



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

December 2, 2004

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2004-40

Joseph J. Miller, Jr.  
Treasurer  
Libertarian Party of Maryland  
211 Coronet Drive  
Linthicum Heights, MD 21090-1706

Dear Mr. Miller,

We are responding to your inquiry regarding the status of the Libertarian Party of Maryland (the "Party") as a State party committee of a political party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. In this opinion, the Commission concludes that the Party qualifies as a State party committee because (1) the Party is a political party that is affiliated with the national committee of the Libertarian Party, (2) is responsible for the day-to-day operation of the Libertarian Party at the State level, and (3) is part of the official Libertarian Party structure.

***Background***

The facts of this request are presented in letters dated September 27 and October 18 and 22, 2004.

The Party's constitution (the "Party Constitution") details various aspects of the organization of the Party. It illustrates how the Party, through the State Central Committee and the Local Central Committee in each county, engages in various activities in Maryland, including: creating a yearly plan of action to promote the Party in Maryland, communicating regularly with its members, nominating candidates for State and local

public offices, supporting the election of the Party's candidates, and engaging in educational social, and fundraising activities to advance the Party's goals.<sup>1</sup>

The Party has provided printouts from the Maryland State Board of Elections website that show that the Party placed candidates for Federal office on the Maryland ballot for the 1988, 1992, 1996, and 2000 Presidential elections. The candidates were Ronald E. Paul for President in 1998; Andre Marrou for President in 1992; and Harry Browne for President in 1996 and 2000. These candidates were listed on the ballot as candidates of the Libertarian Party.<sup>2</sup>

In Advisory Opinion 1975-129, the Commission recognized the Libertarian National Committee as the national committee of a political party.<sup>3</sup> *See also* Advisory Opinions 2002-14 and 1978-58. The Party has been officially affiliated with the national Libertarian Party since at least 1988 and a letter from Mr. Joseph Seehusen, National Director of the Libertarian Party, confirms the status of the Party as an affiliate of the Libertarian Party.

### ***Question Presented***

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

### ***Legal Analysis and Conclusions***

Yes, the Party qualifies as a State party committee. Under the Act, the term "State committee" means the organization that, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission. 2 U.S.C. 431(15). The Commission's regulations include the additional factor that such organization must be "part of the official party structure" either by virtue of the political party's bylaws or by operation of State law. 11 CFR 100.14. The definition of "State committee" also requires the existence of a political party. *Id.* The term "political party" is defined under 2 U.S.C. 431(16) and 11 CFR 100.15 as an association, committee, or organization that nominates or selects a candidate for election to any Federal office, whose name appears on the election ballot as the candidate of such association, committee, or organization. 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 aggregating in excess of \$5,000. 2 U.S.C. 431(2) and 11 CFR 100.3.

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<sup>1</sup> The Federal political committee registered by the Party is the Libertarian Party of Maryland, which first filed with the Commission in 2003.

<sup>2</sup> The Maryland State Board of Elections website indicates that a Libertarian Party candidate – Michael Badnarik – was listed on the 2004 Presidential ballot in Maryland. *See* [http://www.elections.state.md.us/current\\_election/cand/cand-list.php?input=001](http://www.elections.state.md.us/current_election/cand/cand-list.php?input=001).

<sup>3</sup> The Libertarian National Committee is the governing body of the Libertarian Party at the national level when the national convention is not in session. *See* <http://www.lp.org/organization/Inc>.

The requesting organization's existence as a political party is necessary for State committee status. This requires that the organization actually obtain ballot access for one or more Federal candidates, as defined in the Act. *See* 2 U.S.C. 431(16); Advisory Opinions 2004-34 and 2003-27. At least one Federal candidate identified in your request, Mr. Harry Browne, received or expended in excess of \$5,000 in both his 1996 and 2000 campaign according to disclosure reports filed with the Commission. Accordingly, Mr. Browne satisfies the Act's definition of a "candidate." 2 U.S.C. 431(2). Additionally, Mr. Browne's name appeared on the 1996 and 2000 ballots in Maryland as the Presidential candidate of the Party. Because Mr. Browne appeared on the ballot in Maryland as a candidate of the Party, the Commission concludes that the Party satisfies the definition of "political party" under the Act.<sup>4</sup>

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

As noted above, the Party Constitution sets out the organizational structure for the Party and establishes specific responsibilities for Party officials. *See* Party Constitution, articles V and VI. As this governing document delineates activity commensurate with the day-to-day functions and operations of a political party on a State level, the Party Constitution meets the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14, and it is consistent with the State party rules reviewed in previous situations where the Commission has affirmed the State committee status of a political organization. *See* Advisory Opinions 2004-34 and 2003-27. Additionally, the letter you have provided confirms the status of the Party as the State affiliate of the Libertarian National Committee, an organization that has qualified as a national committee of a political party. *See* Advisory Opinions 2002-10. Therefore, the Commission concludes that the Party meets this element.

Under Commission regulations, the final element to obtain State party committee status is that the organization must be part of the official party structure. *See* 11 CFR 100.14. By virtue of being the State party organization in Maryland, as acknowledged by the national Libertarian Party in its letter, the Party is part of the official party structure. *See* Advisory Opinions 2004-34 and 2004-9.

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<sup>4</sup> 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 2004-34 and 2004-9.

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

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

Sincerely,

signed

Ellen L. Weintraub  
Vice Chair

Enclosures (AOs 2004-34, 2004-9, 2003-27, 2002-14, 2002-10, 1978-58, and 1975-129)