



FEDERAL ELECTION COMMISSION
Washington, DC 20463

April 23, 1993

CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1992-44

Mr. David P. Goch
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Goch:

This responds to your letter of December 18, 1992, and the letters and supplemental documents sent by you on February 26, March 2, March 9, April 14, and April 21, 1993, requesting an advisory opinion regarding whether the National Committee of U.S. Taxpayers Party (the "Committee") is a "national committee" of a political party for purposes of the Federal Election Campaign Act of 1971, as amended ("the Act").

Your letter states that the U.S. Taxpayers Party (the "Party") was formed at a national convention on September 4 and 5, 1992 in New Orleans, Louisiana, which also nominated the Party's 1992 Presidential candidate, Howard Phillips, and three Vice Presidential candidates.^{1/} Among the documents that you have included in your request are minutes of the September 1992 convention and the minutes of a December 1992 meeting of the Committee, as well as the Party constitution, the Committee bylaws, and the Party platform.

The Party constitution lists the various purposes of the Party, the first of which is "to provide a national vehicle through which the member state parties may fully participate in the national election process, including the nomination of national candidates and the adoption of national platforms."^{2/} To support your assertion that the Committee is a national committee of a political party, you state that Mr. Phillips achieved ballot access in twenty one states.^{3/} He was on the ballot in ten states as the candidate of a party you describe as affiliated with the U.S. Taxpayers Party and was listed as an independent in the other 11 states.^{4/} You further state in your request that the Party has recognized affiliates in 31 states, three of which (California, Michigan and Nevada) succeeded in obtaining ballot access for their candidates for the U.S. Senate and

Congress.^{5/} You also state that the Party has established a national party headquarters located in Vienna, Virginia, and intends to promote its principles and candidates through the appointment by the Party of "a national media coordinator" who will "propose and implement a national strategic plan regarding media." The coordinator would also encourage the Party's state affiliates to take similar steps.

The term "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. The term "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 election ballot as the candidate of such association, committee, or organization." 2 U.S.C. 431(16).

Therefore, to determine whether the Committee is eligible for national committee status, the Commission must first determine whether the Party qualifies as a "political party" under the Act. You have provided documentation consisting of correspondence from state authorities verifying that the Party's Presidential and Vice Presidential candidates achieved ballot access in several states under the designation of parties that you state are affiliated with the U.S. Taxpayers Party. Secondary information (publicly available) confirms that the Party's Presidential candidate achieved ballot status as the candidate of several parties apparently identified with the U.S. Taxpayers Party. On this basis, the Commission concludes that the U.S. Taxpayers Party would be a political party for purposes of the Act. See Advisory Opinions 1992-30, 1988-45, 1980-121, 1980-96 and 1980-3.

The Commission has applied a number of criteria to determine whether a political party or its committees have demonstrated sufficient activity on a national level to attain national committee status. A committee demonstrates that it is a national committee of a political party by the nomination of 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; 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 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-96 and 1975-129.

A committee or political party will not qualify for national committee status if its activity is focused solely on the Presidential and Vice Presidential election (Advisory Opinions 1980-131 and 1978-58), or if it is limited to one state (Advisory Opinion 1976-95), or if it currently has only a limited number of Federal candidates on state ballots (Advisory Opinion 1988-45).

An examination of the documents and information you have submitted indicates that while the Party has engaged in some form of party building activity, this activity is not sufficiently national at this time. The Commission notes that while the Party has held a national convention and has established a party headquarters, your request acknowledges that the Party's efforts as a newly formed organization has been focused on ballot access for its candidates.

As a result, it is only recently by April, 1993, that the Party has been able to publicize its positions by issuing press releases, by preparing a book detailing its philosophy and policy positions and by issuing the first issue of its Party newsletter.^{6/} Further, you acknowledge that the Party's get-out the vote and registration drives are nascent and still in a planning stage.^{7/} The Commission notes the still formative nature of your endeavors is mirrored by the financial status of the Committee itself. The minutes for the December meeting of the Committee, reflect a comment made by Mr. Phillips: "[t]he National Committee of the U.S. Taxpayers Party had not done anything yet financially. It has no bank account or procedures for disbursing or raising money."^{8/} These circumstances together indicate that the U.S. Taxpayers Party is not yet fully engaging in activity on a national level.

An important element in determining an organization's national committee status is the degree to which successful ballot access efforts extend beyond the Presidential and Vice Presidential level to other Federal races as well. See Advisory Opinions 1992-30 and 1988-45. While several state party affiliates have qualified as political committees, Party efforts regarding ballot access indicate the limited success of the Party's efforts. For example, in the 1992 general election, the U.S. Taxpayers Party had achieved ballot access in only three states for candidates seeking election to the U.S. Congress or Senate.^{9/} These consisted of nine candidates in California, Michigan and Nevada.^{10/} Considering all these factors together, the Commission concludes that the U.S. Taxpayers Party, at this time, has not manifested sufficient national activity for its national committee to qualify as the national committee of a political party under the Act. The Commission's determination does not preclude the attainment by the Committee of national committee status at a future date subsequent to another advisory opinion request.

This conclusion means that the Committee and the Party may not accept contributions for its Federal account in amounts greater than \$5,000 per year, per donor. See 2 U.S.C. 441a(a)(1)(C), 441a(a)(2)(C). Furthermore, the Committee and the Party may not make expenditures pursuant to 2 U.S.C. 441a(d). Since no specific transaction or activity relating to Chapters 95 or 96 of the Internal Revenue Code of 1954 was presented, this opinion does not reach any issues as to the eligibility of the U.S. Taxpayers Party's Presidential candidate(s) to receive Federal matching funds under 26 U.S.C. 9031-9042 for use in the primary elections, nor as to entitlement to general election funding under 26 U.S.C. 9001-9012. Similarly, this opinion does not reach the issue of entitlement of the U.S. Taxpayers Party to receive convention financing under 26 U.S.C. 9008.

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)

Scott E. Thomas
Chairman

Enclosures (AOs 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-112, 1976-95 and 1975-129)

ENDNOTES

1/ Robert Tisch was nominated as the Party's Vice Presidential candidate for the state of Michigan. Steven Graves was nominated as the Party's Vice Presidential candidate for the states of Louisiana and Wyoming. The candidate who was nominated to serve as the Party's Vice Presidential candidate in the remaining states was Albion W. Knight.

2/ The other purposes of the Taxpayers Party include promoting the election of Party nominated Presidential and Vice Presidential candidates, assisting member state parties in organizational efforts and promoting allegiance to the principles and objectives of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights "as conceived and set forth by our Founding Fathers in their establishment of our Republic."

3/ According to information collected from public sources, Mr. Phillips received .04% of the vote in the 1992 election.

4/ Of the ten states in which you identify Mr. Phillips as achieving ballot access under a party designation, the Commission notes that five of these parties bear party names, such as the Mississippi Taxpayers Party, that easily identify them as related to the U.S. Taxpayers Party. The five remaining parties bear titles that distinguish them in name from the national party. These are the South Carolina American Party, the American Independent Party of California, the Tisch Independent Citizens Party of Michigan, the Independent American Party of Nevada and the Independent Voters Party in Massachusetts.

5/ According to Commission records, five affiliates have registered with the Commission and the state affiliates in California, Washington, and Pennsylvania have reached a level of financial activity that would qualify them as political committees for purposes of the Act.

Your March 2, 1993, submission identifies an additional candidate, Mr. Vince Thornton, as attempting to secure ballot access as a candidate of the Mississippi Taxpayers Party in the 1993 special election for the U.S. House of Representatives in the Second Congressional District of Mississippi. According to information provided by the office of the Secretary of State of Mississippi and your April 14 submission, Mr. Thornton failed to gain a place on the ballot by the March 10 deadline.

6/ Your initial March 2, 1993 submission attempted to substitute in place of national journals or materials the existence of various state party newsletters and publications such as the California Statesman, which is the journal of the American Independent Party of California. The Commission notes that these autonomous state publications seem, by their very nature, to be limited in scope to a single state and do not convey the impression of the type of national and continuous activity central to national committee status under the Act.

7/ The request has detailed various planned activities which, if carried out, would be indicia of national activity by the Party. In Advisory Opinion 1980-3, when considering the national committee status of the Citizen's Party, the Commission considered the planned national activities of that party to conclude that once those activities were completed the Citizens Party could consider itself a national committee of a political party. See Advisory Opinion 1980-3.

However, more recent advisory opinions have based the granting of national committee status on the completion or existence of actual party building activity of national scope or successful ballot access efforts at the time of the request. See Advisory Opinions 1992-30 and 1988-45. Therefore, to the extent that language in Advisory Opinion 1980-3 is inconsistent with the more recent Commission opinions which analyze and grant national committee status on the basis of current or completed party building activity or successful ballot access efforts at the time of the request, Advisory Opinion 1980-3 is hereby superseded.

8/ Contrary to Mr. Phillips' comments, your April 14 submission presents documentation that the Party does have a bank account. Reports filed by the Committee would seem to support at least part of Mr. Phillips' statements in that they indicate that during the 1991-1992 election cycle the Committee raised \$2,313 but made no disbursements. Your April 14 submission states that disbursements have been made since December 1992.

9/ This level of activity is distinguishable from the situation in Advisory Opinion 1992-30, where the Commission granted national committee status to the Natural Law Party. At the time of the request, the Natural Law Party had obtained ballot access for 31 of its candidates for the U.S. Congress or Senate in fourteen states. The U.S. Taxpayers Party's situation would seem closer to that of the Populist Party in Advisory Opinion 1988-45. The Commission, in denying the Populist Party's claim to national committee status, found that the Populist Party had obtained ballot access for five Congressional candidates in the state of Pennsylvania.

10/ Prior to the establishment of the Taxpayers Party in 1992, one of the Party's state affiliates, the American Independent Party of California, had achieved success in obtaining ballot access for its candidates on a state wide level. The American Independent Party of California had placed candidates on the ballot for election to the Congress in 1984, 1988, 1990 and 1992. In the 1988 Presidential election this party had run its own candidate for President.

In 1992, this State party amended its statement of organization to indicate an affiliation status with the Taxpayers party, a relationship which your April 14 submission further documents. However, communication between the American Independent Party of California and the Commission contemporaneous with your documentation conveys a contrary opinion as to the relationship between that party and the U.S. Taxpayers Party. In a December 16, 1992 letter discussing the amended statement of organization, the treasurer of the California American Independent Party stated:

[the Commission] inquired about our affiliation with Howard Phillips' U.S. Taxpayers Party... The pre-election report I filed described what we had contributed to Mr. Phillips' campaign, but I did not list his U.S. Taxpayers Party as an "affiliated committee" on the original statement of Organization form. My

reason for not doing so was, because in one sense of the word, the U.S. Taxpayers Party is not a committee of the American Independent Party, but a totally separate organization, which we may or may not be affiliated with in the future - an organization we are not responsible to, or for and over which we have no control.