



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 8, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2008-12

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

Dear Ms. Williams:

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.

Background

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.

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

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

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

Question Presented

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

Legal Analysis and Conclusion

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

A "State committee" of a political party is an organization that, by virtue of the bylaws of a political party, is part of the official party structure and 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); 11 CFR 100.14(a). A "political party" is an association, committee, or organization that nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of the association, committee, or organization. 2 U.S.C. 431(16); 11 CFR 100.15.

The determination as to whether a State party organization not affiliated with a national political party qualifies as a State committee of a political party turns on three elements: (1) the State party organization must itself qualify as a "political party"; (2) the State party organization must itself possess an official party structure; and (3) the State party organization must be responsible for the day-to-day operation of a party at the State level. *See, e.g.*, Advisory Opinion 2007-23 (Independence Party of New York). The Commission therefore addresses each of these three elements in turn.

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) Qualification as a Political Party

To qualify as a political party, the IPO must have at least one candidate for Federal office whose name is on the ballot as a candidate of the IPO. *See id.* An individual qualifies as a candidate if the individual, the individual's authorized committee, or other persons authorized by the individual, have received contributions aggregating in excess of \$5,000 or have made expenditures aggregating in excess of \$5,000. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). IPO House candidate Joel Haugen received and expended amounts in excess of \$5,000 in his 2008 campaign for the U.S. House of Representatives according to disclosure reports filed with the Commission, and therefore satisfies the Act's definition of a candidate.² Thus, the IPO qualifies as a political party because Mr. Haugen will appear on the November 2008 Oregon general election ballot as a candidate of the IPO.

(2) Official Party Structure

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

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

The third element in determining whether a State party organization is a State committee of a political party is whether the organization, by virtue of its bylaws or by operation of State law, is responsible for the day-to-day operation of a political party at the State level. *See* 2 U.S.C. 431(15) and 11 CFR 100.14(a); *see also* Advisory Opinion 2007-23 (Independence Party of New York).

Provisions of the IPO's Constitution and Bylaws noted above detail the organizational structure for the IPO and establish responsibilities for IPO officials. *See* Constitution, Art. IV, V; Bylaws, Art. III-VI. Further, the IPO's Constitution and Bylaws establish a comprehensive organizational structure for the IPO from the statewide

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).

level down through various local levels, and clearly identify the role of the IPO and its responsibilities for the day-to-day functions and operations of a political party at the State level. The IPO's responsibility for the operations of a political party on the State level is commensurate with the responsibility of other State party committees that the Commission previously recognized. *See, e.g.*, Advisory Opinion 2007-23 (Independence Party of New York). Thus, the IPO is responsible for the day-to-day operations of a political party at the State level.

Because all three elements of the definition of "State committee" are satisfied, the Commission determines that the IPO 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. Any person involved in any specific transaction or activity which is indistinguishable in all its material respects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law, including, but not limited to, statutes, regulations, advisory opinions and case law. The cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Donald F. McGahn II
Chairman