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STATE BOARD OF ELECTIONS
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GARY O. BARTLETT
Executive Director

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April 8, 2004

Mr. Roger W. Knight
Wyrick, Robbins, Yates, Ponton, LLP
4101 Lake Boone Trail
Suite 300
Raleigh, NC 27606-7506

Dear Mr. Knight,

This letter contains an opinion of the Executive Director of the State Board of Elections pursuant to G.S. § 163-278.23.

In your request for an opinion, you ask whether the North Carolina Republican Main Street Committee ("NCRMSC") may solicit and accept contributions from individuals and corporations for the sole purpose of producing "issue advocacy" advertisements and educational materials. Groups that accept contributions and make expenditures for the sole purpose of engaging in "issue advocacy" are not subject to North Carolina campaign finance laws. However, there are several factors that must be addressed before arriving at this conclusion for NCRMSC:

First, pursuant to NCGS § 163-278.15 and G.S. § 163-278.19, business entities may not contribute to candidates or political committees. Therefore, in order to allow NCRMSC to accept contributions from business entities, it must first be established that the group is not a political committee. The term "political committee" is defined in NCGS § 163-278.6(14). It states that a group that accepts anything of value to make contributions or expenditures and has a major purpose to support or oppose the nomination or election of one or more clearly identified candidates or to support or oppose the nomination or election of candidates of a clearly identified political party is a political committee. There is also a "rebuttable presumption" standard included in the "political committee" definition that has been struck down in a recent court decision. Thus, this "presumption" should not be considered. Your letter states NCRMSC intends to produce ads that do not advocate for the election or defeat of any candidate. Therefore, this advisory opinion assumes that all contributions received and expenditures made will only be for the production of these "issue advocacy" ads. If this assumption is incorrect, this advisory opinion will not be valid.

Next, assuming the only activity of NCRMSC is to produce "issue advocacy" ads, a determination must be made that the ads are in fact "issue" and do not support or oppose the nomination or election of clearly identified candidates or candidates of a particular political party. Groups engaging in

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communications that are "express advocacy" must abide by the regulations of Article 22A of Chapter 163 of the North Carolina General Statutes, including the prohibition on the acceptance of business contributions. In order to determine if a communication is "express advocacy" and subject to Article 22A regulations, we rely on the statutory guidance of NCGS § 163-278.14A. However, due to a recent court decision in the Fourth Circuit, the North Carolina State Board of Elections only relies upon subdivision (1) of subsection (a) and subsection (b) of this statute. The language provided in this subdivision defines examples of "magic words" that must be included in a communication for it to be considered "express advocacy." Subdivision (2) of subsection (a) was determined unconstitutional by the Fourth Circuit. The language in this subdivision defined contextual factors that could be used to determine if a communication is "expressly" advocating for or against candidates. These contextual factors are not presently considered as a result of the Fourth Circuit ruling. But, it should be noted that the Fourth Circuit decision is presently under review by the United States Supreme Court. Nevertheless, we are bound to follow the ruling of the Fourth Circuit and only rely on the "magic word" standard, unless it is overturned. If the ruling should be overturned, this advisory opinion would be nullified.

To conclude, as long as NCRMSC does not meet the definition of a political committee and does not engage in "express advocacy" in any activities, they would not be subject to the provisions of Article 22A of the North Carolina General Statutes and would be allowed to accept funds from any source to engage in the "issue" related goals and purposes of the "committee." If the purpose of NCRMSC should change to a goal to expressly advocate for the election or defeat of specified candidates or candidates of a particular political party, NCRMSC would be subject to the provisions of Article 22A and would be required to register as a "political committee" with the State Board of Elections.

If we can be of further assistance, please don't hesitate to contact our office. We thank you for your interest in campaign finance compliance.

Sincerely,



Gary O. Bartlett
Executive Director