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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JAN 7 2 00 PM '97

SUBMITTED LATE

January 7, 1997

AGENDA ITEM

For Meeting of: 1-9-97

MEMORANDUM

TO: The Commission

THROUGH: John C. Sukina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Rita A. Reimer
Attorney

SUBJECT: Revised Draft AO 1996-51

The Office of General Counsel has recently learned that one of the Arkansas Reform Party's 1996 congressional candidates, Tony Joe Huffman of the 3d Congressional District, registered with the Commission and has filed campaign disclosure reports indicating a level of activity sufficient to qualify him as a candidate for purposes of the Federal Election Campaign Act.

The attached draft Advisory Opinion has been revised to reflect this new information. The revisions, which appear on pages 4 and 5, have been highlighted. This revised draft should be considered on January 9 instead of Agenda Document #97-2.

Attachment

DRAFT

1
2 **ADVISORY OPINION 1996-51** Jan 7 2 00 PM '97

3
4 **Gwynn J. Kansfield, Treasurer**
5 **Reform Party of Arkansas**
6 **P.O. Box 6**
7 **Norman, AR 71960**

8
9 **Dear Ms. Kansfield:**

10
11 **This refers to your letters dated November 24 and October 24, 1996, which request**
12 **advice concerning application of the Federal Election Campaign Act of 1971, as amended**
13 **("the Act"), to the possible status of the operations of the Reform Party of Arkansas (the**
14 **"State Party") as a State party committee for purposes of the Act.**

15 **You state that the Reform Party of Arkansas is a State affiliate of the National**
16 **Reform Party.¹ You have submitted a copy of the State Party's bylaws, and a decision**
17 **from the United States District Court for the Eastern District of Arkansas, *Citizens to***
18 ***Establish a Reform Party in Arkansas v. Priest*, No. LR-C-96-185 (E.D. Ark. July 31,**
19 **1996), which required the Arkansas Secretary of State to officially recognize the**
20 **formation of the State Party for purposes of Arkansas law. You further state that the State**
21 **Party was successful in obtaining ballot access for individuals who received the Party's**
22 **nomination in 1996 for Federal office.² This statement is substantiated by publicly**

¹ This advisory opinion concerns only issues relating to the State Party and its political party and State committee status. A committee that claims to represent the National Reform Party has submitted a separate advisory opinion request to the Commission concerning its possible status as a national committee of a political party. See Advisory Opinion Request 1996-47.

² The Reform Party candidates in Arkansas were Keith Carlee for U.S. House of Representatives in the 1st Congressional District, and Tony J. Huffman for U.S. House of Representatives in the 3d Congressional District.

1 available sources. Also, the State Party placed on the 1996 ballot two candidates for state
2 office and five candidates for local offices.

3 Under the Act and Commission regulations, the term "State committee" means
4 the organization, which, by virtue of the bylaws of a political party, is responsible for the
5 day-to-day operation of such political party at the State level, as determined by the
6 Commission. See 2 U.S.C. §431(15) and 11 CFR 100.14. The definition of State
7 committee also requires the existence of a political party. Political party is defined under
8 2 U.S.C. §431(16) as an association, committee, or organization which nominates a
9 candidate for election to any Federal office whose name appears on the election ballot as
10 the candidate of such association, committee, or organization.

11 In Advisory Opinion 1992-30, the Commission determined the elements
12 necessary to qualify an organization as a State committee. The first requirement was the
13 existence of a State affiliate agreement which "delineates activities commensurate with
14 the day-to-day operation of [a political party] on a State level." Advisory Opinion 1992-
15 30; see also Advisory Opinions 1996-43, 1996-27, and 1995-49. The Commission then
16 concluded that "[t]o the extent the relationship between [a political party] and an affiliate
17 is based on this agreement and the affiliate displays evidence of activity by obtaining
18 ballot access for both its Presidential and other Federal candidates..., [that] particular
19 affiliate is a State Committee of the [political party]." *Id.*³

³ The Commission notes that this language is from prior opinions (Advisory Opinions 1996-27, 1995-49 and 1992-30) which considered State committees that were linked to national political parties. Therefore, the facts in those opinions concerned State committees that secured ballot access for Presidential and Vice-Presidential candidates as well as other Federal candidates. However, neither the Act nor Commission regulations require that ballot access be for a specific Federal office or a specific number of Federal candidates before an entity can qualify as a political party or a State committee of a political party. See 2 U.S.C. §§431(15), (16) and 11 CFR 100.14 and 100.15. See also the discussion below.

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1 **The Commission notes that these prior opinions are relevant to your situation**
2 **even though they concerned a State party affiliate also claiming a relationship with a**
3 **national party that had achieved national committee status. The entity known as the**
4 **National Reform Party has not received this status. However, the definitions in the Act**
5 **and Commission regulations for State committee and political party do not require that a**
6 **national committee or national party be established before a State entity can be**
7 **recognized as the State committee of a political party.**

8 **In Advisory Opinion 1996-43, the Commission addressed the situation where a**
9 **State party affiliate of a national political party that had not yet achieved the status of a**
10 **national party committee nevertheless sought State party status. The Commission found**
11 **that the same criteria applied to that situation, which, it noted, was very similar to**
12 **Advisory Opinion 1976-95, the first opinion that examined State committee status. In**
13 **that opinion the Campaign Committee of the Liberal Party of New York sought**
14 **designation as a national committee of a political party. The Commission noted that the**
15 **activity of the requester (including its successful ballot activity) was limited only to New**
16 **York State. The Commission concluded that the requester was not a national committee,**
17 **but was instead “a subordinate [State] committee of a political party.” See Advisory**
18 **Opinion 1976-95.**

19 **According to the Bylaws submitted with your request, the purpose of the State**
20 **Party is to “nominate and endorse candidates for public office, and to engage in other**
21 **political and information activities in the State of Arkansas.” Bylaws, Art. 1, §1. The**
22 **Bylaws also list the responsibility of the party organization to hold State conventions and**
23 **to insure that the Reform Party candidates for President and Vice President selected at the**

1 Reform Party's national nominating convention appear on the general election ballot in
2 Arkansas. Bylaws, Art. V, §1. The Bylaws set criteria for party membership and
3 establish a State Executive Committee and Party Officers. Bylaws, Art. I, §§2, 6; Art. II;
4 Art. III. These provisions are consistent with the State party rules reviewed in Advisory
5 Opinions 1996-43, 1996-27, 1995-49 and 1992-30 as they delineate activity
6 commensurate with the day-to-day functions and operations of a political party on a State
7 level.

8 The second element for qualifying as a political party is that the party
9 organization actually obtains ballot access for its Federal candidates. [material deleted]
10 The Commission has informally confirmed that Keith Carlee and Tony Huffman were
11 listed on the 1996 general election ballot as the candidates of the Reform Party for the
12 U.S. House of Representatives in the Arkansas 1st and 3d Congressional districts,
13 respectively. While there is no document on file at the Commission indicating that
14 Mr. Carlee ever designated a principal campaign committee or took any other
15 action required of Federal candidates under the Act,⁴ Mr. Huffman has registered
16 with the Commission and filed campaign disclosure reports indicating a level of
17 campaign activity sufficient to qualify as a candidate under the Act.⁵ In addition,
18 the Reform Party's Presidential and Vice Presidential candidates, Mr. Ross Perot and Dr.

⁴ An individual becomes a candidate for purposes of the Act if he or she receives contributions aggregating in excess of \$5,000 or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. §431(2). Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate and also become subject to various registration, recordkeeping and reporting requirements. 2 U.S.C. §§432(e)(1), 433, 434(a)(1) and (2); 11 CFR 101.1(a), 102.1(a) and 104.1

⁵ Mr. Huffman's authorized campaign committee, Friends of Tony Huffman for Congress, filed a report of receipts and disbursements on November 2, 1996, noting total receipts of \$7176.71 and total disbursements of \$6993.42 during the election cycle as of October 28, 1996.

1 Pat Choate, [] filed as candidates with the Commission. They also appeared on the
2 Arkansas ballot as the Reform Party's candidates for those offices pursuant to State Party
3 bylaws requiring the State Party to insure that the party's national convention nominees
4 for President and Vice President be placed on the Arkansas general election ballot. Given
5 these circumstances, the Commission concludes that the State Party meets the second and
6 last element to qualify as a State committee of a political party. It also qualifies the
7 Reform Party of Arkansas as a political party. Therefore, the Commission further
8 concludes that the operations of the Reform Party of Arkansas would constitute it as the
9 State committee of a political party.⁶

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

13 Sincerely,

14
15
16 John Warren McGarry
17 Chairman

18
19
20 Enclosures (AOs 1996-43, 1996-27, 1995-49, 1992-30 and 1976-95)

⁶ The Commission notes that any person involved in a specific activity indistinguishable in all its material aspects from the activity described in an advisory opinion issued to another person may rely on its conclusions. 11 CFR 112.5(a). Therefore, any other Reform Party entity that operates at the State level with party rules similar to those of the Reform Party of Arkansas, and that secured Federal candidate ballot access for the 1996 election cycle (or a past election cycle) for at least one of its Federal candidates who also qualified as a candidate under the Act, may rely on the conclusions reached in this opinion.