

October 2, 2008

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 2008-12 is available for public comments under this procedure. It was requested by Linda K. Williams, Esq., on behalf of Independent Party of Oregon.

Draft Advisory Opinion 2008-12 is scheduled to be on the Commission's agenda for its public meeting of Wednesday, October 8, 2008.

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 October 7, 2008.

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 2008-12, 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.

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October 2, 2008

AGENDA ITEM
For Meeting of: 10-08-08

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *PCS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Albert J. Kiss *ASK*
Attorney

Subject: Draft AO 2008-12

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 8, 2008.

Attachment

SUBMITTED LATE

1 ADVISORY OPINION 2008-12

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3 Linda K. Williams, Esq.
4 State Chair and Treasurer
5 Independent Party of Oregon
6 10266 S.W. Lancaster Rd.
7 Portland, OR 97219-6305

DRAFT

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9 Dear Ms. Williams:

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We are responding to your advisory opinion request regarding the status of the Independent Party of Oregon (the "IPO") as a State committee of a political party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes that the IPO qualifies as a State committee of a political party because: (1) the IPO qualifies as a political party; (2) the IPO possesses an official party structure; and (3) the IPO is responsible for the day-to-day operation of a political 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 letters received on August 18 and 27, 2008, your email received September 24, 2008, telephone conversations with Commission attorneys, and publicly available materials.

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The IPO is not affiliated with a national political party but qualifies under Oregon law as a "minor political party." See Letter from Oregon Secretary of State, dated January 24, 2007 (attached to advisory opinion request). The IPO's Constitution and Bylaws detail the organization, nominating authority, endorsing authority, and operation of the IPO. The IPO is governed by a three-person State Council. Constitution, Art. IV, Sec. A; Bylaws, Art. IV, Sec. A. The IPO's State Council appoints one or more

1 chairpersons, a secretary, and a treasurer. Bylaws, Art. IV, Sec. B. The IPO's State
2 Council manages the IPO's day-to-day activities and operation, establishes procedures
3 for considering endorsements of persons who are candidates for offices not sought by
4 IPO candidates, and has additional responsibilities for statewide operation and
5 administration of the IPO. Bylaws, Art. IV, Sec. A.6. The IPO nominates and endorses
6 candidates for partisan political office via a five-delegate IPO Caucus or at annual IPO
7 conventions. Constitution, Art. V and VI; Bylaws, Art. V, Secs. A-C; and Art. VI,
8 Secs. A, B and D. The Constitution and Bylaws provide for the creation of IPO chapters
9 within geographic regions of the State. Constitution, Art. IV; Bylaws Art. IV, Sec. C.

10 The IPO has placed a candidate for the U.S. House of Representatives, Mr. Joel
11 Haugen, on the 2008 Oregon general election ballot. Mr. Haugen is identified on the
12 ballot as the candidate of the IPO.¹

13 ***Question Presented***

14 *Does the IPO qualify as a State committee of a political party within the meaning*
15 *of the Act and Commission regulations?*

16 ***Legal Analysis and Conclusion***

17 Yes, the IPO qualifies as a State committee of a political party within the meaning
18 of the Act and Commission regulations.

19 A "State committee" of a political party is an organization that, by virtue of the
20 bylaws of a political party, is part of the official party structure and is responsible for the

¹ The political party identification for Mr. Haugen on the general election ballot appears on the Oregon Secretary of State's website at <https://secure.sos.state.or.us/eim/cfDetail.do?page=search&cfRsn=6483> (last visited September 25, 2008).

1 day-to-day operation of such political party at the State level, as determined by the
2 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an association,
3 committee, or organization that nominates a candidate for election to any Federal office
4 whose name appears on the election ballot as the candidate of the association, committee,
5 or organization. 2 U.S.C. 431(16); 11 CFR 100.15.

6 The determination as to whether a State party organization not affiliated with a
7 national political party qualifies as a State committee of a political party turns on three
8 elements: (1) the State party organization must itself qualify as a “political party”;
9 (2) the State party organization must itself possess an official party structure; and (3) the
10 State party organization must be responsible for the day-to-day operation of a party at the
11 State level. *See, e.g.*, Advisory Opinion 2007-23 (Independence Party of New York).

12 The Commission therefore addresses each of these three elements in turn.

13 *(1) Qualification as a Political Party*

14 To qualify as a political party, the IPO must have at least one candidate for
15 Federal office whose name is on the ballot as a candidate of the IPO. *See id.* An
16 individual qualifies as a candidate if the individual, the individual’s authorized
17 committee, or other persons authorized by the individual, have received contributions
18 aggregating in excess of \$5,000 or have made expenditures aggregating in excess of
19 \$5,000. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). IPO House candidate Joel Haugen
20 received and expended amounts in excess of \$5,000 in his 2008 campaign for the U.S.
21 House of Representatives according to disclosure reports filed with the Commission, and

1 therefore satisfies the Act's definition of a candidate.² Thus, the IPO qualifies as a
2 political party because Mr. Haugen will appear on the November 2008 Oregon general
3 election ballot as a candidate of the IPO.

4 *(2) Official Party Structure*

5 The IPO is not affiliated with any national political party, but such affiliation is
6 not needed to obtain State party committee status. *See, e.g.* Advisory Opinions 2000-21
7 (State Committee of the New York State Conservative Party) and 2000-14 (New York
8 State Committee of the Working Families Party). In cases where a State party
9 organization is not affiliated with a national political party, the State party organization
10 must itself possess an official party structure. The Commission concludes that the IPO
11 possesses an official party structure because: (1) the IPO's Constitution and Bylaws
12 establish an official party structure; and (2) pursuant to Oregon law, the IPO has ballot
13 status as the official Independent Party of Oregon and has placed a candidate on the
14 ballot.³ Accordingly, the IPO satisfies the second element required to qualify as a State
15 committee of a political party.

16 *(3) Responsibility for Day-to-Day Operation of a Political Party*

17 The third element in determining whether a State party organization is a State
18 committee of a political party is whether the organization, by virtue of its bylaws or by
19 operation of State law, is responsible for the day-to-day operation of a political party at

² Disclosure reports for Mr. Haugen appear on the Commission's website at <http://query.nictusa.com/cgi-bin/fecimg/?C00452680> (last visited September 25, 2008).

³ The January 24, 2007 letter from the Oregon Secretary of State evidences the IPO's status as a minor political party under Oregon law. Similarly, the Oregon Secretary of State's website lists the IPO as a statewide minor political party. *See* <http://www.sos.state.or.us/elections/other.info/polparty.pdf> (last visited September 25, 2008).

1 the State level. *See* 2 U.S.C. 431(15) and 11 CFR 100.14(a); *see also* Advisory Opinion
2 2007-23 (Independence Party of New York).

3 Provisions of the IPO's Constitution and Bylaws noted above detail the
4 organizational structure for the IPO and establish responsibilities for IPO officials.
5 *See* Constitution, Art. IV, V; Bylaws, Art. III-VI. Further, the IPO's Constitution and
6 Bylaws establish a comprehensive organizational structure for the IPO from the statewide
7 level down through various local levels, and clearly identify the role of the IPO and its
8 responsibilities for the day-to-day functions and operations of a political party at the State
9 level. The IPO's responsibility for the operations of a political party on the State level is
10 commensurate with the responsibility of other State party committees that the
11 Commission previously recognized. *See, e.g.*, Advisory Opinion 2007-23 (Independence
12 Party of New York). Thus, the IPO is responsible for the day-to-day operations of a
13 political party at the State level.

14 Because all three elements of the definition of "State committee" are satisfied, the
15 Commission determines that the IPO qualifies as a State committee of a political party
16 under the Act and Commission regulations.

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

1 transaction or activity which is indistinguishable in all its material respects from the
2 transaction or activity with respect to which this advisory opinion is rendered may rely on
3 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
4 conclusions in this advisory opinion may be affected by subsequent developments in the
5 law, including, but not limited to, statutes, regulations, advisory opinions and case law.
6 The cited advisory opinions are available on the Commission's website at
7 <http://saos.nictusa.com/saos/searchao>.

8 On behalf of the Commission,

9 Donald F. McGahn II
10 Chairman