FEDERAL ELECTION COMMISSION

Washington, DC 20463

August 25, 2003

CERTIFIED MAIL
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ADVISORY OPINION 2003-19

Judith L. Corley, Esq.
Brian G. Svoboda, Esq.
Perkins Coie LLP
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2011

Dear Ms. Corley and Mr. Svoboda:

This responds to your letter dated June 24, 2003, requesting an advisory opinion on behalf of the Democratic Congressional Campaign Committee, Inc. ("DCCC"), concerning the application of the Federal Election Campaign Act of 1971, as amended, and the Bipartisan Campaign Reform Act of 2002 ("BCRA")(collectively, "the Act"), and Commission regulations to the DCCC's proposed sale of used office equipment and furniture.

Background

The DCCC is a "national congressional campaign committee" under the Act. *See* 2 U.S.C. § 441i(a); 11 CFR 110.2(c)(2); 11 CFR 300.10(a). In 2002, the DCCC agreed to participate in the renovations of the Democratic Party headquarters building that began shortly after the 2002 general election. You state that, as a result of the renovations, the DCCC anticipates that much of its office equipment and furniture will be incompatible with the new space and with future plans. The DCCC would like to sell these items in arm's length transactions "at a price most closely approximating fair market value." You state that a fair market price will be easily determinable because similar used items are routinely bought and sold. The DCCC intends to make the used furniture and equipment available for sale to a wide array of potential purchasers, which may include corporations, labor organizations or other sources prohibited from making contributions or donations to national party committees under the Act.

Question Presented

Under BCRA, may the DCCC accept proceeds from the sale of used office equipment and furniture, without regard to the source or amount of those proceeds?

Legal Analysis and Conclusion

Yes, it may, under certain conditions. Before BCRA, national party committees were able to raise and spend non-Federal funds (i.e., funds not subject to the limitations, prohibitions and reporting requirements of the Act) using separate non-Federal accounts. Under BCRA, however, national party committees may not "solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions and reporting requirements of this Act." 2 U.S.C. § 441i(a); 11 CFR 300.10(a). As a national congressional campaign committee, the DCCC is considered a "national committee" of a political party for the purposes of section 441i(a) of the Act. 11 CFR 300.10(a). As such, the DCCC is prohibited from receiving any contributions or donations that are not subject to the limitations, prohibitions, and reporting requirements of the Act. 2 U.S.C. § 441i(a). The term "contribution" is defined in the Act to include "any gift, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A). In the specific context of contributions by corporations or labor organizations, the term "contribution" is also defined to include "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money… to any candidate, campaign committee, or political party or organization, in connection with any election to" Federal office. 2 U.S.C. § 441b(b)(2). A "donation" means "a payment, gift, subscription, loan, advance, deposit, or anything of value given to a person, but does not include contributions." 11 CFR 300.2(e).

The Commission recently addressed transactions involving political committee assets under BCRA. In Advisory Opinion 2002-14, the Commission concluded, in pertinent part, that payments received by a national party committee for the leasing of its mailing list would not be viewed as a "contribution, donation or transfer of any funds or any other thing of value . . . subject to the Act's limits and prohibitions" based on how the list was developed and used, and on the nature of the lease transaction at issue in that opinion. Specifically, the Commission concluded that the national party committee could lease its mailing list to persons, including corporations and labor organizations, where: 1) the list had been developed by the committee in the course of its political activities over a period of time and primarily for its own political or campaign purposes rather than for sale or lease to others; 2) the leasing of the list constituted only a small percentage of the committee's use of the list; 3) the list, or the leased portion thereof, had an ascertainable fair market value; and 4) the list was leased at the usual and normal charge in a *bona fide*, arm's length transaction and was used in a commercially reasonable manner consistent with an arm's length agreement. The Commission further concluded that the

rental payments would be considered Federal funds usable for any purpose permitted under the Act and the regulations and should be reported in the Committee's reports as "Other Receipts."[1]

The office equipment and furniture that the DCCC proposes to sell was purchased for use in everyday business operations, and not as a means of raising funds. Moreover, used office equipment and furniture generally has an ascertainable market value. The Commission also notes that this transaction, like the sale of a campaign's unusable van sanctioned in Advisory Opinion 1986-14, would result in the isolated disposal of unwanted and depreciated committee assets, and is thus not inherently susceptible to use for political fundraising. Therefore the Commission concludes that the proceeds from the sale of the used office equipment and furniture will not be considered a "contribution, donation, or transfer of funds or any other thing of value" subject to the Act's limitations and prohibitions if the DCCC sells these assets at a price that does not exceed the usual and normal charge for used office equipment and furniture at the time of the sale. *See* 11 CFR 100.52(d).

To ensure that the assets are sold for the usual and normal charge, the sale of the assets must not be advertised in any contribution solicitation. *Cf.* Advisory Opinion 1986-14. Payments received from transactions meeting these conditions will not be subject to the Act's contribution limits, and may come from corporations, labor organizations or other sources that are prohibited from making contributions or donations to the DCCC. The payments will be considered to be Federal funds usable by the DCCC for Federal election purposes and for any other purposes permitted under the Act and the Commission's regulations. Such payments would be reported in the category of "Other Receipts." *See* Advisory Opinion 2002-14.

The Commission expresses no opinion regarding any tax ramifications of the proposed activities because those issues are not within its jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

The Commission notes that this advisory opinion analyzes the Act, as amended by BCRA, and Commission regulations, including those promulgated to implement the BCRA amendments, as they pertain to your proposed activities. On May 2, 2003, a three-judge panel of the United States District Court for the District of Columbia ruled that a number of BCRA provisions are unconstitutional and issued an order enjoining the enforcement, execution, or

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[1] The conclusion in Advisory Opinion 2002-14 is generally in accord with the pre-BCRA treatment of proceeds resulting from the sale of certain committee assets under similar circumstances. *See e.g.*, Advisory Opinions 1992-24, 1990-26, 1989-4, and 1986-14. The conclusion is also consistent with the purpose of the section 441i(a) ban on a national party's receipt of non-Federal funds because, even before BCRA, such proceeds were never viewed as non-Federal funds required to be deposited in a separate account or prohibited from being used to finance Federal elections.

other application of those provisions. *McConnell v. FEC*, 251 F.Supp. 2d 176 (D.D.C. 2003); *prob. juris. noted*, 123 S.Ct. 2268 (U.S. 2003). Subsequently, the District Court stayed its order and injunction in *McConnell v. FEC*, 253 F.Supp. 2d 18 (D.D.C. 2003). The Commission has determined that your request for advice is not affected by the District Court's ruling. The Commission cautions that the legal analysis in this advisory opinion may be affected by the eventual decision of the Supreme Court.

Sincerely,

(signed)

Bradley A. Smith
Vice-Chairman

Enclosures (AOs 2002-14, 1992-24, 1990-26, 1989-4, and 1986-14)