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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of: 8-10-00

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *J Pehrkon*
Staff Director

FROM: Lawrence M. Noble *L M Noble*
General Counsel

N. Bradley Litchfield *N B Litchfield*
Associate General Counsel

Michael G. Marinelli *M G Marinelli*
Staff Attorney

SUBJECT: Draft AO 2000-18

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for August 10, 2000.

Attachment

1
2 **ADVISORY OPINION 2000-18**

3
4 **Michael B. Trister**
5 **Lichtman, Trister, Singer & Ross**
6 **1666 Connecticut Avenue, NW**
7 **Suite 500**
8 **Washington, D.C 20009**

9
10 **Dear Mr. Trister:**

11
12 **This refers to your letters dated June 16 and May 25, 2000, requesting an advisory**
13 **opinion concerning the application of the Presidential Primary Matching Payment**
14 **Account Act ("the Matching Act") and Commission regulations to a determination of the**
15 **matching payment period for the presidential primary campaign of Mr. Ralph Nader.**

16 **FACTS**

17 **You state that you represent the Nader 2000 Primary Committee, Inc.**
18 **("Committee"), which is the principal campaign committee of Mr. Nader for his**
19 **candidacy for the office of President of the United States. The Committee seeks a**
20 **determination that the matching payment period under the Matching Act for Mr. Nader's**
21 **candidacy will extend until August 17, 2000, the last day of the Democratic National**
22 **Convention.**

23 **You explain that on February 18, 2000, Mr. Nader filed a statement of candidacy**
24 **(FEC Form 2) designating the Committee as his principal campaign committee for his**
25 **Presidential campaign. On February 23, 2000, the Committee filed a statement of**
26 **organization (FEC Form 1). You state that the Committee has filed periodic reports**
27 **detailing its contributions and expenditures in accordance with applicable requirements.**
28 **On June 7, 2000, Mr. Nader submitted a letter to the Commission seeking to become**

1 eligible to receive Presidential primary matching fund payments. The letter contained the
2 agreements specified in 11 CFR 9033.1 and the certifications specified in 11 CFR 9033.2.
3 On the same date, the Committee submitted a threshold submission for matching fund
4 payments as specified in 11 CFR 9036.1.¹

5 You further explain that, in an effort to appear on the general ballot in all or
6 substantially all of the States, Mr. Nader is seeking the nomination of the Green Party to
7 appear as its candidate for President in those States where the Party or its State affiliates
8 have attained ballot access on the basis of their prior election activities. There are 14
9 such States. Mr. Nader is also working with State affiliates of the Green Party in 18
10 States where the Party does not have ballot access and where the Party must petition to
11 have its candidate for President appear on the ballot. In 18 additional States, Mr. Nader is
12 seeking to have his name appear on the ballot as an independent candidate through the
13 State's petition process since this is less onerous than seeking to qualify the Green Party
14 for the general election ballot.² Mr. Nader is also seeking the nomination of the United
15 Citizens Party ("UCP") as its candidate for President. UCP has ballot access for its
16 candidates in the State of South Carolina and will select its Presidential candidate at a
17 party meeting scheduled for August 12, 2000.

18 You explain the process through which Mr. Nader will receive the nomination of
19 the Green Party. On June 23--25, 2000, the Association of State Green Parties ("ASGP")
20 held a convention in Denver, Colorado, for the purpose of nominating candidates for

¹ On June 30, 2000, the Commission certified Mr. Nader eligible for Federal matching funds and also certified payment of \$100,000 for his 2000 campaign for the nomination of the Green Party. On July 31, the Commission certified an additional amount of \$178,628 in matching funds for Mr. Nader.

² In a number of the States where Mr. Nader is seeking to petition onto the ballot as an independent candidate, he may still, however, be identified with a Green Party label.

1 President and Vice-President.³ Delegations from at least 42 States were expected to
2 attend and participate in the convention.⁴ Under the rules of the convention and in order
3 to participate, a State delegation must pledge to support the nominees chosen by the
4 convention. State Green Parties that do not participate in the convention, however, are
5 free to select their own nominees.

6 In those States where Green Parties affiliated with ASGP have attained ballot
7 access for their candidates, nomination at the ASGP convention is effectively the last step
8 in the nomination process, except for certain formalities mandated by State laws, as it is
9 for candidates of the major parties. In the States where ASGP affiliates have not attained
10 ballot access, however, the nomination process also requires the submission of petitions
11 seeking ballot access, either on behalf of the State Green Party or Mr. Nader. The
12 petition process in at least 30 of these States will not be completed under State law until
13 after the ASGP convention; in six of the States, the deadline for submitting petitions is
14 not until after the date of the Democratic National Convention. Your request includes a
15 list of these States and the deadline for submitting these petitions.

16 Your request asserts that, in light of the above facts, Mr. Nader's date of
17 ineligibility to receive Federal funds under the Matching Act should be the last day of the
18 Democratic National Convention because the deadline for filing party/candidate petitions
19 for him to appear on the general election ballot is after that date in a number of States.

³ Your June 16 letter was received just prior to the beginning of the ASGP Denver convention. According to news reports on June 25, Mr. Nader received the nomination of the ASGP at the Denver convention.

⁴ Although the Commission has granted State committee status to several Green Party affiliates, the Commission denied national committee status to the national Green Party in Advisory Opinion 1996-35. See also Advisory Opinions 1996-43 (New York State Green Party), 1997-29 (New Mexico Green Party), 1998-23 (Maine Green Party), and 1998-27 (Hawaii Green Party).

1 You also offer a second proposal. If the Commission does not determine that Mr.
2 Nader's date of ineligibility is the last day of the Democratic National Convention (by
3 reason of the later deadlines for him to submit party and candidate petitions in a number
4 of States), then his date of ineligibility should be, under 11 CFR 9032.6(b), the date of the
5 UCP convention, or the last day of the Democratic convention, whichever is earlier.

6 **MATCHING ACT AND COMMISSION REGULATIONS**

7 Under the Matching Act and Commission regulations, all contributions received
8 by an individual from the date he becomes a candidate and all Federal matching payments
9 received by the candidate shall be used only to defray qualified campaign expenses or to
10 repay loans or otherwise restore funds (other than contributions which were received and
11 expended to defray qualified campaign expenses) which were used to defray qualified
12 campaign expenses. 26 U.S.C. §§9032(9), 9038(b)(2), 9042(b); 11 CFR 9034.4(a)(1).

13 With the exception of certain winding down costs, qualified campaign expenses
14 do not include any expenses incurred after a candidate's date of ineligibility, 11 CFR
15 9034.4(b)(3), which is defined as the last day of the candidate's matching payment
16 period. 11 CFR 9033.5(c).

17 The term "matching payment period" means the period beginning with the
18 beginning of the calendar year in which a general election for the office of President of
19 the United States will be held and ending on the date on which the national convention of
20 the party, whose nomination a candidate seeks, nominates its presidential candidate, or, in
21 the case of a party which does not make such nomination by national convention, ending
22 on the earlier of the date such party nominates its presidential candidate, or the last day of
23 the last national convention held by a major party during such calendar year. 26 U.S.C.

1 §9032(6), *see also* 11 CFR 9032.6. In the current Federal election cycle, the last national
2 convention of a major party is being held by the Democratic Party on August 14 through
3 17.

4 **APPLICATION TO PROPOSAL**

5 The Commission has examined the application of the 26 U.S.C. §9032(6) to
6 situations where candidates sought the nomination of several minor political parties.⁵
7 The Commission reviewed the matching fund status of an individual seeking the
8 Presidential nomination of several minor parties that were active in separate States. *See*
9 *Advisory Opinion 1984-11*. It has also considered a candidate who was seeking the
10 Presidential nomination, first of the Citizen's Party (a minor party which had a
11 recognized national committee and a national nominating convention), and then
12 concurrently, the nomination of several minor parties at the State level that did not have
13 national conventions. *See Advisory Opinion 1984-24*. In both circumstances the
14 candidates asked whether their matching payment periods would extend to the date of the
15 candidates' nominations by the last State party to make its nomination, or the last date of
16 the last major party Presidential nomination convention, whichever was earlier.

17 The Commission concluded in both cases that neither the Matching Act, nor
18 Commission regulations, required that the matching payment period for one non-major
19 party Presidential candidate be shorter than that of another such candidate solely for the
20 reason that one was seeking a national party nomination by national convention, and the
21 other candidate was seeking nomination by several State political parties. The

⁵ Use of the phrase "minor political party or parties" is intended to distinguish them from the two major political parties. *See* 26 U.S.C. §9002(6)[defining "major party"]. It does not mean that any so called "minor" party has qualified as a "minor party" under 26 U.S.C. §9002(7).

1 Commission stated: "Both candidates should, in the Commission's view, have the same
2 range of alternatives for the determination of their matching payment periods." Advisory
3 Opinion 1984-25.

4 These past interpretations of the regulations indicate that the close of Mr. Nader's
5 matching payment period would be the date he receives the nomination of the South
6 Carolina United Citizens Party, or the last date of the last major party nominating
7 convention, whichever is earlier. On this basis, the Commission determines that Mr.
8 Nader's matching payment period would end on August 12, 2000, the date he is expected
9 to receive the UCP nomination. Having made this determination, the Commission need
10 not decide whether the June 25, Green Party convention was a national convention or
11 whether the procedure used to nominate Mr. Nader at that convention represented the
12 culmination of the Green Party's nomination process.⁶

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

16 Sincerely,

17

18 Darryl R. Wold
19 Chairman

20

21 Enclosures (AOs 1998-27, 1998-23, 1997-29, 1996-43, 1996-35, 1984-25 and 1984-11)

⁶ In Advisory Opinion 1984-11, the Commission noted that none of the political parties, whose nomination the candidate was seeking, had been recognized as having national committee status and it assumed, for purposes of the opinion, that none of conventions of those organizations would be national conventions. The Commission does not make the same assumption in this opinion. Instead, it does not reach the question.