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*Deanna Wallis*

10/21/03

Date

2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2241

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2241

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/06/03

Tape Number	Side A	Side B	Meter #
Tape 2		x	2680-5440
Committee Clerk Signature <i>Lisa Myers</i>			

Minutes:

**Senator Karen Krebsbach**, Chairman opens SB 2241. All senators present.

**Senator Joel Heitkamp** introduces bill (Testimony attached)

**Senator Wardner** : Page 1 on what a contribution is, if I were to put \$500 into my own campaign would I have to report that?

**Senator Heitkamp**: Yes I do believe so but, maybe not I am not quite sure.

**Senator Dever** : Definition of a candidate regarding SB 2063. I think it basically says the same thing just in different terms.

Expenses, the timing of the reports they need to report 10 days prior to the election I feel that is letting people know what is going on before hand.

**Senator Heitkamp**: I guess you could relook at the dates.

**Senator Brown**: Why would you think there would be an illegal expenditure?

**Senator Heitkamp**: Illegal was a bad choice of words, how are you spending those dollars ?

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Page 2

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2241

Hearing Date 02/06/03

**Senator Nelson** : On FEC report you have to report it over \$200. It is not difficult, it is art of the job.

**Senator Heitkamp**: It comes down to full disclosure and take the confusion out of it.

**Senator Fairfield** : What I appreciate about this bill is that you comment about the perception about what we do to the public and the legality of it to the public.

**Representative Gulleason**, in support of bill

**Cory Fong, Deputy Secretary of State** is in neutral but would like to offer an amendment to keep the bill consistent with the rest.

Closed SB 2241

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2241

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/18/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		3700-4250
Committee Clerk Signature			

Minutes:

Senator Karen Krebsbach, Chairman reopens SB 2241. All senators present.

Senator Fairfield moves a Do Pass

Senator Nelson 2nd

Senator Dever : I do like this bill with exception of one thing and that is having to report expenses sometime before the election and that to me is reveling the end game. I don't think that should be required

Senator Nelson : The big expenditures I think we already have a pretty good clue. The FEC report makes you anyway.

Senator Dever : I think this is really clever when we put a post it not to the Front Page of the paper with our logo on it and it cost more that \$200.

2 Yes 4 No

Senator Brown moves for a Do Not Pass

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Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2241

Hearing Date 02/18/03

Senator Wardner 2nd

4 Yes 2 No

Carrier : Senator Dever

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

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2241**

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Fairfield Seconded By Nelson

[illegible]

Total (Yes) 2 No 4

Absent 6

Floor Assignment Over

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

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10/21/03

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

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2241

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

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

Action Taken Do Not Pass

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) 4 No 2

Absent 0

Floor Assignment Dever

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

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**REPORT OF STANDING COMMITTEE (410)**  
February 18, 2003 4:06 p.m.

Module No: SR-31-3155  
Carrier: Dever  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**SB 2241: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)**  
recommends **DO NOT PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2241 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-31-3155

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2003 TESTIMONY

SB 2241

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2-06-03

Senate Bill 2241

Chairman Krebsbach and Member of the Senate Government and Veterans Affairs Committee.  
My name is Joel Heitkamp and I am the State Senator from District 26.

Senate Bill 2241 comes to you as a means to rectify a problem. A problem that we have seen play out in our court system and in the public's mind. The problem is campaign finance reform and full disclosure. I came to this session not feeling that we necessarily had a problem after the ruling from the District Court in Grand Forks.

It wasn't until hearing people's response to that ruling that I decided to work on this bill. The interpretation of that ruling and the confusion that followed in some people's mind has been disheartening. The goal of this bill madam chair is to clear the air and make sure that no one is able to misinterpret the law again. The bill also tightens the loopholes that the public feels needs to be tightened.

So Madam Chair I will attempt to go through 2241 and give an explanation of the bill:

Section 1 defines a candidate. No longer would any individual be able to claim that they were raising money but they didn't really know if they were a candidate.

Section 2 goes to the definition of a contribution. If it has a value it counts. If you borrow money from a bank or anyone it counts.

Section 3 speaks again to the loan issue.

Section 4 goes to the reporting of expenditures for candidates. People want to know where we got the money and they want to know where we spent it.

Section 5 again goes to the reporting of expenditures for political parties and the bills that get paid in excess of 200 bucks.

Section 6 again goes to "each contributor" and the amounts of those expenditures made by the person in excess of 200 dollars.

Section 7 speaks to political committees and the expenditures they make. They already have to report the receipts of excess of 200 dollars and now this speaks to the expenditures in excess of 200 dollars.

Section 8 speaks to those political committees and their expenditures in excess of 200 dollars.

Section 9 adds a new section to code to deal with the reporting of third party expenditures. In other words if the folks back home decide to run a bunch of ads for me and run separate from my organization they will have to report that the same way we would. And Madam Chair and fellow Senators that means anything of value in excess of 200 dollars.

This bill Madam Chair and members of the GVA committee goes to total disclosure of what goes on in our campaigns. It attempts to hide nothing. It shows no favoritism to either party and simply gives the public the right to the information they deserve.

There is no one on this committee that in anyway, I would ever suspect would have a problem meeting the criteria this bill sets out. It explains who a candidate is and how they should report to the Secretary of State. It simply gives the public what they deserve.

I thank you for your consideration on this bill and I appreciate your time. I would be glad to answer any questions I can.

Joel Heitkamp  
State Senator District 26

# 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

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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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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)

1 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.

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

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

2/5/2003



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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**Various Registration and Reporting Requirements of Senate Bill No. 2241**  
(Contained in Sections 4, 5, 6, 7, 8 and 9)

Requirement	Statewide Candidate	Legislative Candidate	State Party	District Party	Political Committees	Persons Promoting Measures	Individuals
Registration Requirement with Secretary of State	Yes	No	No	No	Yes	Yes	No
Pre-Primary and Pre-General reporting during each election year	Yes	Yes	Yes	Yes	Yes	Yes	No
Contributions received	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$100	No
Expenditures made	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200	Yes In excess of \$200
Gross total of all expenditures made	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>	No
48 hour reporting of contributions received in excess of \$500	Yes	Yes	Yes	Yes	Yes	Yes	No
Disclosure of expenditures made on behalf or in opposition to another candidate	No	No	No	No	Yes <sup>1</sup> In excess of \$200	No	Yes <sup>1</sup> In excess of \$200

<sup>1</sup> New requirement in SB 2241

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