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FEDERAL ELECTION COMMISSION

Washington, DC 20463

AGENDA ITEM

For Meeting of: 1-28-99

January 21, 1999

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 1998-27

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 28, 1999.

Attachment

DRAFT

1
2 **ADVISORY OPINION 1998-27**

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

7
8 **Dear Mr. Linzey:**

9
10 **This refers to your letter dated December 15, 1998, requesting an advisory**
11 **opinion concerning the application of the Federal Election Campaign Act of 1971, as**
12 **amended ("the Act"), and Commission regulations to the possible status of the Hawaii**
13 **Green Party Coordinating Committee ("the Party Committee") as a State committee of**
14 **the Hawaii 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 Hawaii Green**
17 **Party Coordinating Committee acts as the executive authority for the Party. According to**
18 **the bylaws, the Party Committee is responsible for, among other activities, the acceptance**
19 **of members into the Party, the calling of a State convention to choose Party officers,**
20 **determining the qualifications of persons seeking to be candidates of the Hawaii Green**
21 **Party and the procedures for the endorsement of the candidates of other parties by the**
22 **Hawaii Green Party. Your request includes a copy of an affiliation agreement between**
23 **the Hawaii Green Party and the Association of State Green Parties.¹ Finally, you provide**
24 **a letter from a candidate in the 1992 election cycle who, you claim, was on the Hawaii**
25 **ballot as a Federal candidate of the Hawaii Green Party. This candidate states in her letter**

¹ 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 that she recognizes the authority of the Party Committee and supports its request for State
2 committee status under the Act.²

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, 1998-23, 1997-29, 1997-7, 1997-3,
13 and 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
20 State Committee of the [political party]." Advisory Opinions 1998-24 and 1998-23. The

² The candidate is Linda B. Martin, who sought election to the U.S. Senate in 1992. The Commission notes that your request does not rely on the Hawaii 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

1 Commission has also granted State party committee status to organizations that had
2 affiliated status with national political parties, which had not achieved national committee
3 status, based on the existence of State bylaws detailing activities commensurate with the
4 day-to-day operation of a party on the State level and the placement of at least one
5 Congressional candidate on the ballot. Advisory Opinions 1998-24, 1998-23, and 1997-
6 29. In reaching this conclusion, the Commission made clear that a State political party
7 could qualify as a State committee without an affiliation with any national political party
8 organization and indicated that a State party's candidate must be a candidate under 2
9 U.S.C. §431(2) in order for that party to satisfy the second requirement.³ Advisory
10 Opinions 1998-23, 1997-29, and 1996-51; see also Advisory Opinion 1976-95. The
11 Commission has also granted State committee status to a State affiliate of a qualified
12 national party committee where its only Federal candidates, as defined under the Act,
13 were the Presidential and Vice Presidential candidates of the national party. Advisory
14 Opinion 1997-3.

15 As noted above, the Party's bylaws set out a comprehensive organizational
16 structure for the Party from the statewide level down through various local levels and
17 they clearly identify the role of the Hawaii Green Party Coordinating Committee. Party
18 bylaws, articles III and VII. The bylaws are, therefore, consistent with the State party
19 rules reviewed in the opinions cited above as they delineate activity commensurate with

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 1998-23 and 1996-35.

³ 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 the day-to-day functions and operations of a political party on a State level. Advisory
2 Opinions 1998-23, 1997-29, and 1997-7. Therefore, the Commission concludes that the
3 Party meets the first element.

4 As indicated above, the second element for qualifying as a State committee of a
5 political party, and an essential element for qualifying as a political party, is that the party
6 organization actually obtains ballot access for its Federal candidates, as defined in the
7 Act. The Federal candidate identified in your request, Linda Martin, attained ballot
8 access in 1992 with a Hawaii Green Party ballot designation. This candidate also
9 registered her principal campaign committee and filed disclosure reports with the
10 Commission. Further, the reports filed by Ms. Martin's committee indicate that her
11 campaign received or expended in excess of \$5,000. Accordingly, the candidate satisfied
12 the requirements of 2 U.S.C. §431(2). As in Advisory Opinion 1998-23, the Commission
13 notes that it makes no difference that Ms. Martin's candidacy dates to the 1992 election
14 cycle since the Party continued to pursue its political objectives and goals in Hawaii
15 during the 1998 election cycle. The Commission also notes that in the 1998 election
16 cycle, the Party placed several candidates on the ballot in local offices.⁴ In Advisory
17 Opinion 1998-23, when considering the similar situation of the Maine Green Party, the
18 Commission explained that "if the Party had submitted this request during the period of
19 Mr. Carter's [who was a qualified candidate under the Act] 1992 campaign, or shortly
20 thereafter, the claim for State committee status at that time would have been as
21 compelling as it is presently." Therefore, the Commission also concludes in this opinion

⁴ In 1998, the Hawaii Green Party presented three candidates for election to the County Council for the County of Hawaii island. One of these candidates was elected.

1 that Ms. Martin's 1992 candidacy remains relevant to the Party's claim to State
2 committee status at this time, and that the Party meets the second element.

3 In view of the fact that both elements discussed in this opinion have been
4 satisfied, the Commission concludes that Hawaii Green Party Coordinating Committee
5 qualifies as the State committee of a political party under the Act and Commission
6 regulations.

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

10 Sincerely,

11 Scott E. Thomas
12 Chairman

13
14 Enclosures (AOs 1998-24, 1998-23, 1997-29, 1997-7, 1997-3, 1996-51, and 1976-95).