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FEDERAL ELECTION COMMISSION
Washington, DC 20463

DEC 7 3 36 PM '00

AGENDA ITEM
For Meeting of: 12-14-00

December 7, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence M. Noble 
General Counsel

N. Bradley Litchfield *NBL (RCS)*
Associate General Counsel

Michael G. Marinelli 
Staff Attorney

SUBJECT: Draft AO 2000-39

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 14, 2000.

Attachment

1
2 **ADVISORY OPINION 2000-39**

3
4 **Trey Smith, Treasurer**
5 **Pacific Green Party of Oregon**
6 **333 State St.**
7 **Salem, Oregon 97301**

DRAFT

8
9 **Dear Mr. Smith:**

10
11 **This refers to your letter dated November 2, 2000, requesting an advisory opinion**
12 **concerning the status of the Pacific Green Party of Oregon ("the Party") as a State**
13 **committee of a political party under the Federal Election Campaign Act of 1971, as**
14 **amended ("the Act"), and Commission regulations.**

15 **Your request includes the Party Bylaws (the "Bylaws ") and the Party Constitution**
16 **(the "Constitution") which together detail various aspects of the organization of the Party.**
17 **These documents prescribe the manner in which the Party, using several different**
18 **subgroups such as its Executive Committee, engages in various activities such as**
19 **selecting Party officers.¹ The Bylaws further detail the procedures for the holding of**
20 **regular State Party conventions, the endorsement of Party candidates and the creation of**
21 **local party chapters. You state that the Party has successfully placed several candidates**
22 **for Federal office on the ballot for the 2000 elections. These candidates are Ralph Nader**
23 **for U.S. President, Winona LaDuke for Vice President, and Tre Arrow for U.S.**
24 **Representative from the 3rd Congressional District.**

¹ The Federal political committee registered by the Party is the Pacific Green Party Federal Committee, which first filed with the Commission in 2000.

1 You also state that the Party is formally affiliated with the State Association of
2 Green Parties, which is one the two national Green Party organizations.² The request
3 includes a letter from the Secretary of the Association of State Green Parties recognizing
4 the State Party as a member of the national organization and as the recognized Green
5 Party in the State of Oregon.

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

14 The Commission has considered a variety of State party organizations in making
15 these determinations. Advisory Opinions 2000-35, 2000-21, 2000-14, 1999-26, 1998-27,
16 1998-24, 1998-2, and 1997-29. In reviewing State party affiliates of entities that qualified
17 as national committees of political parties under 2 U.S.C. §431(14), the Commission has
18 looked to the existence of a State affiliate agreement which "delineates activities
19 commensurate with the day-to-day operation of [a political party] on a State level," and

² The other Green Party national organization is the Greens/Green Party USA. In Advisory Opinion 1996-35, the Commission determined that Greens/Green Party USA did not qualify as the national committee of a political party because Mr. Nader, its 1996 Presidential candidate, did not qualify as a candidate under the Act and Commission regulations.

1 then concluded that "[t]o the extent the relationship between [a political party] and an
-2 affiliate is based on this agreement and the affiliate displays evidence of activity by
3 obtaining ballot access for both its Presidential and other Federal candidates, . . . [that]
4 particular affiliate is a State Committee of the [political party]." Advisory Opinion 1998-
5 24. The Commission has also granted State party committee status to organizations that
6 were affiliated with national political parties which had not achieved national committee
7 status. State committee status in these opinions was based on the existence of State
8 bylaws detailing activities commensurate with the day-to-day operation of a party on the
9 State level, and the placement of at least one Congressional candidate on the ballot.
10 Advisory Opinions 1998-27, 1998-23, 1997-29, and 1997-7. In reaching this conclusion,
11 the Commission made clear that a State political party could qualify as a State committee
12 without an affiliation with any national political party organization and indicated that a
13 State party's candidate must be a candidate under 2 U.S.C. §431(2) in order for that party
14 to satisfy the second requirement.³ Advisory Opinions 2000-35, 2000-14, 1998-27 and
15 1998-23; see also Advisory Opinion 1976-95. The Commission has also granted State
16 committee status to a State affiliate of a qualified national party committee where its only
17 Federal candidates, as defined under the Act, were the Presidential and Vice Presidential
18 candidates of the national party. Advisory Opinions 1999-26 and 1997-3.

19 As noted above, the Party's rules set out an identifiable organizational structure for
20 the Party with varying responsibilities. Bylaws, articles V, VI, VIII, XVII; Constitution,

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 articles IV, V, and VI. As they delineate activity commensurate with the day-to-day
2 functions and operations of a political party on a State level, the rules are consistent with
3 the State party rules reviewed in previous situations where the Commission has affirmed
4 the State committee status of a political organization. *See* Advisory Opinions 2000-35,
5 2000-21, 2000-14, 1999-26, and 1998-27. Again, the fact that the Party is not affiliated
6 with a recognized national committee, does not prevent its recognition as a State
7 committee of a political party. *See* Advisory Opinions 2000-21, 2000-14 and 1976-95.⁴
8 Therefore, the Commission concludes that the Party meets the first 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. Of the Federal candidates identified in your request, Mr. Nader is the only one who,
13 according to disclosure reports filed with the Commission, received or expended in
14 excess of \$5,000 in his 2000 campaign. Accordingly, the candidate meets the
15 requirements of 2 U.S.C. §431(2).

16 The Commission notes that in the past State committee opinions, it has permitted
17 the use of the State party's presidential candidate where the State party was affiliated with

⁴ The Commission has recognized the State committee status of other party committees affiliated with national organizations that did not qualify as national committees of a political party. The most recent example is the granting of State committee status to the Green Party of Washington State in Advisory Opinion 2000-35.

1 a national party organization that received national committee status.⁵ However, the
2 Commission concludes here that whether the national political organization received
3 national committee status is not relevant to the State ballot status of its presidential
4 candidate. Although the Association of State Green Parties has not qualified as a national
5 committee of a political party, this does not change the fact that Mr. Nader's name did
6 appear on the 2000 ballot in the State of Oregon as the Presidential candidate of the
7 Pacific Green Party and that he had qualified as a candidate for purposes of the Act.⁶
8 Therefore, the Commission concludes that Mr. Nader's candidate status is relevant to the
9 Party's claim to State committee status, and the Party, therefore, meets the second
10 element.

11 In view of the fact that both elements discussed in this opinion have been
12 satisfied, the Commission concludes that the State Committee of the Pacific Green Party
13 of Oregon qualifies as the State committee of a political party under the Act and
14 Commission regulations.

15

⁵ In Advisory Opinion 2000-35, the Green Party of Washington State, as in your situation, presented the Presidential candidacy of Mr. Nader and that of a Congressional candidate as part of its qualifications for State Committee status. In that opinion, however, the Commission granted State committee status based on the Federal ballot line attained by the Congressional candidate since, unlike in your situation, that Congressional candidate did meet the definition of candidate found in section 431(2). A second factual distinction is that unlike the Pacific Green Party of Oregon, the Green Party of Washington State explicitly disclaimed affiliated status with the Association of State Green Parties and Greens/Green Party USA or any other national Green Party organization.

⁶ The official website maintained by the Secretary of State of Oregon confirms that Mr. Nader was on the 2000 U.S. Presidential ballot specifically as the candidate of the Pacific Green Party. Mr. Nader received the support of both national Green Party organizations. He was nominated for president at the convention of the Association of State Green Parties held June 23, 2000 in Denver Colorado. See Advisory Opinion 2000-18.

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Dec 13 10 13 AM '00



FEDERAL ELECTION COMMISSION
Washington, D.C. 20463

December 13, 2000

AGENDA ITEM
For Meeting of: 12-14-00
SUBMITTED LATE

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence M. Noble *LN*
General Counsel

N. Bradley Litchfield *NBL*
Associate General Counsel

Michael G. Marinelli *mm*
Staff Attorney

SUBJECT: Draft AO 2000-39

In preparing the agenda draft of Advisory Opinion 2000-39 (Agenda Document No. 00-125), several Commissioners' offices expressed a desire to consider a draft which, while coming to the same conclusion with the same legal analysis, was organized differently to place greater emphasis on the regulations and Act in the text of the opinion.

To facilitate the Commission's discussion and in consultation with Commissioner Sandstrom's office, we have prepared this alternative draft. We feel it addresses these concerns and also presents the same basic conclusion and analysis.

We request that this alternative draft be placed on the agenda for December 14, 2000.

Attachment

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ADVISORY OPINION 2000-39

ALTERNATIVE DRAFT

Trey Smith, Treasurer
Pacific Green Party of Oregon
333 State St.
Salem, Oregon 97301

Dear Mr. Smith:

This refers to your letter dated November 2, 2000, requesting an advisory opinion concerning the status of the Pacific Green Party of Oregon ("the Party") as a State committee of a political party under the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.

Your request includes the Party Bylaws (the "Bylaws ") and the Party Constitution (the "Constitution") which together detail various aspects of the organization of the Party. These documents prescribe the manner in which the Party, using several different subgroups such as its Executive Committee, engages in various activities such as selecting Party officers.¹ The Bylaws further detail the procedures for the holding of regular State Party conventions, the endorsement of Party candidates and the creation of local party chapters. You state that the Party has successfully placed several candidates for Federal office on the ballot for the 2000 elections. These candidates are Ralph Nader for U.S. President, Winona LaDuke for Vice President, and Tre Arrow for U.S. Representative from the 3rd Congressional District.

¹ The Federal political committee registered by the Party is the Pacific Green Party Federal Committee, which first filed with the Commission in 2000.

1 You also state that the Party is formally affiliated with the Association of State
2 Green Parties, which is one of the two national Green Party organizations.² The request
3 includes a letter from the Secretary of the Association of State Green Parties recognizing
4 the State Party as a member of the national organization and as the recognized Green
5 Party in the State of Oregon.

6 Under the Act and Commission regulations, the term "State committee" means the
7 organization which, by virtue of the bylaws of a political party, is responsible for the day-
8 to-day operation of such political party at the State level, as determined by the
9 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee also
10 requires the existence of a political party. The term "political party" is defined under 2
11 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization which
12 nominates a candidate for election to any Federal office whose name appears on the
13 election ballot as the candidate of such association, committee, or organization. An
14 individual becomes a candidate for purposes of the Act if he or she receives contributions
15 aggregating in excess of \$5,000, or makes expenditures in excess of \$5,000. 2 U.S.C.
16 §431(2).³

17 The first element of the Act and regulations' requirements for State committee
18 status is that the bylaws of a political party establish that the Pacific Green Party of
19 Oregon is responsible for the day-to-day operation of such political party at the State

² The other Green Party national organization is the Greens/Green Party USA. In Advisory Opinion 1996-35, the Commission determined that Greens/Green Party USA did not qualify as the national committee of a political party because Mr. Nader, its 1996 Presidential candidate, did not qualify as a candidate under the Act and Commission regulations.

³ 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 level.⁴ As noted above, the Party's rules set out an identifiable organizational structure
2 for the Party with varying responsibilities. Bylaws, articles V, VI, VIII, XVII;
3 Constitution, articles IV, V, and VI. As they delineate activity commensurate with the
4 day-to-day functions and operations of a political party on a State level, the rules meet the
5 requirements of 2 U.S.C. §431(15) and 11 CFR 100.14, and they are consistent with the
6 State party rules reviewed in previous situations where the Commission has affirmed the
7 State committee status of a political organization. *See* Advisory Opinions 2000-35; 2000-
8 21, 2000-14, 1999-26, and 1998-27.⁵ Therefore, the Commission concludes that the
9 Party meets the first element.

10 The second element for qualifying as a State committee of a political party, and an
11 essential element for qualifying as a political party, is that the party organization actually
12 obtains ballot access for one or more Federal candidates, as defined in the Act. Of the
13 Federal candidates identified in your request, Mr. Nader is the only one who, according to
14 disclosure reports filed with the Commission, received or expended in excess of \$5,000 in

⁴ The Commission has considered either the bylaws of State party organizations or other governing documents in making these determinations. Advisory Opinions 2000-35, 2000-21, 2000-14, 1999-26, 1998-27, 1998-24, 1998-2, and 1997-29. In reviewing State party affiliates of entities that qualified as national committees of political parties under 2 U.S.C. §431(14), the Commission has looked to the existence of a State affiliate agreement which "delineates activities commensurate with the day-to-day operation of [a political party] on a State level," and then concluded that "[t]o the extent the relationship between [a political party] and an affiliate is based on this agreement and the affiliate displays evidence of activity by obtaining ballot access for both its Presidential and other Federal candidates, . . . [that] particular affiliate is a State Committee of the [political party]." Advisory Opinion 1998-24. The Commission has also granted State party committee status to organizations that were affiliated with national political parties which had not achieved national committee status. State committee status in these opinions was 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 Federal candidate on the ballot. Advisory Opinions 1998-27, 1998-23, 1997-29, and 1997-7.

⁵ The fact that the Party is not affiliated with a recognized national committee does not prevent its recognition as a State committee of a political party. *See* Advisory Opinions 2000-21, 2000-14 and 1976-95. The Commission has recognized the State committee status of other party committees affiliated with national organizations that did not qualify as national committees of a political party. The most recent example is the granting of State committee status to the Green Party of Washington State in Advisory Opinion 2000-35.

1 his 2000 campaign. Accordingly, Mr. Nader satisfies the Act's definition of candidate. 2
2 U.S.C. §431(2).

3 Mr. Nader's name appeared on the 2000 ballot in the State of Oregon as the
4 Presidential candidate of the Pacific Green Party.⁶ Therefore, the Commission concludes
5 that the Party satisfies the definition of "political party" under the Act and thus meets the
6 second element for establishing State committee status.⁷

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

⁶ The official website maintained by the Secretary of State of Oregon confirms that Mr. Nader was on the 2000 U.S. Presidential ballot specifically as the candidate of the Pacific Green Party. Mr. Nader received the support of both national Green Party organizations. He was nominated for president at the convention of the Association of State Green Parties held June 23, 2000 in Denver, Colorado. See Advisory Opinion 2000-18.

⁷ As noted above, when determining state committee status the Commission made clear that a State political party could qualify as a State committee without an affiliation with any national political party organization and indicated that a State party's candidate must be a candidate under 2 U.S.C. §431(2) in order for that party to satisfy the second requirement. Advisory Opinions 2000-35, 2000-14, 1998-27 and 1998-23; see also Advisory Opinion 1976-95. The Commission has also granted State committee status to a State affiliate of a qualified national party committee where its only Federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. Advisory Opinions 1999-26 and 1997-3. Although the Association of State Green Parties has not qualified as a national committee of a political party, this does not change the fact that Mr. Nader's name appeared on the 2000 ballot in the State of Oregon as the Presidential candidate of the Pacific Green Party and that he had qualified as a candidate for purposes of the Act.

