

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

Oct 13 4 39 PM '99



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 13, 1999

**MEMORANDUM**

**AGENDA ITEM**  
For Meeting of: 10-21-99

TO: The Commission

THROUGH: James A. Pehrkon *JAP*  
Staff Director

FROM: Lawrence M. Noble *L*  
General Counsel

N. Bradley Litchfield *NBL*  
Associate General Counsel

Michael G. Marinelli *mm*  
Staff Attorney

SUBJECT: Draft AO 1999-26

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 21, 1999.

Attachment

1  
2 **ADVISORY OPINION 1999-26**

3  
4 **William J. Olson,**  
5 **William J. Olson P.C.**  
6 **8180 Greensboro Drive, Suite 1070**  
7 **McLean, Virginia 22102-3823**

**DRAFT**

8  
9 **Dear Mr. Olson:**

10  
11 **This refers to your letters dated September 1, and August 18, 1999, requesting an**  
12 **advisory opinion concerning the application of the Federal Election Campaign Act of**  
13 **1971, as amended ("the Act"), and Commission regulations to the possible status of the**  
14 **State Central Committee of the Virginia Taxpayers Party ("the Party Committee") as a**  
15 **State committee of the Virginia Taxpayers Party ("the State Party").**

16 **Your request includes the State Party's bylaws which detail various aspects of its**  
17 **organization. The bylaws describe the manner in which the Party Committee acts as the**  
18 **executive authority for the State Party. According to the bylaws, the Party Committee is**  
19 **responsible for, among other activities, the general supervision of statewide campaigns,**  
20 **prescribing the duties of state party officers and the calling of a State convention to**  
21 **choose State Party officers, and Presidential electors. Your request includes a letter from**  
22 **the Chairman of the U.S. Taxpayers Party identifying the Virginia Taxpayers Party as the**  
23 **national party's only affiliate in the State of Virginia and affirming the State Party's role as**  
24 **"responsible for the day-to-day operation of the U.S. Taxpayers Party in the State of**  
25 **Virginia."**<sup>1</sup> **You include a document confirming that Howard Phillips was on the Virginia**  
26 **State ballot in 1996 as the Presidential candidate of the U.S. Taxpayers Party. Your**

---

<sup>1</sup> In Advisory Opinion 1995-16, the Commission determined that the U.S. Taxpayers Party qualified as the national committee of a political party. In a letter dated October 7, 1999, you informed the

1 request further describes the activities of the State Party after the 1996 election explaining  
2 that it has continued to hold meetings, issue press releases (one of them was included in  
3 the request), establish new county committees and endorse local candidates.

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

12 The Commission has considered a variety of State party organizations in making  
13 these determinations. Advisory Opinions 1998-27, 1998-24, 1998-2, 1997-29, 1997-7,  
14 and 1997-3. In reviewing State party affiliates of entities that qualified as national  
15 committees of political parties under 2 U.S.C. §431(14), the Commission has looked to  
16 the existence of a State affiliate agreement or other document which "delineates activities  
17 commensurate with the day-to-day operation of [a political party] on a State level," and  
18 then concluded that "[t]o the extent the relationship between [a political party] and an  
19 affiliate is based on this agreement and the affiliate displays evidence of activity by  
20 obtaining ballot access for both its Presidential and other Federal candidates, . . . [that]  
21 particular affiliate is a State Committee of the [political party]." Advisory Opinions 1998-

---

Commission that, subsequent to the submission of your request, the U.S. Taxpayers Party had changed its name to the Constitution Party.

1 27 and 1998-24.<sup>2</sup> The Commission has also determined that the Federal candidate of a  
2 State party who gains ballot access must meet the definition of "candidate" under 2 U.S.C.  
3 §431(2) in order for that party to satisfy the second requirement.<sup>3</sup> Advisory Opinions  
4 1998-27, 1998-24, 1998-23, 1997-29, 1997-7 and 1997-3. In addition, the Commission  
5 has granted State committee status to a State affiliate of a qualified national party  
6 committee where its only Federal candidates, as defined under the Act, were the  
7 Presidential and Vice Presidential candidates of the affiliated national party. Advisory  
8 Opinions 1998-3 (Reform Party of Idaho), 1998-2 (National Reform Party and various  
9 State Reform parties), and 1997-3 (Taxpayers Party of Pennsylvania).

10 As noted above, you have provided documentation of an agreement between the  
11 Taxpayers Party of Virginia and the U.S. Taxpayer's Party as to the role of the State  
12 Party. Further, the State Party's bylaws set out a comprehensive organizational structure  
13 for the State Party from the statewide level down through the district level, and they  
14 clearly identify the role of State Central Committee. State Party bylaws, article III, section  
15 D and article IV. The bylaws are, therefore, consistent with the State party rules reviewed  
16 in the opinions cited above as they delineate activity commensurate with the day-to-day  
17 functions and operations of a political party affiliate on a State level. Advisory Opinions  
18 1998-24 (Washington State Taxpayer's Party), and 1997-3 (Taxpayers Party of

---

<sup>2</sup> The Commission has also granted State party committee status to organizations that had affiliated status with national political parties, which had not achieved national committee status, based on the existence of State bylaws detailing activities commensurate with the day-to-day operation of a party on the State level and the placement of at least one Congressional candidate on the ballot. Advisory Opinions 1998-23, 1997-29, and 1997-7.

<sup>3</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 Pennsylvania). Therefore, the Commission concludes that the State Party meets the first  
2 element.

3 As indicated above, the second element for qualifying as a State committee of a  
4 political party, and an essential element for qualifying as a political party, is that the party  
5 organization actually obtains ballot access for its Federal candidates, as defined in the Act.  
6 Mr. Phillips, the Federal candidate identified in your request, was the 1996 Presidential  
7 candidate of the U.S. Taxpayers Party, and he attained ballot access in Virginia as the  
8 Taxpayers Party Presidential candidate in the general election. This candidate also  
9 registered his principal campaign committee and filed disclosure reports with the  
10 Commission. Further, the reports filed by Mr. Phillips' committee indicate that his  
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 Opinions 1998-27 and 1998-23,  
13 the Commission notes that it makes no difference that the FECA-qualified candidacy dates  
14 to a previous election cycle since the State Party continues to pursue its political  
15 objectives and goals in Virginia during the current election cycle.<sup>4</sup> The Commission,  
16 therefore, concludes that Mr. Phillips' candidacy remains relevant to the Party  
17 Committee's claim to State committee status at this time, and that the State Party meets  
18 the second element.

19 In view of the fact that both elements discussed in this opinion have been satisfied,  
20 the Commission concludes that State Central Committee of the Virginia Taxpayers Party

---

<sup>4</sup> The Commission noted in Advisory Opinion 1998-27 that an individual's Federal candidate status in the 1992 election cycle was relevant to the political party's 1998 request because if "the Party had submitted this request during the period of Ms. Martin's 1992 campaign, or shortly thereafter, the claim for State committee status at that time would have been as compelling as it is presently."

1 qualifies as the State committee of a political party under the Act and Commission  
2 regulations.

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

6 Sincerely,

7 Scott E. Thomas  
8 Chairman

9  
10 Enclosures (AOs 1998-27, 1998-24, 1998-23, 1998-3, 1998-2, , 1997-29, 1997-7,  
11 1997-3 and 1995-16).