



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2007 APR 25 A 10:15

April 25, 2007

## AGENDA ITEM

For Meeting of: 05-03-07

### MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TJD*  
Acting General Counsel

Rosemary C. Smith *RS*  
Associate General Counsel

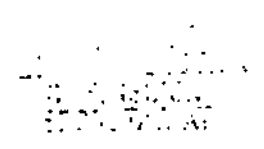
Ron B. Katwan *RBK*  
Assistant General Counsel

Albert J. Kiss *ASK*  
Attorney

Subject: Draft AO 2007-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 3, 2007.

Attachment



IN 03 25 A 10 15

1 **ADVISORY OPINION 2007-06**

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**Mr. Todd Singer  
Treasurer  
Libertarian Party of Indiana  
156 E. Market Street  
Suite #405  
Indianapolis, IN 46204**

**DRAFT**

10 **Dear Mr. Singer:**

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**We are responding to your inquiry regarding the status of the Libertarian Party of**

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**Indiana (the "LPIN"), as a State party committee of a political party under the Federal  
Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.**

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**The Commission concludes that the LPIN qualifies as a State party committee because:**

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**(1) the Libertarian Party qualifies as a political party; (2) the LPIN is part of the official  
Libertarian Party structure; and (3) the LPIN is responsible for the day-to-day operation  
of the Libertarian Party at the State level.**

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***Background***

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**The facts presented in this advisory opinion are based on your letter received on  
March 21, 2007.**

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**The Bylaws of the LPIN ("Bylaws") detail various aspects of the functions,  
organization and operation of the LPIN. They provide that the primary functions of the  
LPIN are to "(a) nominate and run candidates for statewide, state legislative and U.S.  
Congressional offices in the state of Indiana, (b) serve as an affiliate organization of the  
national Libertarian Party, and (c) charter and serve the needs of affiliated County  
Organizations throughout the state of Indiana." Bylaws, art. I, sec. 4. The LPIN is  
controlled and managed by the State Central Committee between State Conventions,  
which are held during the second quarter of each calendar year and which include the**

1 Annual Business Meeting. Bylaws, art. V, sec. 2; art. VI, sec. 1 and 2. In even-  
2 numbered years, potential Libertarian candidates for statewide races, state legislative  
3 races, and U.S. Congressional races are nominated at the Annual Business Meeting.  
4 Bylaws, art. VI, sec. 11. Delegates to Libertarian Party national conventions and national  
5 committees and subcommittees are also selected at the Annual Business Meeting.  
6 Bylaws, art. VI, sec. 12 and 13.

7 The LPIN placed a candidate for U.S. Representative for Indiana's Ninth  
8 Congressional District on the 2006 Indiana general election ballot, and placed a candidate  
9 for President of the United States on the 2004 Indiana general election ballot.<sup>1</sup> These  
10 candidates were Mr. David Eric Schansberg and Mr. Michael Badnarik, respectively.  
11 Both candidates were listed on State ballots as candidates of the Libertarian Party.<sup>2</sup>

12 Since 1975, the Commission has recognized the Libertarian National Committee  
13 as the national committee of a political party. *See* Advisory Opinions 2002-14  
14 (Libertarian National Committee) and 1975-129 (Libertarian National Committee). A  
15 letter from Mr. Robert S. Kraus, Director of Operations of the Libertarian National  
16 Committee, Inc., ("LNC") confirms the status of the LPIN as the LNC's sole affiliate for  
17 the State of Indiana.

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<sup>1</sup> These persons are "candidates" because they sought election to Federal office and either received contributions aggregating in excess of \$5,000, or made expenditures aggregating in excess of \$5,000. 2 U.S.C. 431(2) and 11 CFR 100.3(a).

<sup>2</sup> The ballot listing for Mr. David Eric Schansberg appears on the Indiana Secretary of State's website at <http://www.in.gov/apps/sos/election/general/general2006> (last visited Mar. 29, 2007), and the ballot listing for Mr. Michael Badnarik appears on the Indiana Secretary of State's website at <http://www.in.gov/apps/sos/election/general/general2004> (last visited Mar. 29, 2007).

1 ***Question Presented***

2 ***Does the LPIN qualify as a State party committee within the meaning of the Act***  
3 ***and Commission regulations?***

4 ***Legal Analysis and Conclusion***

5 **Yes, the LPIN qualifies as a State committee of a political party within the**  
6 **meaning of the Act and Commission regulations.**

7 **A “political party” is an “association, committee, or organization which**  
8 **nominates a candidate for election to any Federal office whose name appears on the**  
9 **election ballot as the candidate of such association, committee, or organization.”**

10 **2 U.S.C. 431(16); 11 CFR 100.15. A “State committee” is an organization that, by virtue**  
11 **of the bylaws of a political party, is part of the official party structure and is responsible**  
12 **for the day-to-day operation of such political party at the State level, as determined by the**  
13 **Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).**

14 **The first question in determining whether a political committee is a State**  
15 **committee of a political party is whether the party itself qualifies as a “political party”**  
16 **under the Act and Commission regulations. *See, e.g.,* Advisory Opinion 2007-02**  
17 **(Arizona Libertarian Party). As noted above, the Commission has previously determined**  
18 **that the Libertarian Party qualifies as a political party, and that the LNC qualifies as the**  
19 **national committee of the Libertarian Party. *See* Advisory Opinions 2002-14 (Libertarian**  
20 **National Committee) and 1975-129 (Libertarian National Committee). The Commission**  
21 **is aware of no factual changes that would alter those conclusions.**

22 **The second question in determining whether a political committee is a State**  
23 **committee of a political party is whether the requesting committee satisfies the remaining**

1 elements of the definition of a “State committee” of a political party. *See, e.g.*, Advisory  
2 Opinion 2007-02 (Arizona Libertarian Party). This determination consists of two  
3 inquiries: (1) whether the organization is part of the official party structure; and (2)  
4 whether the organization is responsible for the day-to-day operations of the political party  
5 at the State level, as determined by the Commission. *See* 2 U.S.C. 431(15) and 11 CFR  
6 100.14.

7 In previous advisory opinions, the Commission has addressed the first inquiry by  
8 requiring supporting documentation from the national party indicating that the State party  
9 is part of the official party structure. *See, e.g.*, Advisory Opinion 2007-02 (Arizona  
10 Libertarian Party). Here, a letter from Mr. Robert S. Kraus, Director of Operations of the  
11 LNC, confirms the status of the LPIN as part of the LNC’s official party structure.<sup>3</sup>

12 With respect to the second inquiry, the Commission determines whether an  
13 organization is responsible for the day-to-day functions and operations of a political party  
14 at the State level by considering: (1) whether the organization has placed a “candidate”  
15 on the ballot (thereby qualifying as a “political party”); and (2) the bylaws or other  
16 governing documents of the State party organization.<sup>4</sup> *See, e.g.*, Advisory Opinion  
17 2007-02 (Arizona Libertarian Party).

18 A successful ballot access effort on behalf of a “candidate” is required because  
19 the requesting organization’s existence as a “political party” is necessary for State  
20 committee status. A State party organization must actually obtain ballot access for one or  
21 more “candidates,” as defined in the Act. *See* 2 U.S.C. 431(2), 431(15) and 431(16);

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<sup>3</sup> This document is included in the Advisory Opinion Request, which is available at <http://saos.nictusa.com/saos/searchao> (last visited Mar. 29, 2007).

<sup>4</sup> Where appropriate, the Commission may also consider the operation of State law in making these determinations. *See* 11 CFR 100.14(a).

1 11 CFR 100.3(a), 100.14(a) and 100.15; *see also* Advisory Opinions 2007-02 (Arizona  
2 Libertarian Party), 2004-40 (Libertarian Party of Maryland), 2004-34 (Libertarian Party  
3 of Virginia), and 2003-27 (Missouri Green Party).

4 Two individuals identified in your request, Mr. David Eric Schansberg and Mr.  
5 Michael Badnarik, received contributions or made expenditures in excess of \$5,000 in  
6 their campaigns, according to disclosure reports filed with the Commission, and,  
7 therefore, both satisfy the Act's definition of a "candidate."<sup>5</sup> *See* 2 U.S.C. 431(2) and  
8 11 CFR 100.3(a). Mr. Schansberg appeared on the 2006 Indiana ballot as the LPIN's  
9 candidate for the U.S. House of Representatives, and Mr. Badnarik appeared on the 2004  
10 Indiana ballot as the LPIN's candidate for U.S. President. Accordingly, the LPIN  
11 qualifies as a "political party" under the Act.

12 As noted above, the Bylaws detail the organizational structure for the LPIN and  
13 establish specific responsibilities for LPIN officials. *See* Bylaws, art. I, sec. 1 through 4;  
14 art. V, sec. 1 through 7; art. VI, sec. 1 through 13.<sup>6</sup> The Bylaws delineate activity  
15 commensurate with the day-to-day functions and operations of a political party on a State  
16 level, and are consistent with the State party rules reviewed in previous situations where  
17 the Commission has recognized the State committee status of a political organization.  
18 Therefore, the Bylaws satisfy the requirements of 2 U.S.C. 431(15) and  
19 11 CFR 100.14(a).

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<sup>5</sup> Disclosure reports for Messrs. Schansberg and Badnarik appear on the Commission's website at <http://images.nictusa.com/cgi-bin/fecimg/?C00426692> and <http://images.nictusa.com/cgi-bin/fecimg/?C00384966> (last visited Mar. 29, 2007), respectively.

<sup>6</sup> This document is included in the Advisory Opinion Request, which is available at <http://saos.nictusa.com/saos/searchao> (last visited Mar. 29, 2007).

