

Elliott Johnson

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of: 4-17-97

April 10, 1997

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1997-03

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 17, 1997.

Attachment

DRAFT

1 **ADVISORY OPINION 1997-3**

2
3 **James N. Clymer, Treasurer**
4 **Constitutional Party of Pennsylvania**
5 **P.O. Box 1766**
6 **Lancaster, PA 17608**

7
8 **Dear Mr. Clymer:**

9
10 **This responds to your letters dated December 20, 1996, and March 3, 1997,**
11 **requesting an advisory opinion concerning the application of the Federal Election**
12 **Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the**
13 **possible status of the Constitutional Party of Pennsylvania ("the Party") as a State**
14 **committee of a political party.**

15 **You have submitted a copy of the Party's by-laws, which were adopted in August**
16 **1995 and amended in March 1996, and assert that your organization is the sole entity**
17 **representing the Constitutional Party of Pennsylvania. You state that the Party circulated**
18 **nomination papers to acquire ballot access for candidates in the 1996 general election.**
19 **You have submitted an unsigned copy of the nomination paper, filed by the Party with**
20 **the Pennsylvania Department of State, which shows that this effort entailed seeking**
21 **access for the 1996 presidential and vice presidential candidates of the U.S. Taxpayers**
22 **Party ("USTP") and for three statewide, non-Federal office candidates. Publicly available**
23 **information indicates that the national candidates and two of the three statewide**
24 **candidates appeared on the ballot as candidates of the Party. In addition, one U.S. House**
25 **candidate also appeared on the ballot as a candidate of the Party.**

26 **You state that the Party is affiliated with the USTP, a national committee of a**
27 **political party as defined by 2 U.S.C. §431(14), and is the only state affiliate in**
28 **Pennsylvania of that national party. See Advisory Opinion 1995-16. According to an**
29 **account of the history of the Party that it placed on the World Wide Web, the Party voted**
30 **to affiliate with the USTP shortly after the Party's organization in 1995. You have also**
31 **submitted a copy of a letter you received from the national chairman of the USTP**
32 **confirming that the Party is its State affiliate and briefly describing the Party's role in the**
33 **national party activities. Specifically, the chairman states that the Party participated in**

1 the USTP's 1996 national convention, placed the USTP's nominees for president and
2 vice president on the Pennsylvania ballot, and "has continuously been recognized as
3 Pennsylvania's participant in the USTP's National Committee." He also notes that two
4 of the Party's officers serve as members of the USTP's executive committee.

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

13 In Advisory Opinion 1992-30, the Commission determined the elements
14 necessary to qualify an organization as a State committee when the committee was
15 related to a national committee of a political party. The first requirement was the
16 existence of a State affiliate agreement which "delineates activities commensurate with
17 the day-to-day operation of [a political party] on a State level." Advisory Opinion 1992-
18 30; see also Advisory Opinions 1996-51, 1996-43, 1996-27, and 1995-49. The
19 Commission then concluded that "[t]o the extent the relationship between [a political
20 party] and an affiliate is based on this agreement and the affiliate displays evidence of
21 activity by obtaining ballot access for both its Presidential and other Federal candidates,
22 ... [that] particular affiliate is a State Committee of the [political party]." *Id.*

23 The Party's by-laws state that "[t]he purpose of the Party is to develop an
24 informed, energetic and effective statewide political organization to support the
25 principles, goals and platforms of this Party as may be adopted from time to time by its
26 Convention and to secure the election of all duly nominated candidates and electors
27 thereof." Article II. The By-laws provide for Party membership criteria and for an
28 annual State Convention attended by Party members. Articles IV and VII. The By-laws
29 further provide for the establishment of a State Committee that is responsible for the
30 control and management of the affairs, properties, and funds of the Party consistent with

1 the governing documents; the election of Party officers by the State Convention; and the
2 establishment of an Executive Committee, consisting of some of the officers and other
3 members elected by the State Committee members, that acts in place of the State
4 Committee where authorized by the State Committee or the by-laws. Article V.
5 Provision is also made for the nomination of candidates for Federal and State elective
6 offices by the State Committee and the Convention who will be listed as candidates of the
7 Constitutional Party on ballot access petitions. Article IX. The by-laws also contemplate
8 the establishment of county committees. Articles V, IX and X.

9 With one notable exception, the by-laws are consistent with State party rules
10 reviewed in several past opinions as they delineate activity commensurate with the day-
11 to-day functions and operations of a political party on a State level. Advisory Opinions
12 1996-51, 1996-43, 1996-27, 1995-49, and 1992-30. Unlike the rules reviewed in those
13 opinions, the by-laws do not refer to a specific national party with which the Party
14 maintains a relationship. However, the by-laws provide for the election of national
15 committee members if there is an affiliation with a national party and further provide for
16 the election of delegates to "national conventions of the Party."¹ Documents you
17 submitted indicate that the Party has, in fact, become a state affiliate of the USTP, a
18 national party committee.

19 Even if the Party did not have a relationship with a national party that had
20 achieved national committee status, it may still qualify as a State committee pursuant to 2
21 U.S.C. §431(15) if it also qualifies as a political party under 2 U.S.C. §431(16). In
22 recent opinions, the Commission granted State committee status to a State party affiliate
23 of a national political party that had not yet achieved the status of a national party
24 committee. Advisory Opinions 1996-51 and 1996-43. In those opinions, the
25 Commission relied on Advisory Opinion 1976-95, where the Campaign Committee of the
26 Liberal Party of New York sought designation as a national committee of a political
27 party. In that opinion, the Commission noted that the Liberal Party's activity (including
28 its successful ballot activity) was limited only to New York State. The Commission

¹ According to the by-laws, the phrase, "the Party" refers to the Constitutional Party of Pennsylvania. Article I.

1 concluded that the Liberal Party Campaign Committee was not a national committee, but
2 was instead a State committee of a political party. Advisory Opinion 1976-95.

3 The second element for qualifying as a State committee of a political party, and an
4 essential element for qualifying as a political party, is that the party organization actually
5 obtains ballot access for its Federal candidates. The Commission notes that the only
6 Congressional candidate of the Party that appeared on the 1996 general election ballot in
7 Pennsylvania did not file a statement of candidacy with the Commission or designate a
8 principal campaign committee, as required of Federal candidates under the Act.
9 Moreover, there is no other indication that he qualified as a Federal candidate for
10 purposes of the Act.² As indicated in Advisory Opinion 1996-51, the qualification of a
11 person as a candidate under the Act is necessary for a determination that the placement of
12 that person's name on the ballot satisfies the second element. See also Advisory Opinion
13 1996-35 (where the Commission denied national committee status to the Greens/Green
14 Party USA because, in part, its presidential candidate had stated his determination to
15 avoid candidate status under the Act).

16 In this case, the USTP's presidential and vice presidential candidates appeared on
17 the Pennsylvania ballot as candidates of the Party, filed with the Commission as
18 candidates, and qualified as candidates under the Act. In view of the fact that the Party
19 has been an affiliate of the USTP, which is the entity that nominated the presidential and
20 vice presidential candidates, the Party qualifies as a political party under the Act and also
21 meets the second and last element for qualifying as a State committee of a political
22 party.³ As already noted, since Party by-laws providing for the day-to-day operation of

² 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 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, and 434(a); 11 CFR 101.1, 102.1, and 104.1.

³ The Commission notes past opinions which have recognized State committee status for political party entities that had affiliated relationships with national party committees. Advisory Opinions 1996-27, 1995-49 and 1992-30. In those circumstances, the placement on the ballot of the State and national party's presidential and other Federal candidates was relevant to the opinions' conclusions. In other opinions where the relevant national political organization had not been recognized by the Commission as having national (party) committee status, the Commission has indicated that the Act and Commission regulations would not preclude recognition of State committee status for a political party organization that operates on a statewide basis and has candidates for Federal office who appear on a State election ballot as the party's

1 the Party on a State level satisfy the first element, the Commission concludes that the
2 Constitutional Party of Pennsylvania qualifies as the State committee of a political party
3 under the Act.

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

7
8 Sincerely,

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10
11
12 John Warren McGarry
13 Chairman

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15 Enclosures (AOs 1996-51, 1996-43, 1996-35, 1996-27, 1995-49, 1995-16, 1992-30, and
16 1976-95)

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nominees. See Advisory Opinions 1996-51 and 1996-43. In the instant opinion, the Commission recognizes for the first time that a State party organization whose only Federal candidates (as defined under the Act) are at the presidential and vice presidential levels may also qualify as the State committee of a political party where it has an affiliated relationship with a Commission-recognized national committee of a political party that has nominated the same presidential candidate.