

DRAFT

ADVISORY OPINION 1995-16

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

Dear Mr. Goch:

This responds to your letters of May 9, and June 15, 1995, 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, the Party constitution 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

^{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.

3 national candidates and the adoption of national platforms."^{2/}
4 Party constitution, Article II, section 1.

5 To support your assertion that the Committee is a
6 national committee of a political party, you state that Mr.
7 Phillips achieved ballot access for the 1992 Presidential
8 election in 21 states.^{3/} He was on the ballot in 10 states as
9 the candidate of a party you describe as affiliated with the
10 U.S. Taxpayers Party and was listed as an independent in the
11 other 11 states. You further state that the Party
12 has successfully placed other candidates on the ballot since
13 1992. One was a candidate in the 1993 special election in
14 the 17th Congressional district in California. In 1994, the
15 Party had ballot status for a total of 16 Federal candidates
16 in 6 states.^{4/}

17 You also state that the Party has established a national
18 party headquarters located in Vienna, Virginia, and intends
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21 ^{2/} The other purposes of the Taxpayers Party include
22 promoting the election of Party nominated Presidential and
23 Vice Presidential candidates, assisting member state parties
24 in organizational efforts and promoting allegiance to the
25 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." Party constitution, Article II, sections 2
and 4.

26 ^{3/} According to information collected from public sources,
Mr. Phillips received .04% of the vote in the 1992
27 Presidential election.

28 ^{4/} These states are: California, Kentucky, Mississippi,
Nevada, Ohio and Wisconsin. Your initial letter also
29 identified South Carolina. However, you indicate that that
candidate ran as a Republican, rather than as a candidate of
30 a party affiliated with the U.S. Taxpayers Party.

3 to promote its principles and candidates through the
4 appointment by the Party of "a national media coordinator"
5 who will "propose and implement a national strategic plan
6 regarding media." The coordinator would also encourage the
7 Party's state affiliates to take similar steps. These
8 efforts will take the form of future public forums to educate
9 the public on issues important to the Party.

10 Your request also presents evidence of party building
11 activity by the Party. You state that the Party conducted a
12 voter registration drive in Delaware that registered one-half
13 of one percent of the existing registered voters as Delaware
14 Taxpayers Party members. You also state that the national
15 committee of the Party has met twice per year since the
16 Party's formation (in Denver, Colorado and Memphis, Tennessee
17 during 1993; and in Milwaukee, Wisconsin and Reno, Nevada in
18 1994) with future meetings scheduled in St. Louis, Missouri
19 and in Cleveland, Ohio. The 1996 National Convention of the
20 Party is scheduled for August 1996 in San Diego, California.

21 The term "national committee" is defined by the Act as
22 "the organization which, by virtue of the bylaws of a
23 political party, is responsible for the day-to-day operation
24 of such political party at the national level, as determined
25 by the Commission." 2 U.S.C. §431(14). See also 11 CFR
26 100.13. The term "political party" is defined by the Act as
27 "an association, committee, or organization which nominates a
28 candidate for election to any Federal office whose name
29 appears on the election ballot as the candidate of such
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3 association, committee, or organization." 2 U.S.C.
4 §431(16).

5 Therefore, to determine whether the Committee is
6 eligible for national committee status, the Commission must
7 first determine whether the Party qualifies as a "political
8 party" under the Act. You have provided documentation
9 consisting of correspondence from state authorities verifying
10 that the Party's Presidential and Vice Presidential
11 candidates in 1992 achieved ballot access in several states
12 under the designation of political parties that you say are
13 affiliated with the U.S. Taxpayers Party. Secondary
14 information (publicly available) confirms that the Party's
15 Presidential candidate achieved ballot status as the
16 candidate of several other parties apparently identified with
17 the U.S. Taxpayers Party. Similar ballot status was
18 attained by other Party candidates for Federal office in 1993
19 and 1994. On this basis, the Commission concludes that the
20 U.S. Taxpayers Party would be a political party for purposes
21 of the Act. See Advisory Opinions 1992-44, 1992-30, 1988-45,
22 1980-121, 1980-96 and 1980-3.

23 The Commission has applied a number of criteria to
24 determine whether a political party or its committees have
25 demonstrated sufficient activity on a national level to
26 attain national committee status. A committee demonstrates
27 that it is a national committee of a political party by the
28 nomination of candidates for various Federal offices in
29 numerous states; by engaging in certain activities on an
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3 ongoing basis (rather than with respect to a particular
4 election) such as supporting voter registration and
5 get-out-the-vote drives; and by publicizing issues of
6 importance to the political party and its adherents
7 throughout the nation. Other indicia include the holding of
8 a national convention, the establishment of a national office
9 and the establishment of state affiliates. See Advisory
10 Opinions 1992-44, 1992-30, 1988-45, 1980-131, 1980-121,
11 1980-96, 1980-3, 1978-58, 1976-95 and 1975-129.

12 A committee of a political party will not qualify for
13 national committee status if its activity is focused solely
14 on the Presidential and Vice Presidential election (Advisory
15 Opinions 1980-131 and 1978-58), or if it is limited to one
16 state (Advisory Opinion 1976-95), or if it currently has only
17 a limited number of Federal candidates on state ballots
18 (Advisory Opinions 1992-44 and 1988-45).

19 In a previous advisory opinion, the Commission examined
20 the request of the U.S. Taxpayers Party for recognition as
21 the national committee of a political party. In Advisory
22 Opinion 1992-44, the Commission concluded that due to its
23 nascent status, the Party had not yet reached a level of
24 national activity to qualify as the national committee of a
25 political party under the Act.

26 The current circumstances of the Party differ
27 significantly from the previous request. The Commission
28 notes that the Party has engaged in substantial party
29 building activity as evidenced by the voter registration
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3 drive in the state of Delaware. This indicates that the
4 Party's own promotional or party building activities are no
5 longer merely in the planning stage, as was the case
6 previously. The Commission also notes the national committee
7 meetings held throughout the nation following the convention.
8 Additionally, the Party's financial development in 1994 shows
9 its growth beyond a formative state. In Advisory Opinion
10 1992-44, the Commission noted that as of the date the request
11 was submitted, it was unclear whether the Party had
12 established a bank account or procedures for disbursing or
13 raising money. According to reports filed with the
14 Commission during the 1993-1994 campaign cycle, the Party had
15 received total receipts of \$60,000 and had made \$58,000 in
16 disbursements.

17 An important element in determining an organization's
18 national committee status is the degree to which successful
19 ballot access efforts extend beyond the Presidential and Vice
20 Presidential level to other Federal races as well. See
21 Advisory Opinions 1992-44, 1992-30 and 1988-45. Here again,
22 the circumstances of the current request show significant
23 development. At the time of the previous request, the Party
24 had achieved ballot access for nine candidates seeking
25 election to the U.S. Congress in three states. In the 1994
26 election cycle, the Party achieved ballot access for fourteen
27 candidates in six states, which are located in several
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3 different sections of the nation.^{5/} Considering all these
4 factors together, the Commission now concludes that the U.S.
5 Taxpayers Party has manifested sufficient activity to qualify
6 as the national committee of a political party.

7 This determination of national committee status is
8 applicable only with regard to the contribution limitations
9 of 2 U.S.C. §441a and the national party expenditure limits
10 of 2 U.S.C. §441a(d). Since no specific transaction or
11 activity relating to Chapters 95 or 96 of the Internal
12 Revenue Code of 1954 was presented, this opinion does not
13 reach any issues as to the eligibility of the Party's
14 Presidential candidate(s) to receive Federal matching funds
15 under 26 U.S.C. §§9031-9042 for use in the primary elections,
16 nor as to entitlement to general election funding under 26
17 U.S.C. §§9001-9012. Similarly, this opinion does not reach
18 the issue of entitlement of the Party to receive convention
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21 ^{5/} In Advisory Opinion 1992-44, the Commission stated that
22 the Party's ballot access effort, successful in three states,
23 was similar to the level reached by the Populist Party in
24 Advisory Opinion 1988-45. In that opinion, the Populist
25 Party was denied national committee status because it
26 achieved ballot access for its Federal candidates in only one
27 state. As seen above, the U.S. Taxpayer's development
28 indicates that this characterization is no longer accurate.
29 The U.S. Taxpayer's Party has not achieved ballot access to
30 the same extent as the last party to be granted national
committee status, the Natural Law Party, which, at the time
Advisory Opinion 1992-30 was issued, had achieved ballot
access in fourteen states. However, the Commission notes
that Advisory Opinion 1992-30 was not intended to create a
specific threshold number for ballot access. Rather, the
facts in the current situation indicate that the U.S.
Taxpayer's Party has now shown ballot access success for
Federal office that indicates significant activity on a
national level.

3 financing under 26 U.S.C. §9008.

4 This response constitutes an advisory opinion concerning
5 the application of the Act, or regulations prescribed by the
6 Commission, to the specific transaction or activity set forth
7 in your request. See 2 U.S.C. §437f.

8 Sincerely,

9
10 Danny L. McDonald
11 Chairman

12 Enclosures (AOs 1992-44, 1992-30, 1988-45, 1980-131,
13 1980-121, 1980-96, 1980-3, 1978-58, 1976-112,
14 1976-95 and 1975-129)
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