



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 15, 1988

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1988-45

Donald B. Wassall, Executive Director  
Populist Party of America  
P.O. Box 1988  
Ford City, PA 16226

Dear Mr. Wassall:

This responds to your letter of September 26, 1988, and the letter and supplemental documents sent by you on October 29, 1988, requesting an advisory opinion on behalf of the Populist Party of America National Committee concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the issue of the national committee status of that committee.

In support of your assertion that the committee is a national committee of a political party, you state that the Populist Party presidential and vice presidential candidates were on the ballot in twelve states for the 1988 general election, that there were Populist Party candidates for a seat in the U.S. Senate and four seats in the U.S. House of Representatives from Pennsylvania, and that there were candidates for state and local office in Pennsylvania, Rhode Island, and Colorado. You also state that the Populist Party of America National Committee has engaged in a number of other activities, including disseminating party information to state affiliates and aiding in their development, helping with ballot access procedures, providing speakers to various meetings around the country, and holding National Committee meetings and conventions.

"National committee" is defined by the Act as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission." 2 U.S.C. 431(14). See also 11 CFR 100.13. "Political party" is defined by the Act as "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the ballot as the candidate of such association, committee, or organization." 2 U.S.C. 431(16). See also 11 CFR 100.15. In 1988, the Populist Party of America, an entity that apparently was organized in early

1987, nominated presidential and vice presidential candidates who appeared on the ballot as Populists in nine states.<sup>1</sup> In addition, the Pennsylvania state affiliate placed five Federal candidates on the ballot as Populists. In view of these facts, the Populist Party of America would be regarded as a political party under the Act. See Advisory Opinions 1980-121, 1980-96, and 1980-3.

The Commission has applied a number of criteria aimed at determining whether a committee has demonstrated that it is engaged in sufficient activity on a national level to qualify as a national committee of a political party. A committee demonstrates that it is a national committee of a political party by nominating candidates for various Federal offices in numerous states; by engaging in certain activities on an ongoing basis (rather than with respect to a particular election) such as supporting voter registration and get-out-the-vote drives, providing speakers, and organizing volunteer workers; and by publicizing issues of importance to the party and its adherents throughout the nation. Other indicia include the holding of a national convention, the establishment of a national office, and the establishment of state affiliates. See Advisory Opinions 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-95, and 1975-129.

Documentation provided by the Populist Party of America indicates that the Populist Party of America has held three national conventions, including an initial convention in March, 1987, where it adopted by-laws. At conventions in September, 1987, and March, 1988, the party nominated candidates for President and Vice President.<sup>2</sup> The by-laws provide for a nominating meeting or convention every presidential election year and a national committee meeting at the beginning of March each year. The party prints a monthly magazine known as The Populist Observer which contains news of the activities of the national party organization and state party affiliates, including organizing activities and speeches by Populist Party leaders to state meetings. The Observer also contains articles and news items pertaining to public issues of interest to the Populist Party of America. Articles in The Observer and copies of letters from the national chairman and the executive director indicate that there were communications to state party leaders as to the need for state parties to pay dues in order to have voting delegates at the conventions and the need for state parties to attain a ballot position, and that there were communications to members as to the need to become involved, pay dues, and provide other support. According to articles and lists appearing in The Observer, there are approximately forty state affiliates and these affiliates are engaged in organizational activities to varying degrees. Documentation provided by the Populist Party of America also includes a lease of offices for the party.

Other information in documentation provided or referred to by the Populist Party of America, however, indicates that it has not engaged in sufficient activity on a national level for the committee to qualify as a national committee. Outside of the appearance of the Populist Party presidential and vice presidential candidates on twelve state ballots, there were no Populist Party candidates for Federal office on the ballot in any state but Pennsylvania where there was one Senate candidate and a House candidate in four of the state's twenty-three Congressional Districts.<sup>3</sup> In addition, the reports of the party committee filed with the Commission disclose no contribution or other disbursement made by it in support of Congressional candidates. There are disbursements to individual workers in various states or to the Populist Party of certain states for

'ballot access,' although articles in The Observer and other documentation appear to emphasize the placement of a presidential candidate on the ballot.

The Commission concludes that the Populist Party of America National Committee does not qualify as a national committee of a political party. Although the party committee has taken a number of steps to establish and conduct its activities as a national committee, it has not yet engaged in sufficient activity for various Federal offices in numerous states. See Advisory Opinion 1980-131. As a consequence of this determination, the committee may not avail itself of the \$20,000 and \$15,000 contribution limits set out at 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B) or the national party expenditure provisions of 2 U.S.C. 441a(d). The Commission's determination does not preclude the attainment by the committee of national committee status at a future date.

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)

Danny L. McDonald  
Vice Chairman for the Federal Election Commission

Enclosures (AOs 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-95, and 1975-129)

1. The ticket of David Duke and Floyd Parker appeared on the ballot as Populists in nine states, as Independents in two states, and as the candidates of the Patriotic Party in Iowa.
2. The party nominated George Hansen and Hubert Patty for President and Vice President respectively in September, 1987, and determined that if a vacancy occurred for either candidacy, the Executive Committee of the party would have the right to nominate a candidate. Two months later, Mr. Hansen turned down the nomination and the Executive Committee withdrew the names of Hansen and Patty. In March, 1988, the convention nominated David Duke for President and Bo Gritz for Vice President. Shortly thereafter, Gritz withdrew his name and the Executive Committee nominated Floyd Parker.

By notice filed with the Commission, David Duke designated the Populist Party of America National Committee as his principal campaign committee in the general election for President, and a separate account was apparently established for that purpose. See 2 U.S.C. 432(e)(3)(A)(i), 11 CFR 102.12.

3. The request states that there were candidates for state and local office in Pennsylvania, Rhode Island, and Colorado. Although a number of Populist statewide candidates appeared on the ballot

in Pennsylvania, there was only one state legislature candidate on the ballot in each of the other two states.