B. 2420 Before the House Comm. on Political Subdivisions



opinion expressed by some that political officeholders are continuously running for reelection, it could not reasonably be said that at a point three years before the nomination process and three and a half years before the actual election an individual could be considered a candidate for nomination or election to office within the meaning of N.D.C.C. ch. 16.1-08.1. See N.D.C.C. §§ 16.1-11-01 and 16.1-13-01.<sup>3</sup> This is especially true since becoming a candidate for nomination or election to state office requires the completion of a number of procedural steps and filings, including the filing of a nominating petition or a certificate of endorsement, an affidavit of candidacy, and a statement of interests, not to mention the political custom of publicly announcing one's candidacy for nomination or election. See N.D.C.C. §§ 16.1-11-06, 16.1-11-10, 16.1-09-02. None of these steps required by North Dakota election law could have occurred at the point the fundraiser in question was held.

Similarly, "political purpose" is defined in N.D.C.C. § 16.1-08.1-03(10) as "any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person." Again, because of the time between the event and the nomination and election processes, the event could not reasonably be deemed to be a political purpose within the meaning of N.D.C.C. ch. 16.1-08.1. Until such point as a putative candidate for state office files a nominating petition or certificate of endorsement, together with the affidavit of candidacy and statement of interests with the Secretary of State, such an individual is not legally a candidate who could be nominated in a primary election or elected in a general election.

Based on the foregoing, it is my opinion that a non-cash contribution of goods or services by a corporation to a fundraiser to benefit a state officeholder who is not at the time of the fundraiser a candidate for nomination or election within the meaning of N.D.C.C. ch.

1995 N.D. Leg. (Mar. 2) (Statement of Secretary of State Al Jaeger). ("This section merges the two definition portions of each chapter. There are a few wording adjustments to certain definitions to make them applicable to the surviving chapter.") Id. It does not appear that the shortening of this definition was intended to make any substantive change in the law. This more detailed definition of "candidate" contained in the predecessor statute is instructive in the present case. At the time of the April 2001 fundraiser, it would be three years or more from the time a candidate's name could be presented for nomination for the office of Governor at a convention or primary election and more than three years from the time a person could have his name printed on the ballot at the November 2004 general election for the office of Governor.

<sup>3</sup> Primary elections are held on the second Tuesday in June of every general election year for state officers; general elections are held on the first Tuesday after the first Monday in November of each even-numbered year. Id.

LETTER OPINION 2002-L-12  
February 22, 2002  
Page 6

16.1-08.1 does not constitute an illegal corporate campaign contribution under N.D.C.C. § 16.1-08.1-03.3(1)(c) or (d). For the same reasons outlined above, it is also my opinion that receipt of such non-cash goods or services by a state officeholder under the circumstances present here does not constitute the receipt of an illegal corporate campaign contribution in violation of N.D.C.C. § 16.1-08.1-03.3(1)(c) or (d).

Sincerely,

Wayne Stenehjem  
Attorney General

jlf/pg

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10/22/03

Date

**Various Registration and Reporting Requirements of  
Amended Senate Bill No. 2403**  
(Contained in Sections 2, 3, 4, 5, 6, 9, 10, 12, and 13)

Requirement	Statewide Candidate or Registered Candidate Committee	Legislative Candidate	Judicial District, County & City Candidate <sup>1</sup>	State Party	District Party	Registered Political Action Committee	Registered Multi- Candidate Political Committee <sup>1</sup>	Registered Measure Committee
Registration Requirement with Secretary of State	Yes					Yes	Yes <sup>1</sup>	Yes
Pre-Primary and Pre-General reporting during each election year	Yes	Yes		Yes	Yes	Yes	Yes <sup>1</sup>	Yes
Year-End reporting following each calendar year	Yes <sup>1</sup>	Yes <sup>1</sup>		Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Post Election Reporting			Yes <sup>1</sup>					
Contributions received	Yes In excess of \$200	Yes In excess of \$200	Yes <sup>1</sup> In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes <sup>1</sup> In excess of \$200	Yes In excess of \$100
Gross total of all contributions received	Yes <sup>1</sup>			Yes <sup>1</sup>		Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Total cash on hand in the filer's account at the start and close of a reporting period	Yes <sup>1</sup>		No	Yes <sup>1</sup>	No	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Expenditures made	No	No	No	Yes <sup>1</sup> In excess of \$200	No	Yes In excess of \$200	No	Yes <sup>1</sup> In excess of \$100
Gross total of all expenditures made	No	No	No	Yes <sup>1</sup>	No	Yes <sup>1</sup>	No	Yes <sup>1</sup>
48 hour reporting of contributions received in excess of \$500	Yes	Yes	No	Yes	Yes	Yes	Yes <sup>1</sup>	Yes
Disclosure of occupation, employer, or principal place of business of any person contributing \$5,000 or more	Yes <sup>1</sup>	Yes <sup>1</sup>	No	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	No
Disclosure of all donations and expenditures made to and from a building fund	No	No	No	Yes <sup>1</sup>	No	No	No	No

<sup>1</sup> New requirement in SB 2403 with amendments

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10/22/03  
Date

ALVIN A. JAEGER  
SECRETARY OF STATE  
STATE OF NORTH DAKOTA  
111 E BOULEVARD AVE DEPT 108  
BISMARCK ND 58505-0800

E-MAIL: [aoe@state.nd.us](mailto:aoe@state.nd.us)  
HOME PAGE: [www.state.nd.us/sec](http://www.state.nd.us/sec)



SECRETARY OF STATE

March 21, 2003

BUSINESS DIVISION  
PHONE (701) 328-4284, FAX (701) 328-2882  
CENTRAL INDEXING DIVISION  
PHONE (701) 328-3862, FAX (701) 328-4214  
ELECTIONS DIVISION  
PHONE (701) 328-4148, FAX (701) 328-3882  
LICENSING DIVISION  
PHONE (701) 328-3888, FAX (701) 328-1888  
GENERAL INFORMATION (701) 328-2800  
TOLL FREE 1-800-383-0867

TO: Representative Matt Klein and Members of the House Government and Veterans Affairs Committee

FR: Cory G. Fong, Deputy Secretary of State

RE: Senate Bill No. 2403 - Comprehensive Campaign Finance and Disclosure

Senate Bill No. 2403 makes numerous key and comprehensive changes to North Dakota's present campaign finance and disclosure laws contained in chapter 16.1-8.1. The bill is a companion to Senate Bill No. 2053, which clarifies the definitions of a contribution and a candidate. Together, the two bills offer comprehensive improvements and reforms to North Dakota's present campaign finance and disclosure laws. In some areas, this bill is reliant upon the campaign disclosure bill (SB 2063) that defines what constitutes a contribution and a candidate.

Before I explain the highlights of Senate Bill No. 2403, the Secretary of State's office is proposing some minor technical amendments to the bill. My explanation of the bill will also include discussion of these proposed amendments.

The bill with the proposed amendments accomplishes the following:

- Restores the requirement that a legislative candidate must report a contribution received in excess of \$200 even if the contribution will immediately be signed over to the candidate's district party. Likewise, the district party must report a contribution in excess of \$200, which has been signed over to the district party by a candidate. (Section 1)
- Excludes from the definition of a contribution any commercial transactions as a part of bargained-for exchange for fair market value and contributions of products and services for which the actual cost or fair market value are reimbursed.

The provisions are intended to deem money or anything of value received by a candidate or political party as a part of a commercial transaction not to be a contribution, when the exchange of goods or services are paid for. For example, a candidate may sell shirts or a political party sells its donor list or parts of it. If those items are sold at a fair market exchange there is no "contribution." Another example occurred during 2000 and 2002 when both political parties sold exhibit space during their state conventions to recoup costs associated with holding those conventions, e.g. rental hall fees, etc.

Also, and more important, the language is intended to allow the competitive free market system to play itself out. For example, a printing vendor that submits a lower bid than its competition as a part of a bargained-for exchange would not be making a corporate contribution to a candidate or political party for the amount of the difference. Or, a sign vendor who throws in 10 free signs with the purchase of every 100 purchased as a general

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Operator's Signature

10/22/03

Date

promotional effort would not be making a corporate contribution to a candidate or political party.

Finally, Subdivision (e) simply accounts for those occasions when a candidate or political party may receive a product or service from someone, a company, an association, a union, etc. If the someone, company, association, union, etc. is reimbursed with money for the product or service at a fair market value or at its cost, it is not considered a contribution. (Section 1 and proposed amendments)

- Makes the definition of expenditure consistent, where possible and practical, with the updated definition of contribution, which is being changed in Senate Bill No. 2063, that defines candidates and contributions. (Section 1 and SB 2063)
- Establishes distinct categories of political committees to include political action committees, candidate committees, multi-candidate political committees, and measure committees, all of which would be required to register and report with the Secretary of State. (Sections 1, 2, 4, 5, 6, and 9)
- Clarifies the reporting requirements for statewide candidates, whether or not they have registered a candidate committee with the Secretary of State. (Sections 2 and 5)
- Raises the political committee registration fee with the Secretary of State from \$5 each calendar year to \$25 each calendar year. (Section 5)
- Requires political committees to register with the Secretary of State within 15 business days of receiving any contribution or making any expenditure. The present law requires political committees to register with the Secretary of State within five days of the receipt of any contribution. (Section 5)
- Requires Year-End reporting by January 31 of each calendar year for all filer types. (Sections 2, 3, 4, 6, 9, and SB 2063)
- Requires disclosure of gross contributions received and "cash-on-hand" for:
  - Statewide candidates or their registered candidate committees;
  - State political parties;
  - Registered political action committees;
  - Registered multi-candidate committees; and
  - Registered measure committees. (Sections 2, 3, 4, 6 and 9)
- Requires disclosure of expenditures made in excess of \$200 and gross expenditure reporting for state political parties, measure committees, and political action committees. (Sections 3, 4, and 6)

**SB 2403 - Comprehensive Campaign Finance and Disclosure**  
**House Government and Veterans Affairs**  
**March 21, 2003**  
**Page three**

- Requires disclosure of occupation, employer, and principle place of business of persons and political committees, not already registered with the state or the FEC, who contribute \$5,000 or more for all filer types. (Sections 2, 3, 4, 6 and 9)
- Allows state political parties and non-profit corporate entities under the control of or affiliated with state political parties to establish separate and segregated funds for the purpose of receiving donations from corporations, cooperative corporations, limited liability companies, and associations for the purpose of purchasing, maintaining, or renovating a building and for purchasing fixtures for the building. State political parties or non-profit corporate entities under the control of or affiliated with state political parties establishing a building fund shall disclose all contributions made to and from the fund during the previous calendar year, along with cash-on-hand in the fund at the start and close of the reporting period, by January 31 of each calendar year. (Section 7)
- Establishes a more comprehensive and meaningful process for the Secretary of State to follow when arranging an audit of a statement or when requested to arrange an audit of a statement filed according to the chapter. An audit may result in penalty fees assessed by the Secretary of State. (Section 11)
- Allows the Secretary of State to charge and collect late fees for any statement, registration, or report, or for any amended statement, registration, or report, that is not filed within the prescribed time.
  - 6 days late - \$25
  - 11 days late - \$50
  - 12 days late or more - \$100 (Section 14)
- Requires the Secretary of State to provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to the law. (Section 15)
- Requires candidates for judicial district, county, and city candidates, in cities with a resident population of 5,000 or more as determined by the most recent federal decennial census, to disclose all contributions received in excess of \$200 within 30 days following an election. Judicial district candidates covered under this provision would be required to report to the Secretary of State. County and city candidates covered under this provision would be required to report to the county auditor. (Section 13)

The Secretary of State's office supports Senate Bill No. 2403 and encourages this committee to give it a do pass recommendation.

**PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2403**

Page 2, line 17, after "exchange" insert "for fair market value"

Page 2, line 19, after "reimbursed" insert "by payment of money"

Renumber accordingly

Page 1

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## Federal Election Commission Advisory Opinion Number 2001-1

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[Federal Election Commission Main Page](#)

February 15, 2001

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-01

Scott R. Falmlen, Executive Director  
North Carolina Democratic Party /  
220 Hillsborough Street  
Raleigh, NC 27603

Dear Mr. Falmlen:

This refers to your letter dated January 4, 2001, on behalf of the North Carolina Democratic Party ("the Party") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of an office building fund, maintained by the Party, for various purposes related to the renovation of the Party's office building.

You state that the Party is preparing to embark on a wholesale restoration and renovation of its historic headquarters building in Raleigh, NC.<sup>1</sup> You believe, based on past policy and opinions of the Commission, that the actual expenditures for the restoration and renovation, machinery and equipment, furniture and fixtures, and other similar property may be made from the Party's office building fund.<sup>2</sup> However, you seek clarification on whether the office building fund can be used for spending in several specific areas.

You ask whether expenditures such as construction management and architectural fees, directly and solely related to the restoration and renovation project, may be paid from the Party's office building fund. You explain that a construction manager is the equivalent of a general contractor. This is an individual or firm that, while not actually doing any of the actual renovation work, would

2/5/2003

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oversee and manage the work of the various subcontractors involved in the renovation project. You also ask whether, based on the funds received method of allocating expenses, fundraising expenses may be paid from the Party's office building fund. Specifically, you wish to know whether the office building fund could be used to pay the salary or fees and other expenses of an employee or consultant whose sole responsibility is to raise funds for the office building fund.<sup>3</sup>

#### ACT AND COMMISSION REGULATIONS

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a 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). The Commission has applied these provisions to permit State party committees and national party committees to accept corporate and labor union donations to office building funds (or accounts) established and used for the purpose of purchasing or constructing an office facility by the cited party committees. Advisory Opinions 1997-14, 1993-9, 1991-5, 1986-40, and 1983-8; see also Advisory Opinions 1998-8, 1998-7 and 1996-8.

Commission regulations at 11 CFR 106.5 provide that party committees that make disbursements in connection with Federal and non-Federal elections "shall make those disbursements entirely from funds subject to the prohibitions and limitations of the Act, or from accounts established pursuant to 11 CFR 102.5," which provides for the establishment of Federal and non-Federal accounts. 11 CFR 106.5(a) and 102.5(a). Party committees that establish separate Federal and non-Federal accounts shall allocate specific categories of expenses between those two accounts according to section 106.5.

When one fundraising program or event is held to collect Federal funds (i.e., funds to be used in Federal elections) and non-Federal funds (i.e., funds to be used in nonfederal elections), the sponsoring committee must allocate the direct costs of the activity, including planning, administrative and solicitation costs. 11 CFR 106.5(a)(2)(ii). Party committees must use the funds

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*Deanna Hallen*  
Operator's Signature

10/22/03  
Date

received allocation method for these fundraising expenses.  
11 CFR 106.5(f)

Under this approach, the costs are allocated according to the ratio of Federal funds received to total receipts for the program or event. The allocation ratio is estimated before making payments for the program or event. The committee has up to 60 days after the ending date of the program or event to: (1) adjust the ratio based on the actual funds received; and (2) transfer funds from the non-Federal account to the Federal (or allocation) account based on the adjusted allocation percentage. 11 CFR 106.5(f)(2).4

#### APPLICATION TO PARTY PROPOSAL

##### Construction management and architectural fees

In the Commission's consideration of what constitutes the proper use of the office building fund, the Commission has drawn a parallel between permissible uses of the office building fund and the description and treatment of capital expenditures found in the Internal Revenue Code and related IRS regulations. Under the IRS regulations, a capital expenditure includes the cost of the acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures and similar property. 26 CFR 1.263(a)-1 and 1.263(a)-2. The Commission has concluded that items that would fall under the category of capital expenditures would also be considered the type of expenditures that are legitimately part of the construction of a political party's office facility. See Advisory Opinion 1998-7. In this instance, the Commission notes that "the amount expended for architect's services" are explicitly listed in IRS regulations as an example of a capital expenditure. See 26 CFR 1.263(a)-2(d). The Commission concludes that the office building fund may be used to pay for architectural fees directly and solely related to the restoration and renovation project for Party headquarters.

With regard to construction management expenses, the Commission notes that the expenses relating to the construction manager directly relate to the actual renovation of the Party's headquarters. These are direct construction costs. Therefore, the office building fund may be used to pay for these expenses as well.

##### Fund raising costs

The Commission notes your statement that fundraising is

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necessary to cover the costs of the renovation, and therefore concludes that these fundraising costs are directly related to the construction of the Party headquarters.<sup>5</sup> Again, you have stated that these costs are to cover the salary or fee of an employee whose sole responsibility is raising funds for the office building fund. The Commission concludes that the salary and other related fundraising expenses solely related to the raising of funds for the office building fund are also covered by 2 U.S.C. 431(8)(B)(viii).

You have also asked that the Commission permit you to use the funds received method of allocation for the expenses of paying this individual's salary. The Commission notes, however, that the funds received method of allocation is used with multi-purpose fundraising events that are intended to collect contributions for the Party's Federal and non-Federal activities. This is not the situation presented in your request. Instead, where the fundraising is solely for the building fund, there is no need to allocate the expenses. Consequently, the full amount of the salary, fees and other related expenses of the employee or consultant who is working exclusively to raise money for the restoration and renovation project may be paid from the building fund.<sup>6</sup>

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

Sincerely,

(signed)

Karl J. Sandstrom  
Commissioner

Enclosures (AOs 1998-8, 1998-7, 1997-14, 1996-8, 1993-9, 1991-5, 1986-40 and 1983-8)

<sup>1</sup> You state that the renovation will be extensive, requiring external and interior work of both a structural and cosmetic nature. The anticipated cost of the project is \$1.5 to 2.5 million necessitating a full-time fundraising effort. The Party headquarters is housed in a building it owns, the Goodwin House, built in 1903 and designated as a Raleigh Historic Site in 1980.

<sup>2</sup> You cite to the Commission's conclusions in Advisory Opinion 1998-7 to support your position.

<sup>3</sup> In a phone conversation with Commission staff you identified the other expenses as the health insurance

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benefits, travel expenses and the employer's portion of the withholding tax associated with this employee.

4 Should additional Federal receipts come in after the 60-day period, further ratio adjustments and reimbursements from the Federal account to the non-Federal account will be necessary. However, while the Federal account may pay more than its share of an allocable expense, overpayments by the non-Federal account are illegal. Id.

5 Your situation is distinguishable from past situations where the Commission has determined that the building fund exception was unavailable. For example, in Advisory Opinion 1983-8, the Commission concluded that the office building fund exception did not apply to donations to pay for the costs of the property taxes, assessments, charges and other expenses incurred by a trust that administered a party's office facilities. In Advisory Opinion 1988-12, the Commission similarly concluded that the office building fund exception did not cover rent, building maintenance, utility, office equipment expenses and other administrative expenses of a party headquarters. In contrast to these opinions, the fundraising expenses at issue would directly relate to the construction of the party office building rather than its administration.

Of some relevance is Advisory Opinion 1993-9 where the Commission concluded that a Party could establish an office building fund to pay off the land contract on its current headquarters so that it could sell the property and use the proceeds toward the purchase or construction of new office facilities. However, this opinion did not address whether fundraising costs could also be paid out of the office building fund.

6 The Commission notes that you have not asked whether any law of North Carolina would be pre-empted by 2 U.S.C. 431(8)(B)(viii) if that law impeded the ability to raise funds for the Party's headquarters. Accordingly, while this opinion does not consider any issue relating to the laws of North Carolina, other opinions have examined the extent to which State laws were pre-empted by the operation of section 431(8) and 2 U.S.C. 453. See Advisory Opinions 1998-8, 1998-7, 1997-14, 1993-9, 1991-5 and 1986-40. However, while the Commission has construed the Act and Congressional intent to require disclosure of office building fund activity by the national party committees in reports they file with the Commission (see 11 CFR 104.8(f) and 104.9(d)), it has also concluded that any State level disclosure requirements regarding a State party office building fund are not pre-empted or superseded by the Act or Commission regulations. See Advisory Opinions 1997-14 and 1991-5.

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*Deanna Waller*  
Operator's Signature

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Date

# Federal Election Commission Advisory Opinion Number 2001-12

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October 25, 2001

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2001-12

Linda Honold, Chairperson  
Democratic Party of Wisconsin  
222 State Street,  
Suite 400  
Madison, WI 53703

Dear Ms. Honold:

This refers to your letter dated August 2, 2001, as supplemented with an undated letter received on August 13, and a letter dated September 18 from counsel, on behalf of the Democratic Party of Wisconsin concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the use of an office building fund, maintained by the party, for various purposes related to the renovation or construction of the party's office building.

You are the Chairperson of the Democratic Party of Wisconsin ("DPW"). You explain that DPW plans to establish a building fund (or several such funds) that it may use to construct, or to purchase and renovate, an office building to serve as its headquarters. DPW seeks an opinion regarding the Act's preemption of Wisconsin statutes relating to donations for the establishment and operations of the building fund. You indicate that current Wisconsin law limits and in some cases prohibits contributions, disbursements, and obligations to candidates and political parties. See Wis. State ANN. 11.00, et seq, (West 2000).1

You state that DPW is engaged in both Federal and non-Federal election activity. DPW plans to undertake one or all of the following activities:

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- (1) Establish a building fund to purchase, renovate or construct a building to serve as new headquarters for its Federal and non-Federal activities.
- (2) Establish a building fund to pay-off the balance of its current lease on the building which presently serves as a headquarters for its Federal and non-Federal activities.<sup>2</sup>
- (3) Establish a building fund to pay the salary or fees and other expenses of an employee or consultant whose sole and exclusive responsibility is to raise funds for the building fund.
- (4) Establish a building fund to pay for the principal and interest for a mortgage for the purchase, renovation and/or construction of the building.
- (5) Establish a building fund to pay for any capital improvements to the office facility as defined by the Internal Revenue Code.

DPW, you state, will use the new or renovated facility to influence Federal and non-Federal elections in a general way, but the described building funds will not be used for the purpose of influencing any particular elections. Furthermore, DPW, in its capacity as a registered entity with the Commission, intends to take the following actions and observe the following conditions:

- (1) It will solicit and accept corporate contributions designated for the building fund(s).
- (2) It will advise all potential corporate contributors that all corporate contributions will be used for the building fund(s).
- (3) It will establish a "separate segregated" bank account in which only corporate contributions designated for the building fund(s) will be deposited.
- (4) It will disburse the corporate funds deposited in such separate account(s) to purchase, renovate and construct a new headquarters, and pay off the remaining amount owed on its current lease at its existing headquarters.
- (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.

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(6) It will not limit, other than on a voluntary basis, the amount of the corporate contributions, individually or collectively, to the building fund(s).

(7) It will not report the corporate contributions to the building fund(s), other than on a voluntary basis, to the Commission.

The request also explains that DPW plans to apply the funds only for the purchase, renovation or construction of a new headquarters, and to pay-off the remaining amount owed on its current lease at its existing headquarters. It will not use the building fund to pay ongoing costs, such as property taxes and assessments.

The September 18 letter, provided by counsel, further indicates that the "DPW intends to use the building funds for the cost of the acquisition, construction, or erection of a building for the party headquarters and for any necessary repairs and improvements to the building. This may include but is not limited to construction of a new roof, the installation of electrical and telephone wiring, plumbing and any expansion of the size of the building and the number of rooms within the building." Counsel's letter continues, "DPW intends to use building fund monies to hire an architect's services and a construction manager. DPW also intends to use funds from the building fund for the purchase of office machinery, equipment, furniture and fixtures and similar property." The letter states, however, that the DPW will not use building fund monies to pay for building maintenance, utility, office equipment expenses and other administrative expenses of the party headquarters.

#### ACT AND COMMISSION REGULATIONS

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a 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). The Commission has applied these provisions to permit State party committees (and national party committees) to accept corporate and labor union donations to office building funds or accounts established and used for the purpose of purchasing or constructing an office facility by the cited party committees. Advisory

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Opinions 2000-01, 1997-14, 1993-9, 1991-5, 1986-40, and 1983-8; see also Advisory Opinions 1998-8, 1998-7 and 1996-8.

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; 11 CFR 108.7(a). The House committee that approved this provision explained its meaning in sweeping terms, stating that it is intended "to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the 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 election related conduct 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, but does not affect State laws as to the manner of qualifying as a candidate, or the dates and places of elections. Id. at 100-101.

When the Commission promulgated regulations at 11 CFR 108.7 to clarify and explain the scope of the Act's preemption of 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, at 51; 11 CFR 108.7(b). In past opinions, the Commission has summarized the legislative history of 2 U.S.C. 453 as showing that "the central aim of the clause is to provide a comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing . . . for election to Federal office." Advisory Opinions 2000-23 and 1999-12.

#### APPLICATION TO PARTY PROPOSAL

##### Pre-emption of State law

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In five opinions that were issued to State parties, the Commission has previously concluded that the Act and Commission regulations preempt and supersede the application of any State law that purports to prohibit corporate donations to a State party office building fund. See Advisory Opinions 1998-8, 1997-14, 1993-9, 1991-5, and 1986-40. Two of the opinions noted that, in addressing the building fund donations and the entities receiving them, Congress explicitly decided not to place restrictions on the subject, even though it could have determined that the purchase or construction of such a facility was for the purpose of influencing a Federal election. The opinions explain that Congress, instead, took the affirmative step of exempting (or making exceptions for) the receipt and disbursement of funds for such activity from the specific proscriptions of the Act, and that there is no indication of Congressional intent to limit the preemptive effect to some allocable portion of the purchase (or construction) costs. Advisory Opinions 1998-8, 1998-7, 1993-9 and 1991-5; see also Advisory Opinions 1997-14 and 1986-40.

DPW's situation is materially indistinguishable from those described in the four cited opinions. See 2 U.S.C. 437f(c)(1)(B). Consistent with these opinions, the Commission concludes that the Act and Commission regulations preempt the contribution limitations and prohibitions of Wisconsin State law with respect to donations made to the building fund established by DPW. Accordingly, DPW is not prohibited from accepting corporate donations or other donations in excess of the State limits for the purposes described in this opinion to the extent they are consistent with the lawful uses of the building fund (see discussion below).<sup>3</sup>

#### Uses of building fund(s)

The DWP proposal to establish a building fund(s), with the conditions described herein, for the most part falls within the parameters established by the opinions cited above. For example, the Commission has approved the use of a building fund to pay the mortgage on a new office building. Advisory Opinions 1998-8 and 1993-9. Drawing a parallel to the description and treatment of capital expenditures in the Internal Revenue Code and related IRS regulations, the Commission also has concluded that capital expenditures may be paid from a building fund. See Advisory Opinions 2001-01 and 1998-7.4 Most recently, the Commission has approved the use of a building fund to pay the salary and certain other expenses that were solely related to the raising of funds for the office building fund. Advisory Opinion 2001-01. Therefore, these expenses,

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as they apply to your current request, are among the permissible purposes for which the DPW building funds may be used.

The situation, however, is different with lease payments for the current DPW office facility. The Commission notes that the building fund exemption specifically applies to costs directly relating to the purchase, construction or renovation of an office building, not the leasing of such facilities.<sup>5</sup> Therefore, the fund could not have been used for the initial lease of these facilities. Furthermore, unlike the above costs, there is no connection between the payment of the current lease and the construction or purchase and renovation of a new office building. The payment of the lease would not result in the acquisition of any property rights or interest in land that could otherwise be sold and used to finance the purchase.<sup>6</sup> Accordingly, DWP's office building fund may not be used to pay the described lease expenses.

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

Sincerely,

(signed)

Danny L. McDonald  
Chairman

Enclosures: (AOs 2001-01, 2000-23, 1999-12, 1998-8, 1998-7, 1997-14, 1996-8, 1993-9, 1991-5, 1988-12, 1986-40 and 1983-8)

<sup>1</sup> For example, Wis. State ANN. 11.26 (4) provides that "no individual may make any contribution or contributions to any individuals who or committees which are subject to a registration requirement under 11.05, including legislative campaign committees and committees of a political party, to the extent of more than a total of \$10,000 in any calendar year." Section 11.38(1)(a) states that "No foreign or domestic corporation, or association organized under ch. 185, may make any contribution or disbursement, directly or indirectly, either independently or through any political party, committee, group, candidate or individual for any purpose other than to promote or defeat a referendum. Further, no political party,

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committee, group, candidate or individual may accept any contribution or disbursement made to or on behalf of such individual or entity which is prohibited by Section 11.38." Wis. State ANN. 11.38(b).

2 According to your request, the DPW originally entered into a five-year lease with the owner of the building property currently being used by the party as a headquarters. This lease expired in 1997. Since then, the party has exercised the one-year option contained in the agreement each year to renew the lease. Currently, the DPW pays rent in the monthly amount of \$1,549. In August 22 and 23 phone conversations with the Office of General Counsel, the Executive Director of DPW indicated that the current one-year lease period will expire on April 14, 2002 and that, because of its inconvenient location, it is unlikely that the DPW will purchase or remain in its current office facility.

3 However, while the Commission has construed the Act and Congressional intent to require disclosure of office building fund activity by the national party committees in reports they file with the Commission (see 11 CFR 104.8(f) and 104.9(d)), it has also concluded that any State level disclosure requirements regarding a State party office building fund are not preempted or superseded by the Act or Commission regulations. See Advisory Opinions 2001-01, 1997-14 and 1991-5.

4 In Advisory Opinion 2001-01, the Commission approved the use of funds for management expenses and architectural fees relating to the construction of a party office building. In Advisory Opinion 1998-7, the Commission approved the use of the building fund for the construction of a new roof, new electrical wiring and room expansion for an extant party office building.

5 The Commission notes previous opinions stating restrictions as to the use of the building fund. For example, in Advisory Opinion 1983-8, the Commission concluded that the office building fund exception did not apply to donations to pay for the costs of the property taxes, assessments, charges and other expenses incurred by a trust that administered a party's office facilities. In Advisory Opinion 1988-12, the Commission similarly concluded that the office building fund exception did not cover rent, building maintenance, utility, office equipment expenses and other administrative expenses of a party headquarters.

6 The Commission notes that your situation can be compared to and distinguished from the situation in Advisory Opinion 1993-9. In that opinion, a State party wished to use the office building fund to pay off the balance of its land contract on the building that served as its headquarters. It proposed to sell the headquarters and use the proceeds to purchase a new building. The Commission, in approving the

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proposal, noted that the funds could have been used for the initial purchase of the land contract. It also noted that raising funds by selling the fully acquired legal title to its current office was "materially indistinguishable from the receipt of donations for the new headquarters."

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## Federal Election Commission Advisory Opinion Number 1998-7

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May 22, 1998

CERTIFIED MAIL  
RETURN RECEIPT RETURNED

ADVISORY OPINION 1998-7

Christine M. Tartaglione, Acting Chairman  
The Pennsylvania Democratic Party  
510 North Third Street  
Harrisburg, Pennsylvania 17101

Dear Ms. Tartaglione:

This responds to your letters dated April 3, and March 27, 1998, on behalf of the Pennsylvania Democratic Party ("PDP"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a building fund by the PDP.

### PDP PROPOSAL

The PDP proposes to solicit contributions and donations from individuals and corporations for the following purposes:

- 1) The establishment and maintenance of a building fund to satisfy the existing mortgage loan debt on the PDP headquarters facility;
- 2) The establishment and maintenance of a building fund to purchase or construct a new building to serve as the new headquarters of the PDP;
- 3) The establishment and maintenance of a building fund to purchase or construct three new buildings to serve as new regional headquarters for the PDP in Pittsburgh, Harrisburg and Philadelphia.
- 4) The establishment and maintenance of a building fund to

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pay for necessary repairs and improvements to the existing PDP headquarters such as the construction of a new roof, the installation of new electrical wiring, and the expansion of the size of the building and the number of rooms within the building, and/or

5) The establishment and maintenance of a building fund to purchase or construct a parking lot, adjacent to the PDP headquarters, for the primary use of PDP personnel, members, visitors, but with excess parking spaces being offered to the general public at a usual and normal rate.<sup>1</sup>

You affirm that the PDP uses its headquarters facility to influence Federal and non-Federal elections and for other campaign purposes. However, the headquarters facility is not used for the exclusive purpose of influencing the election of a particular candidate for office.

You further state that the PDP would take several measures and observe certain limitations regarding the establishment and maintenance of a building fund. It would only solicit and accept corporate, union and individual contributions that are exclusively designated for the building fund(s). It would advise all potential corporate, union and individual contributors that all contributions will be used exclusively for the building fund(s). A separate and segregated account would be created for the deposit of all corporate, union and individual contributions designated for the building fund. All funds placed in the account would be used only for the purposes detailed above.

Regarding the parking lot, funds obtained from the use of the excess capacity by the public would either be placed in the same separate, segregated account as other building funds, or placed in its own separate, segregated account. If a "parking fund" were created for this purpose, you affirm that PDP would only use the funds deposited in the "parking fund" to: (a) defray the ordinary and necessary capital expenses associated with the operation and maintenance of the headquarters facility and parking lot (e.g., utility and property tax costs), or (b) pay for the cost of constructing or purchasing a new headquarters facility (e.g., transfer to the building fund), or (c) for both purposes. You explain that PDP would not use the funds deposited in the "parking fund" for the purpose of influencing any Federal or non-Federal election, nor transfer such funds to any account for the purpose of influencing any Federal or non-Federal elections.

Finally, your request notes that the Pennsylvania Election Code explicitly prohibits corporations from making

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any contributions for any political purposes. Therefore, your request not only inquires as to the application of the Act and related regulations to your proposal, but also asks whether Pennsylvania law is preempted to the extent it would prohibit your proposal.<sup>2</sup>

#### ACT AND COMMISSION REGULATIONS

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a 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). The Commission has applied these provisions to permit a number of State party committees and a national party committee to accept corporate donations to building funds set up for the purpose of purchasing or constructing an office facility for those party committees. Advisory Opinions 1997-14, 1993-9, 1991-5, 1986-40, and 1983-8; see also Advisory Opinion 1996-8.

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. Congress intended that the Federal law should be "construed to occupy the field with respect to elections to Federal office" and would be the sole authority under which such elections would be regulated. H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). It specifically defined this field as covering "limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses" but not 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).<sup>3</sup> Commission regulations rely on this legislative history and embody the explicit Congressional intent to preempt. They provide that the Act supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b). See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977).

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## APPLICATION TO PDP PROPOSAL

## Preemption of Pennsylvania law

In all four of the opinions that were issued to State parties, the Commission concluded that the Act and Commission regulations preempted the application of State law with respect to the prohibitions on corporate donations to a State party office building fund. Advisory Opinions 1997-14, 1993-9, 1991-5, and 1986-40. Two of the opinions noted that, in addressing the building fund donations and the entities receiving them, the Act spoke to a subject matter involving the areas set out in the regulations, and that Congress explicitly decided not to place restrictions on the subject, even though it could have determined that the purchase of such a facility was for the purpose of influencing a Federal election. The opinions stated that Congress, instead, took the affirmative step of deleting the receipt and disbursement of funds for such activity from the specific proscriptions of the Act, and that there is no indication that Congress intended to limit the preemptive effect to some allocable portion of the purchase costs. Advisory Opinions 1993-9 and 1991-5; see also Advisory Opinion 1997-14 and 1986-40. Therefore, to the extent that PDP's proposal to purchase or construct party headquarters is consistent with 2 U.S.C. 431(8)(B)(viii), 11 CFR 100.7(b)(12) and 11 CFR 100.8(b)(13), the Commission concludes that Pennsylvania State law is preempted with respect to the prohibitions on corporate donations and contribution limitations to the PDP building fund.

## Establishment and uses of building fund

The Commission notes that your proposal to establish a building fund would, for the most part, fall within the parameters established by the opinions cited above. For example, in Advisory Opinion 1993-9, the Commission permitted a State party to use a building fund to pay off the balance of its land contract on an existing party headquarters.

The Commission reasoned that this was a necessary part of the transaction to enable the party to acquire new office space. Therefore, the Commission concludes that PDP may use a building fund to pay off the existing mortgage loan debt on a current or future PDP headquarters or office facility.

However, you also delineate several other uses of the moneys collected for the building fund. These include the rebuilding of the current Party headquarters (including related improvements, such as new roofing and improved electrical wiring) and the purchase of multiple offices

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located throughout the State. The Commission concluded in Advisory Opinion 1983-8 that the building fund exception extends to donations to defray costs incurred for the construction or purchase of an office facility, but does not extend to donations to pay such ongoing, operating costs as property taxes and assessments. See Advisory Opinions 1991-5 and 1983-8. However, the Commission has not previously detailed the specific ways in which a building fund could be used in accordance with section 431(8)(B)(viii) and Commission regulations.

A parallel may be made between permissible uses of the building fund and the description and treatment of capital expenditures found in the Internal Revenue Code and related IRS regulations. Under the IRS regulations, a capital expenditure includes the cost of the acquisition, construction, or erection of buildings, machinery and equipment, furniture and fixtures and similar property. 26 CFR 1.263(a)-1 and 1.263(a)-2. Under the Internal Revenue Code, while business expenses produce tax deductions, no deduction is permitted for capital expenditures. Therefore, the distinction between what is a business expense and what is an capital expenditure has important tax consequences. 26 U.S.C. 263(a) and 26 CFR 1.263(a) -1. In the same manner, items that would fall under the category of capital expenditures would also be considered the type of expenditures that are legitimately part of the construction of a Party office facility. Items which instead are classified as business expenses would be seen as operating expenditures that fall outside the scope of the Act's building fund exception.

In the Internal Revenue Code, a distinction is made between capital expenses and "the cost of incidental repairs which neither materially add to the value of the property nor appreciably prolong its life, but keep it in an ordinary efficient operating condition." 26 CFR 1.162-4. The latter is not considered a capital expense. However, past case tax law has determined that when repair work reaches a level to constitute wholesale restoration or renovation of a structure, those expenses that might have individually constituted repair work were then treated as capital expenditures. See *True v. United States*, 894 F.2d 1197 (10th Cir. 1990) and *Stoelizing v. C.I.R.*, 266 F.2d 374 (9th Cir. 1959). Since the type of reconstruction proposed (the necessary repairs and improvements to the existing PDP headquarters, the construction of a new roof, the installation of new electrical wiring and the expansion of the size of the building and the number of rooms within the building) in your request would fall under the definition of capital expenditures, the Commission concludes this use of

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*Deanna Waller*  
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Date

the building fund would also meet the requirements of the Act and Commission regulations.

Regarding the construction of State party office headquarters in separate locations, the Commission concludes that this also falls within the parameters of section 431(8)(B)(viii) and Commission regulations. Other than specifying that the office facility may not be used to support a specific candidate, the Act and Commission regulations do not specify the number of office facilities that are permitted under the building fund exception or where they must be located.<sup>4</sup> Moreover, it is not unreasonable for a State political party to construct office facilities in three different cities where each city, as is the case here, is classified as a distinct Metropolitan Statistical Area by the United States Census Bureau.

#### Establishment and uses of "parking fund"

Your proposal regarding the "parking fund" is more problematic. The Commission notes that parking areas provided for the PDP headquarters would be an expected and, in many cases, necessary part of any office facility. However, the construction or acquisition of additional parking space capacity, not needed for the direct use of the Party (for its personnel and visitors to the Party office), may fall outside the building fund exception. At this time the Commission does not have complete and specific information from PDP regarding its plans and intentions for the acquisition and use of any parking lot facility. The Office of General Counsel will pursue this matter further with PDP to ascertain if it wishes to submit a separate advisory opinion request limited to the parking lot questions.

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

Sincerely,

(signed)

Joan D. Aikens  
Chairman

Enclosures (AOs 1997-14, 1996-8, 1993-9, 1991-5, 1986-40 and 1983-8)

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1 Your request states that the rate would be based on an independent market value of parking spaces in the metropolitan area in which the proposed parking facility is located.

2 The Pennsylvania election code provides under 25 PA CONS. STAT. ANN. 3253 that:

It is unlawful for any National or State bank, or any corporation, incorporated under the laws of this or any other state or any foreign country or any unincorporated association, except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever except in connection with any question to be voted on by the electors of this Commonwealth. Furthermore, it shall be unlawful for any candidate, political committee, or other person to knowingly accept or receive any contribution prohibited by this section, or for any officer or any director of any corporation, bank, or any unincorporated association to consent to any contribution or expenditure by the corporation, bank or unincorporated association, as the case may be, prohibited by this section.

3 The first report cited is the report of the House Committee that drafted section 453 as part of the 1974 amendments. The second report is the Conference Committee report on the 1974 amendments.

4 In Advisory Opinion 1983-8, the requester was permitted to establish and maintain a building fund with reference to office headquarters consisting of several buildings at one location.

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10/22/03  
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## Federal Election Commission Advisory Opinion Number 1986-40

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December 18, 1986  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
ADVISORY OPINION 1986-40  
John R. Raese, Chairman  
West Virginia Republican State  
Executive Committee/  
113 Washington Street West  
P.O. Box A  
Charleston, West Virginia 25362

Dear Mr. Raese:

This responds to your letters of September 23, 1986, and October 24, 1986, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the solicitation and acceptance of corporate donations by a building fund.

According to your request, the West Virginia Republican State Executive Committee maintains both a federal and a state account. The party committee plans to construct or purchase a building to house the party's offices. You indicate that the federal account, which is called the West Virginia Republican State Executive Committee ("the Committee"), will establish another account, called the West Virginia Republican Building Fund ("the Building Fund"), for the purpose of accepting donations. You explain that all donations solicited and expended for the building will be channeled only through this new fund. You ask whether the Building Fund may solicit and accept corporate donations.

Under the Act and Commission regulations, donations to a national or a state committee of a political party that are specifically designated to defray the costs of construction or purchase of an office facility are not considered to be contributions or expenditures, 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. SS 431(8)(B)(viii); 11 CFR 100.7(b)(12) and 100.8(b)(13).

Thus, the Commission concludes that so long as the proposed office building is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, corporate donations to the Building Fund would

2/5/2003

not constitute contributions or expenditures under the Act, and therefore would not be prohibited. See 11 CFR 114.1(a)(2)(ix).

Any donations received for the Building Fund from corporations would have to be deposited in an account separate from the Committee (the federal account from which expenditures in connection with federal elections are made), as you have indicated will be done. Pursuant to 11 CFR 102.5(a)(2), only contributions that are designated for the federal account (the Committee), that result from a solicitation which expressly states the contributions will be used in connection with a federal election, and that are made by contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act may be deposited in the Committee. Donations solicited or designated for the Building Fund do not meet any of the foregoing conditions and, therefore, must be kept out of the Committee's account.

Any donations deposited in the Building Fund would not have to be reported under federal law. Commission regulations state that building fund donations "made to a committee which is not a political committee under 11 CFR 100.5" need not be reported. 11 CFR 100.7(b)(12). Because the Building Fund is not itself a "Political committee" for purposes of the Act (see 11 CFR 100.5), donations it receives need not be disclosed under the Act or Commission regulations.

[The final issue raised by your request is whether the Act and Commission regulations would supersede and preempt any West Virginia statute that prohibited or limited the Building Fund's acceptance of corporate donations. Because the Act specifically addresses building fund donations and clearly permits them, the Commission concludes that any such West Virginia statute would be superseded and preempted.\*/ See 2 U.S.C. SS 453 and 11 CFR 108.7.]

\*/ The Commission notes that this request includes a letter from Mr. Ken Hechler, the West Virginia Secretary of State. Mr. Hechler advises you that West Virginia statutes appear to prohibit the proposed corporate donations, but that in his opinion Federal law preempts the application of such statutes as to building fund donations.

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. See 2 U.S.C. SS 437f.

P.S. Commission Josefiak voted against approval of this opinion and will file a dissenting opinion at a later date.

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Deanne Hall  
Operator's Signature

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Date

## Federal Election Commission Advisory Opinion Number 1993-9

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August 6, 1993

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1993-9

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

Dear Mr. Doster:

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

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

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

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You state that, as with any headquarters, the MRSC uses the facility to influence Federal and non-Federal elections, but creating the building funds is not done for the purpose of influencing any elections. You state that "[i]n its capacity as a committee registered with the Commission," MRSC plans to take the following actions and observe the following conditions: (1) it will solicit and accept corporate contributions designated for the building fund(s); (2) it will advise all potential corporate contributors that all corporate contributions will be used for the building fund(s); (3) it will establish a "separate segregated" bank account in which only corporate contributions designated for the building fund(s) will be deposited; (4) it will disburse the corporate funds deposited in such separate account(s) to either purchase or construct a new headquarters, or pay off the balance of its land contract on its existing headquarters; (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(s); and (7) it will not have to report the corporate contributions to the building fund(s), other than on a voluntary basis, to the Commission. Furthermore, the MRSC plans to apply the funds only for construction or purchase of an office facility and not to pay such ongoing costs as property taxes and assessments. See Advisory Opinions 1991-5 and 1983-8.

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

You state that the MRSC's intended actions and conditions are substantially identical to those set forth in Advisory Opinion 1991-5 where the Commission approved the establishment of a party building fund and stated that any Tennessee State law prohibiting such a building fund under those conditions would be preempted. You state that the only "major difference" is that the MRSC may create a building fund to pay off the balance of its land contract on its existing headquarters facility. You wish to know whether, on

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*Deanna Hall*  
Operator's Signature

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the terms and conditions described above, the MRSC may accept corporate contributions either to pay off the balance of its land contract on the existing building or to purchase or construct a new headquarters facility. You also ask whether Federal law preempts any Michigan law prohibitions on corporate contributions to the building fund(s).1/

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value to a national or state committee of a political party, which 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). Raising funds to pay off the land contract on the existing building enables the party to complete its purchase of the building and obtain legal title, and thus is a permissible purpose for the exemption. In addition, raising funds for a new headquarters by selling the MRSC's interest in the existing headquarters is materially indistinguishable from the receipt of donations for the new headquarters. 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, the MRSC may accept corporate donations to the building fund as a part of any or all of the three activities described in your request. See Advisory Opinions 1991-5 and 1986-40.

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 the 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

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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, at 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 No. 95-44, at 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 this 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).<sup>2/</sup> Advisory Opinion 1991-5. The Commission concludes, therefore, that

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the Act and Commission regulations preempt the application of Michigan State law with respect to the prohibitions on corporate donations to the MRSC building fund.

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. See 2 U.S.C. §437f.

Sincerely,

(signed)

Scott E. Thomas  
Chairman

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

ENDNOTES

1/ You state that your client is not seeking guidance as to the reporting requirements for building funds under State or local law, "since this issue has been squarely addressed by the Commission." See Advisory Opinion 1991-5.

2/ 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).

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## Federal Election Commission Advisory Opinion Number 1991-5

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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

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*Deanna Waller*  
Operator's Signature

10/22/03  
Date

"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. Sc2-19-132; Sc2-10-101 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. Sc431(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

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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

-----  
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.

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. Sec 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

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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

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.

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.

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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

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).

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)

2/5/2003

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*Deanna Hall*  
Operator's Signature

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Date

## Federal Election Commission Advisory Opinion Number 1998-8

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AO 1998-8

May 22, 1998

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

### ADVISORY OPINION 1998-8

Michael Peterson, Chairman  
Iowa Democratic Party /  
5661 Fleur Drive  
Des Moines, Iowa 50321

Dear Mr. Peterson:

This responds to your letter dated April 7, 1998, on behalf of the Iowa Democratic Party ("IDP"), requesting an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the preemption of Iowa State law relating to donations for the establishment of a State party facility building fund.

Beginning in September 1997, the IDP has received donations that were solicited specifically for purchasing a State party office building in accordance with 2 U.S.C. 431(8)(B)(viii). On January 12, 1998, the IDP purchased an office building. It paid a portion of the cost of the building with such funds and has obtained a 20-year mortgage to defray the balance of the purchase costs. The IDP intends to solicit donations for the purpose of paying the balance of the mortgage and intends to establish a separate building fund account for the receipt of such donations.

Thus far, the donations received for the purpose of defraying the costs of purchasing the office building have been in compliance with the prohibitions of Iowa election law, including the prohibitions against contributions from corporations. The IDP intends to solicit donations into the building fund account from sources that do not comply with the State law. The Iowa Code, 56.15, generally prohibits

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political contributions by corporations.<sup>1</sup>

You cite a declaratory ruling issued on July 15, 1997, by the Iowa Ethics and Campaign Disclosure Board ("the Iowa Board") to the Republican Party of Iowa. The Iowa Board concluded, in essence, that Federal law would not preempt the Iowa Code when applied to the solicitation and receipt of donations for the construction of a party office facility. You note previous advisory opinions in which the Commission has preempted the application of State law prohibitions with regard to such donations, and you ask for an advisory opinion confirming that the Act preempts Iowa law with respect to the solicitation of corporate funds into a depository set up to defray the purchase cost of the IDP's office facility.<sup>2</sup>

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a 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). The Commission has applied these provisions to permit a number of State party committees and a national party committee to accept corporate donations to building funds set up for the purpose of purchasing or constructing an office facility for those party committees. Advisory Opinions 1997-14, 1993-9, 1991-5, 1986-40, and 1983-8; see also Advisory Opinion 1996-8. The donations in question will be used to pay off the mortgage obtained by the IDP to purchase the building. Moreover, the donations will not be used for the purpose of influencing a particular Federal election, but instead will be deposited in a separate building fund account. Assuming the specific designation by the donors for the building fund, the Act permits the proposed activity. Advisory Opinion 1993-9.

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. Congress intended that the Federal law should be "construed to occupy the field with respect to elections to Federal office" and would be the sole authority under which such elections would be regulated. H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974). It specifically defined this field as covering

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"limitations on campaign expenditures, the sources of campaign funds used in Federal races, the conduct of Federal campaigns, and similar offenses" but not 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).<sup>3</sup>

Commission regulations rely on this legislative history and embody the explicit Congressional intent to preempt. They provide that the Act supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b). See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977).

In all four of the opinions that were issued to State parties, the Commission concluded that the Act and Commission regulations preempted the application of State law with respect to the prohibitions on corporate donations to a State party office building fund. Advisory Opinions 1997-14, 1993-9, 1991-5, and 1986-40. Two of the opinions noted that, in addressing the building fund donations and the entities receiving them, the Act spoke to a subject matter involving the areas set out in the regulations, and that Congress explicitly decided not to place restrictions on the subject, even though it could have determined that the purchase of such a facility was for the purpose of influencing a Federal election. The opinions stated that Congress, instead, took the affirmative step of deleting the receipt and disbursement of funds for such activity from the specific proscriptions of the Act, and that there is no indication of Congressional intent to limit the preemptive effect to some allocable portion of the purchase costs. Advisory Opinions 1993-9 and 1991-5; see also Advisory Opinion 1997-14 and 1986-40.

The IDP's situation is materially indistinguishable from those described in the four cited opinions. See 2 U.S.C. 437f(c)(1)(B). Consistent with these opinions, the Commission concludes that the Act and Commission regulations preempt the application of Iowa State law with respect to the prohibitions on corporate donations to the IDP building fund. The IDP is not prohibited from accepting corporate donations for the purpose of paying the mortgage on its purchase of a building that is used as its office facility.<sup>4</sup>

This response constitutes an advisory opinion concerning the application of the Act, or regulations prescribed by the Commission, to the specific transaction or

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activity set forth in your request. See 2 U.S.C. 437f.

Sincerely,

(signed)

Joan D. Aikens  
Chairman

Enclosures (AOs 1997-14, 1996-8, 1993-9, 1991-5, 1988-12,  
1986-40, and 1983-8)

1 The Iowa Code, 56.15, subsections 1 and 2, provides, in pertinent part:

1. [I]t is unlawful for ... [a] corporation ... to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or for the purpose of influencing the vote of an elector ...

2. [I]t is unlawful for a member of a committee, or its employee or representative, ... or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from ... [a] corporation ... any money, property, or thing of value belonging to the ... corporation for campaign expenses, or for the purpose of influencing the vote of an elector ...

2 You state that the IDP acknowledges that the Act does not preempt the State's ability to regulate the disclosure of building fund contributions and thus does not seek an opinion regarding disclosure requirements. See Advisory Opinions 1997-14, n.1 and 1991-5.

3 The first report cited is the report of the House Committee that drafted section 453 as part of the 1974 amendments. The second report is the Conference Committee report on the 1974 amendments.

4 The Commission reminds you, that while the building fund exception extends to donations to defray costs incurred for the construction or purchase of an office facility, it does not extend to donations to pay such ongoing operating costs as property taxes and assessments. Advisory Opinions 1991-5 and 1983-8; see also Advisory Opinion 1988-12.

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## Federal Election Commission Advisory Opinion Number 1997-14

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August 22, 1997  
CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

### ADVISORY OPINION 1997-14

Robert F. Wood  
Holcomb Dunbar  
111 East Capitol Street  
Suite 290  
PO Box 2990  
Jackson, MS 39207-2990

Dear Mr. Wood:

This responds to your letter dated July 9, 1997, on behalf of the Mississippi Republican Party ("MRP"), concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the establishment of a building fund by the MRP.

The MRP proposes to solicit contributions and donations from individuals and corporations for the acquisition and/or construction of a building to be used as a party headquarters within the State of Mississippi. You state that the building and headquarters will be used to influence Federal and non-Federal elections but the building fund, itself, will not be used to influence elections. In connection with this project, the MRP proposes to establish a separate building fund for individual and corporate contributions so that contributions are: (a) made to a building fund established exclusively for the purchase and/or construction of a building to serve as a new headquarters for its Federal and non-Federal activities; (b) used exclusively for the building project; (c) clearly designated as contributions or donations to the building fund; and (d) not used for the purpose of influencing particular Federal, State or local elections or transferred to accounts used for such purposes.

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You note that Section 97-13-15 of the Mississippi Code of 1972, as annotated and amended, provides as follows:

It shall be unlawful for any corporation, incorporated company or incorporated association, by whatever name it may be known, incorporated or organized under the laws of this state, or doing business in this state, or for any servant, agent, employee or officer thereof, to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property of said corporation, incorporated company or incorporated association, in excess of one thousand dollars (\$1,000.00) for the purpose of aiding any political party or any candidate for any public office, or any candidate for any nomination for any public office of any political party, or to give, donate, appropriate or furnish, directly or indirectly, any money, security, funds or property of said corporation, incorporated company or association in excess of one thousand dollars (\$1,000.00) to any committee or person as a contribution to the expense of any political party or any candidate, representative or committee of any political party or candidate for nomination by any political party, or any committee or other person acting in behalf of such candidate. The limit of one thousand dollars (\$1,000.00) for contributions to political parties shall be an annual limitation applicable to each calendar year.

Under the Act and Commission regulations, a gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a 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). The Commission has applied these provisions to permit a number of State party committees and a national party committee to accept corporate donations to building funds set up for the purpose of purchasing or constructing a headquarters for those party committees. Advisory Opinions 1996-8, 1993-9, and 1991-5.

In the three opinions noted above, which involved State

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party committees, the Commission also addressed whether the Act's exemption would preempt State laws that appeared to prohibit corporate donations to State party organizations for any purpose, including the acquisition of a State party's office building. 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. Commission regulations repeat this language and, more specifically, provide that the Act supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitation on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(a) and (b). See Federal Election Commission Regulations, Explanation and Justification, House Document No. 95-44, at 51 (1977). The opinions noted that, in addressing the building fund donations and the entities receiving them, the Act spoke to subject matter involving the topics set out in the regulations, and Congress explicitly decided not to place restrictions on the subject, even though it could have treated it as Federal activity. Thus, the building fund exemption of the Act preempted State law with respect to prohibitions on contributions to the State party building funds. Advisory Opinions 1996-8, 1993-9 and 1991-5.

As you note in your request, your client's situation is substantially identical to those set forth in Advisory Opinions 1993-9 and 1991-5. Consistent with these opinions, the Commission concludes that the Act and Commission regulations preempt the application of Mississippi State or local law with the respect to the prohibitions on corporate or individual donations to the MRP building fund. The MRP is not prohibited from accepting corporate contributions in any amount for the purpose of purchasing or constructing a building to be used as its office headquarters.<sup>1</sup>

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

Sincerely,

(signed)

John Warren McGarry  
Chairman

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Enclosures (AOs 1996-8, 1993-9, 1991-5, and 1983-8)

1 The Commission reminds you that while the building fund exception extends to donations to defray costs incurred for the construction or purchase of an office facility, it does not extend to donations to pay such ongoing operating costs as property taxes and assessments. See Advisory Opinions 1991-5 and 1983-8. Further, while 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)), the Commission has concluded that any State level disclosure requirement regarding a State party building fund is not pre-empted by the Act. See Advisory Opinion 1991-5.

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