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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 5, 1998

**AGENDA ITEM**  
For Meeting of: 11-12-98

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Acting Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Michael G. Marinelli  
Staff Attorney

SUBJECT: Draft AO 1998-23

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 12, 1998.

Attachment

**DRAFT**

1  
2 **ADVISORY OPINION 1998-23**

3  
4 **Thomas Alan Linzey, Esq.**  
5 **2244 Lindsay Lot Road**  
6 **Shippensburg, Pennsylvania 17257**

7  
8 **Dear Mr. Linzey:**

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10 **This refers to your letter dated September 9, 1998, which was received September**  
11 **23, 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 Maine Green Party Council ("the Party Committee") as a State**  
14 **committee of the Maine Green Party ("the Party").**

15 **Your request includes the Party's Bylaws which detail various aspects of the**  
16 **organization of the Party. The Bylaws prescribe the manner in which the Maine Green**  
17 **Party Council acts as the executive authority for the Party, the calling of a State**  
18 **convention to choose Party officers, the procedures for the endorsement of candidates and**  
19 **the nomination of a presidential candidate, as well as the choosing of Presidential**  
20 **electors. You also provide a copy of the Party newsletter which details some of the party-**  
21 **building activities of the Party. Your request includes a copy of an affiliation agreement**  
22 **between the Maine Green Party and the Association of State Green Parties.<sup>1</sup> Finally, you**  
23 **provide letters from two candidates in the 1996 and 1992 election cycles who, you claim,**  
24 **were on the Maine ballot as Federal candidates of the Maine Green Party. These**

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<sup>1</sup> For a brief description of the decentralized nature of the Green Party political movement in the United States, see Advisory Opinion 1996-35, footnote one.

1 candidates have provided letters indicating that they now associate themselves with the  
2 Party Committee's request for State committee status under the Act.<sup>2</sup>

3 Under the Act and Commission regulations, the term "State committee" means the  
4 organization which, by virtue of the bylaws of a political party, is responsible for the day-  
5 to-day operation of such political party at the State level, as determined by the  
6 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee also  
7 requires the existence of a political party. The term "political party" is defined under 2  
8 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization which  
9 nominates a candidate for election to any Federal office whose name appears on the  
10 election ballot as the candidate of such association, committee, or organization.

11 The Commission has considered a variety of State party organizations in making  
12 these determinations. Advisory Opinions 1998-24, 1998-2, 1997-29, 1997-7, 1997-3, and  
13 1996-51. In reviewing State party affiliates of entities that qualified as national  
14 committees of political parties under 2 U.S.C. §431(14), the Commission has looked to  
15 the existence of a State affiliate agreement which "delineates activities commensurate  
16 with the day-to-day operation of [a political party] on a State level," and then concluded  
17 that "[t]o the extent the relationship between [a political party] and an affiliate is based on  
18 this agreement and the affiliate displays evidence of activity by obtaining ballot access  
19 for both its Presidential and other Federal candidates, . . . [that] particular affiliate is a

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<sup>2</sup> These Maine candidates are: John Rensenbrink, 1996 U.S. Senate Candidate and Jonathan Carter, 1992 U.S. House candidate in the Second Congressional District. The Commission notes that your request does not rely on the Maine ballot status of Ralph Nader as the Green Party's Presidential candidate in the 1996 Presidential election. As the Commission concluded in Advisory Opinion 1996-35, since Mr. Nader was not a candidate for purposes of the Act, his place on a ballot could not be used to advance a claim to national committee status; this would also apply to any State committee claim as well. See Advisory Opinions 1997-29, 1996-43 and 1996-35; see also footnote 3 below.

1 State Committee of the [political party]." Advisory Opinions 1997-29 and 1997-7. The  
2 Commission has also granted State party committee status to organizations that had  
3 affiliated status with national political parties, which had not achieved national committee  
4 status, based on the existence of State bylaws detailing activities commensurate with the  
5 day-to-day operation of a party on the State level and the placement of at least one  
6 Congressional candidate on the ballot. Advisory Opinions 1997-29, 1997-7 and 1996-51.  
7 In reaching this conclusion, the Commission made clear that a State political party could  
8 qualify as a State committee without an affiliation with any national political party  
9 organization and indicated that a State party's candidate must be a candidate under 2  
10 U.S.C. §431(2) in order for that party to satisfy the second requirement.<sup>3</sup> Advisory  
11 Opinions 1997-29, and 1996-51; see also Advisory Opinion 1976-95.<sup>4</sup> The Commission  
12 has also granted State committee status to a State affiliate of a qualified national party  
13 committee where its only Federal candidates, as defined under the Act, were the  
14 Presidential and Vice Presidential candidates of the national party. Advisory Opinion  
15 1997-3.

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<sup>3</sup> The Commission notes that your request cites Advisory Opinion 1996-43 to support your claim to State committee status. This opinion granted State committee status to a State party organization without requiring that at least one party candidate qualify as a candidate under 2 U.S.C. §431(2). This portion of the rationale in Advisory Opinion 1996-43, as well as that of previous opinions (Advisory Opinions 1976-95, 1992-30 1995-49, and 1996-27), are superseded by Advisory Opinion 1996-51 which required that a party's candidate(s) meet the \$5,000 threshold of section 431(2) in order for the party entity to qualify for State committee status. However, the Commission notes that, while portions of these opinions are superseded, the holdings that granted State committee status to the requesting entities are not affected since they met the standard for State committee status that existed at the time of their requests.

<sup>4</sup> 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 the committee also becomes 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.

1           As noted above, the Party's Bylaws set out a comprehensive organizational  
2 structure for the Party from the statewide level down through various local levels and  
3 they clearly identify the role of the Maine Green Party Council. Party Bylaws, Articles II  
4 and IV. The Bylaws are therefore consistent with the State party rules reviewed in the  
5 opinions cited above as they delineate activity commensurate with the day-to-day  
6 functions and operations of a political party on a State level. Advisory Opinions 1997-29  
7 1997-7 and 1997-3.<sup>5</sup> Therefore, the Commission concludes that the Party meets the first  
8 element.

9           As indicated above, the second element for qualifying as a State committee of a  
10 political party, and an essential element for qualifying as a political party, is that the party  
11 organization actually obtains ballot access for its Federal candidates, as defined in the  
12 Act. One of the two Federal candidates identified in your request, Mr. Jonathan Carter,  
13 attained ballot access in 1992 with a Maine Green Party ballot designation. This  
14 candidate also registered his principal campaign committee and filed disclosure reports  
15 with the Commission. Further, the reports filed by Mr. Carter's committee indicate that  
16 his campaign received or expended in excess of \$5,000. Accordingly, the candidate  
17 meets the requirements of 2 U.S.C. §431(2).<sup>6</sup> It makes no difference that Mr. Carter's  
18 candidacy dates to the 1992 election cycle since the Party continues to pursue its political  
19 objectives and goals in Maine during the current election cycle. The Commission notes

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<sup>5</sup> You have also provided a copy of an affiliation agreement between the Party and the Association of State Green Parties.

<sup>6</sup> The second candidate, John Rensenbrink, also filed reports that indicated he received or expended in excess of \$5,000 in his 1996 campaign for election to the U.S. Senate. However, while Mr. Rensenbrink had qualified as a candidate under the Act, he achieved ballot access with a designation as an Independent candidate, rather than as a candidate of the Green Party. Therefore, his candidacy cannot help the Party Committee satisfy the requirements of 2 U.S.C. §431(15) and (16).

1 that in the current election cycle, the Party has placed on the ballot a candidate for  
2 election as Governor and two candidates for election to the State legislature.  
3 Furthermore, if the Party had submitted this request during the period of Mr. Carter's  
4 1992 campaign, or shortly thereafter, the claim for State committee status at that time  
5 would have been as compelling as it is presently. The Commission, therefore, concludes  
6 that his 1992 candidacy remains relevant to the Party's claim to State committee status at  
7 this time, and that that the Party meets the second element.

8 In view of the fact that both elements discussed in this opinion have been  
9 satisfied, the Commission concludes that Maine Green Party Council qualifies as the  
10 State committee of a political party under the Act and Commission regulations.

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

14 Sincerely,

15 Scott E. Thomas  
16 Acting Chairman

17  
18 Enclosures (AOs 1998-24, 1998-2, 1997-29, 1997-7, 1997-3, 1996-51, 1996-43, 1996-35,  
19 and 1976-95).