

November 28, 2007

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2007-23 is available for public comments under this procedure. It was requested by A. Joshua Ehrlich, Esq., on behalf of Independence Party of New York.

Draft Advisory Opinion 2007-23 is scheduled to be on the Commission's agenda for its public meeting of Thursday, December 6, 2007.

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 12:00pm noon (Eastern Time) on December 5, 2007.

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 timely received comments 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 Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2007-23, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

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

MAILING ADDRESSES

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

Rosemary C. Smith
Associate General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

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AGENDA ITEM

For Meeting of: 12-06-07

November 28, 2007

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Ron Katwan *RBK*
Assistant General Counsel

Joshua S. Blume *JSB*
Attorney

Subject: Draft AO 2007-23

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 6, 2007.

Attachment

1 ADVISORY OPINION 2007-23

2

3 Mr. A. Joshua Ehrlich, Esq.

DRAFT

4 Attorney At Law

5 Capitol Station

6 P.O. Box 7273

7 Albany, NY 12224

8

9 Dear Mr. Ehrlich:

10

11 We are responding to your inquiry regarding the status of the Independence Party

12 of New York (the "IPNY") as a State party committee of a political party under the

13 Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission

14 regulations. The Commission concludes that the IPNY qualifies as a State party

15 committee because: (1) the IPNY qualifies as a political party; and (2) the IPNY is

16 responsible for the day-to-day operations of a political party at the State level.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on

19 September 19, 2007 as supplemented by an e-mail communication received on

20 September 20, 2007 and a letter received on October 15, 2007.

21 The IPNY was founded in 1992. At this time, it is not affiliated with a national

22 political party.¹ Since its inception, the IPNY has achieved ballot status pursuant to New

23 York State Election Law ("Election Law") 1-104(3) in each succeeding gubernatorial

24 election through 2006. Pursuant to Election Law 6-104, the State Committee of the

25 IPNY (the "IPNY Committee") directly nominates IPNY candidates for any Statewide

26 elective office to be filled by all the voters of the State. Nominees are guaranteed a place

27 on the ballot by virtue of the IPNY's ballot status. Election Law 7-116(1). Senator

¹ According to the website www.independencepartyofamerica.com the IPNY, in cooperation with others, is actively seeking to launch a national political party, to be known as the Independence Party of America.

1 Hillary Clinton appeared on the general election ballot as the IPNY's candidate for U.S.
2 Senator in 2006.² Several other individuals appeared on the 2006 ballot as the IPNY's
3 candidates for election to the U.S. House of Representatives, including, for example,
4 Representative Gary Ackerman (5th Congressional District), former Representative Sue
5 Kelly (19th Congressional District), and Representative Louise Slaughter (28th
6 Congressional District).³

7 The IPNY Committee Rules⁴ control the governance of the IPNY. These Rules
8 are on file with the New York State Board of Elections pursuant to Election Law 2-
9 114(1). The IPNY Rules detail various aspects of the organization and operation of the
10 IPNY. Under the IPNY Rules, members of the IPNY Committee are elected from
11 Assembly Districts, and twenty-five members are chosen to serve as executive officers.
12 Rules, Art. II, Secs. 1, 2. The IPNY Committee holds meetings at least three times per
13 year, and may schedule additional meetings upon written petition of a sufficient number
14 of members. Rules, Art. III. The IPNY Rules contain procedures for voting at such
15 meetings, for endorsing IPNY candidates for Federal, State and local elective offices, and
16 for constituting interim county committees, county committees, and judicial district
17 nominating conventions. Rules, Arts. IV-VI, X-XI. The IPNY Committee has
18 constituted county committees pursuant to the Rules and Election Law. *See* IPNY Rules,
19 Art. X, Election Law Art. 2.

² This information was obtained from the official website of the New York State Board of Elections, which provides a chart detailing the U.S. Senate election returns for November 7, 2006. *See* www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_ussen.pdf. The chart lists vote totals for each of the party candidates by county.

³ *See* www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_cong.pdf.

⁴ This document is included in the Advisory Opinion Request, which is available at <http://saos.nictusa.com/saos/searchao>.

1 ***Question Presented***

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

4 ***Legal Analysis and Conclusion***

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

7 A "State committee" is an organization that, by virtue of the bylaws of a political
8 party or the operation of State law, is part of the official party structure and is responsible
9 for the day-to-day operation of such political party at the State level, as determined by the
10 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).

11 The first question in determining whether a political committee is a State
12 committee of a political party is whether the organization itself qualifies as a "political
13 party" under the Act and Commission regulations. *See, e.g.,* Advisory Opinions 2007-06
14 (Indiana Libertarian Party) and 2004-40 (Libertarian Party of Maryland). A "political
15 party" is an "association, committee, or organization which nominates a candidate for
16 election to any Federal office whose name appears on the election ballot as the candidate
17 of such association, committee, or organization." 2 U.S.C. 431(16); 11 CFR 100.15. The
18 IPNY candidate identified in your request, Senator Clinton, as well as Representatives
19 Ackerman and Slaughter, and former Representative Kelly, each received or expended
20 amounts in excess of \$5,000 in their 2006 campaigns according to disclosure reports filed
21 with the Commission, and therefore, all satisfy the Act's definition of a "candidate."⁵

⁵ Disclosure reports for Senator Clinton, Representative Ackerman, former Representative Kelly and Representative Slaughter appear on the Commission's website at <http://query.nictusa.com/cgi-bin/fecimg/?C00346544>; <http://query.nictusa.com/cgi-bin/fecimg/?C00165241>;

1 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). Senator Clinton and the three House candidates
2 appeared on the 2006 ballot in the State of New York as the IPNY's candidates for the
3 U.S. Senate and the U.S. House of Representatives respectively.⁶ Accordingly, the
4 Commission concludes that the IPNY satisfies the definition of "political party" under the
5 Act.

6 The second question in determining whether the IPNY is a State committee of a
7 political party is whether the requesting committee satisfies the remaining elements of the
8 definition of a "State committee" of a political party. *See, e.g.*,
9 Advisory Opinions 2007-06 (Indiana Libertarian Party), 2007-02 (Arizona Libertarian
10 Party) and 2004-40 (Libertarian Party of Maryland). This determination considers
11 whether the organization, by virtue of its bylaws, is responsible for the day-to-day
12 operations of the political party at the State level, as determined by the Commission. *See*
13 2 U.S.C. 431(15) and 11 CFR 100.14.

14 The IPNY is not part of a larger national party structure. However, a State party
15 organization need not be affiliated with any national political party organization to obtain

<http://query.nictusa.com/cgi-bin/fecimg/?C00294900>; and <http://query.nictusa.com/cgi-bin/fecimg/?C00213611>, respectively.

⁶ The Commission notes that all four of the IPNY candidates also appeared on the 2006 ballot in the State of New York as candidates of other recognized political parties. Senator Clinton also appeared on the ballot as the candidate of the Democratic Party and of the Working Families Party. *See* www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_ussen.pdf. Similarly, Representative Ackerman, former Representative Kelly and Representative Slaughter also appeared on the ballot as Democratic or Republican candidates. *See* www.elections.state.ny.us/NYSBOE/elections/2006/general/2006_cong.pdf. The Commission, however, has determined that a candidate's association with more than one political party is not relevant when considering a party committee status request. The Commission concluded that "fusion candidates may be considered when reviewing a party's qualification for national committee status." Advisory Opinion 1998-02 fn 5 (Reform Party USA). The Commission has reached the same conclusion when reviewing a party's qualification for State committee status. *See, e.g.* Advisory Opinion 2000-14 fn 3 (New York State Committee of the Working Families Party). Furthermore, in Advisory Opinion 2000-14 (New York State Committee of the Working Families Party), the only identified Federal candidate of the Working Families Party was a "fusion candidate," *i.e.*, Hillary Clinton.

1 State committee status. *See* Advisory Opinions 2000-21 (State Committee of the New
2 York State Conservative Party) and 2000-14 (New York State Committee of the Working
3 Families Party). In cases where a State party is not affiliated with a national political
4 party, the Commission has considered whether the Party's Rules "set out a
5 comprehensive organizational structure for the Party" and "clearly identify the role of the
6 Party" and its responsibilities in administering the day-to-day functions and operations of
7 a political party at the State level. *See id.*

8 The Commission concludes that the IPNY's Rules establish a comprehensive
9 organizational structure for the Party from the statewide level down through various local
10 levels, and clearly identify the role of the Party. *See* Advisory Opinions 2000-21 (State
11 Committee of the New York State Conservative Party) and 2000-14 (New York State
12 Committee of the Working Families Party).

13 As noted above, the Rules of the IPNY detail the organizational structure for the
14 IPNY and establish responsibilities for IPNY officials. *See* Rules, Arts. II-XI. The IPNY
15 Rules delineate activity commensurate with the day-to-day functions and operations of a
16 political party on a State level, and are consistent with the State party rules reviewed in
17 previous situations where the Commission has recognized the State committee status of a
18 political organization.

19 In addition, the Commission notes that pursuant to New York Election Law, the
20 IPNY has acquired ballot status as the official Independence Party of the State of New
21 York.

