

March 24, 2004

NOTICE AO DRAFT COMMENT PROCEDURES

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2004-09 is available for public comments under this procedure. It was requested by counsel, Grace Ross and David Ebony Allen Barkley on behalf of Green-Rainbow Party. The draft may be obtained from the Public Disclosure Division of the Commission.

Proposed Advisory Opinion 2004-09 will be on the Commission's agenda for its public meeting of Thursday April 1, 2004.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (EST) on March 31, 2004.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case by case basis in special circumstances.

4) All comments timely received will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Disclosure Division.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copy of draft AO 2004-09 contact Public Records Office-
Public Disclosure Division (202) 694-1120, or 800-424-9530.

For questions about comment submission procedure contact
Rosemary C. Smith, Associate General Counsel, (202) 694-1650.

ADDRESSES

Submit single copy of written comments to:

Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463

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SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

AGENDA ITEM
For Meeting of: 4-01-04

TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

James A. Kahl 
Deputy General Counsel

Rosemary C. Smith 
Associate General Counsel

Mai Dinh 
Acting Assistant General Counsel

Michael Marinelli 
Staff Attorney

SUBJECT: Advisory Opinion 2004-09

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the Agenda for April 1, 2004.

Attachment

DRAFT

1 **ADVISORY OPINION 2004-09**

2
3

4 **Grace Ross and David Ebony Allen Barkley, Co-Chairs**
5 **Green-Rainbow Party**
6 **PO Box 440353**
7 **Somerville MA, 02144-0004**

8

9 **Dear Ms. Ross and Mr. Barkley:**

10

11 **This responds to your letter dated December 20, 2003, which you supplemented**
12 **by an electronic mail message dated February 25, 2004, requesting an advisory opinion**
13 **concerning the status of the Green-Rainbow Party ("the Party") as a State committee of a**
14 **political party under the Federal Election Campaign Act of 1971, as amended ("the Act"),**
15 **and Commission regulations.**

16 ***Background***

17 **Your request includes various documents including a copy of the Party bylaws**
18 **("the Bylaws"). This governing document details various aspects of the organization of**
19 **the Party. It illustrates how the Party, through the State committee apparatus, engages in**
20 **various activities in Massachusetts including: maintaining regular communication with**
21 **and providing training, information and other services to local committees of the Green**
22 **Party of the United States; formulating and disseminating statements of the Party's policy**
23 **and platform; coordinating and conducting the Party's state campaigns; and the raising**
24 **and disbursing of funds needed for operating the Party and the local Green Party**
25 **committees.¹ You state that the Party successfully placed candidates for Federal office on**
26 **the ballot in Massachusetts in the 2000 elections. These candidates were Ralph Nader for**

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¹ The Federal political committee registered by the Party is the Green-Rainbow Party Federal Fund which first filed with the Commission in 2000.

1 U.S. President and Winona LaDuke for Vice President. You further state that the Party
2 has maintained its ballot status by running statewide candidates in 2002 for Governor,
3 Lieutenant Governor and Treasurer and receiving more than the mandated 3% of the
4 votes cast in that election for retaining ballot status. Your request indicates that the Party
5 is officially affiliated with the Green Party of the United States, which is one of the two
6 national Green Party organizations.² Included with the request is a letter from Ms. Emily
7 Citkowski, Green Party Operations Director, confirming the status of the Party as the
8 affiliate of Green Party of the United States.³

9 ***Question Presented***

10 *Is the Party a State party committee within the meaning of the Act and*
11 *Commission regulations?*

12 ***Legal Analysis and Conclusions***

13 Yes, the Party qualifies as a State party committee. Under the Act, the term "State
14 committee" means the organization that, by virtue of the bylaws of a political party, is
15 responsible for the day-to-day operation of such political party at the State level, as
16 determined by the Commission. 2 U.S.C. 431(15). The Commission's regulations
17 include the additional factor that such organization must be "part of the official party
18 structure" either by virtue of the political party's bylaws or by operation of State law.

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² The Green Party of the United States and the Greens/Green Party USA represent the Green political movement on a national level. These are separate unaffiliated organizations. See Advisory Opinions 2003-27 and 2001-13. In Advisory Opinion 2001-13, the Commission determined that the Green Party of the United States qualified as the national committee of a political party, while in Advisory Opinion 1996-35 the Commission concluded that the Greens/Green Party USA did not qualify for this status.

³ In the February 25, 2004 email message, the Party treasurer confirmed the Party's status as the sole state affiliate of the Green Party of the United States in Massachusetts. He also stated that to the best of his knowledge there is no State affiliate of Greens/Green Party USA in Massachusetts.

1 11 CFR 100.14. The definition of "State committee" also requires the existence of a
2 political party. *Id.* The term "political party" is defined under 2 U.S.C. 431(16) and 11
3 CFR 100.15 as an association, committee, or organization that nominates or selects a
4 candidate for election to any Federal office, whose name appears on the election ballot as
5 the candidate of such association, committee, or organization. An individual becomes a
6 candidate for purposes of the Act if he or she receives contributions aggregating in excess
7 of \$5,000, or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. 431(2).

8 The existence of a political party is necessary for State committee status. This
9 requires that the party organization actually obtain ballot access for one or more Federal
10 candidates, as defined in the Act. See 2 U.S.C. 431(16); Advisory Opinions 2003-27,
11 2002-10, 2002-6, and 2002-3. The Federal candidate identified in your request, Mr.
12 Nader, received or expended in excess of \$5,000 in his 2000 campaign according to
13 disclosure reports filed with the Commission.⁴ Accordingly, Mr. Nader satisfies the
14 Act's definition of a "candidate." 2 U.S.C. 431(2). Mr. Nader's name appeared on the
15 2000 ballot in the State of Massachusetts as the Presidential candidate of the Party.
16 Because Mr. Nader appeared on the 2000 ballot in Massachusetts as a candidate of the
17 Party, the Commission concludes that the Party satisfies the definition of "political party"
18 under the Act.

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⁴ The Commission has 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 2003-27, 2000-39, 1999-26, and 1997-3.

1 As stated in 2 U.S.C. 431(15), the next element of the requirements for State
2 committee status is that the bylaws of a political party establish that the party entity is
3 responsible for the day-to-day operation of such political party at the State level. *See also*
4 11 CFR 100.14(a). The Commission has considered either the bylaws of State party
5 organizations or other governing documents in making these determinations. Advisory
6 Opinions 2003-27, 2002-10, 2002-6 and 2002-3. In reviewing State party affiliates of
7 organizations that qualified as national committees of political parties under 2 U.S.C.
8 431(14), the Commission has required supporting documentation indicating that the State
9 party is affiliated with the national party committee. *See* Advisory Opinions 2002-10,
10 2002-6 and 2002-3.

11 As noted above, the Party's governing document sets out the organizational
12 structure for the Party and establishes specific responsibilities for Party officials. *See*
13 Bylaws, sections 8, 9 and 12. As they delineate activity commensurate with the day-to-
14 day functions and operations of a political party on a State level, the Bylaws meet the
15 requirements of 2 U.S.C. 431(15) and 11 CFR 100.14, and they are consistent with the
16 State party rules reviewed in previous situations where the Commission has affirmed the
17 State committee status of a political organization. *See* Advisory Opinions 2003-27, 2002-
18 10, 2002-6 and 2002-3. The documentation you have provided also confirms the status of
19 the Party as the State affiliate of an organization that has qualified as a national
20 committee of a political party, the Green Party of the United States. *See* Advisory
21 Opinions 2002-10, 2002-6, and 2002-3. Therefore, the Commission concludes that the
22 Party meets this element.

1 Under the Commission's regulations, the final element to obtain State party
2 committee status is that the organization must be part of the official party structure. See
3 11 CFR 100.14. By virtue of being the State party organization in Massachusetts, the
4 Party is part of the official party structure. Advisory Opinion 2003-27.

5 In view of the fact that all three elements discussed in this advisory opinion have
6 been satisfied, the Commission concludes that the Green-Rainbow Party qualifies as a
7 State committee of a political party under the Act and Commission regulations.

8 This response constitutes an advisory opinion concerning the application of the
9 Act and Commission regulations to the specific transaction or activity set forth in your
10 request. See 2 U.S.C. § 437f. The Commission emphasizes that if there is a change in
11 any of the facts or assumptions presented, and such facts or assumptions are material to a
12 conclusion presented in this advisory opinion, then the requestor may not rely on that
13 conclusion as support for its proposed activity.

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15 Sincerely,
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20 Bradley A. Smith
21 Chairman
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24 Enclosures (AOs 2003-27, 2002-10, 2002-6, 2002-3, 2001-13, 2000-39, 1999-26, 1997-3,
25 and 1996-35.)