

AGENDA DOCUMENT NO. 10-77



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SECRETARIAT

2010 DEC 10 A 9:08

December 8, 2010

AGENDA ITEM

MEMORANDUM

For Meeting of 12-16-10

TO: The Commission

FROM: Christopher Hughey *feh*
Acting General Counsel

SUBMITTED LATE

Rosemary C. Smith *RC*
Associate General Counsel

Amy L. Rothstein *AR*
Assistant General Counsel

Cheryl A.F. Hemsley *CAF*
Attorney

Subject: Draft AO 2010-29 (Working Families Party of Oregon)

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 16, 2010.

Attachment

1 ADVISORY OPINION 2010-29
2 Cathy Hight, Esq.
3 Portland Law Collective, LLP
4 1130 SW Morrison Street
5 Suite 407
6 Portland, OR 97205
7

DRAFT

8 Dear Ms. Hight:
9

10 We are responding to your advisory opinion request regarding the status of the
11 Working Families Party of Oregon (the "WFP OR") as a State committee of a political
12 party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and
13 Commission regulations. The Commission concludes that the WFP OR qualifies as a
14 State committee of a political party because: (1) the WFP OR qualifies as a political
15 party; (2) the WFP OR possesses an official party structure; and (3) the WFP OR 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 November 2, 2010, and on information publicly available on the Commission's and the
20 Oregon Secretary of State's websites.

21 The WFP OR is not affiliated with any national political party. The WRP OR
22 qualifies under Oregon law as a "minor political party." *See* Letter from Ms. Candy
23 Broucek, Compliance Specialist, Office of the Secretary of State of Oregon, to Ms.
24 Barbara Dudley, Co-Chair, WFP OR (August 4, 2010) ("Oregon Secretary of State
25 Letter").

26 The organizational structure of the WFP OR is set out in the WFP OR's Bylaws.
27 *See* Bylaws of the WFP OR (the "Bylaws"), Arts. 4-7, and 9. The Bylaws describe
28 membership in and governance of the WFP OR.

1 The WFP OR is governed by a State Committee. *See* Bylaws, Art. 7. The State
2 Committee manages the WFP OR’s day-to-day activities and operation, including but not
3 limited to establishing criteria for membership, chapter formation, organizational
4 affiliation, candidate endorsements and nominations, allocation of financial resources,
5 and political party policies. *See* Bylaws, Art. 7, Para. 1. The State Committee appoints
6 two Co-Chairpersons, a Secretary, and a Treasurer (the “officers”). *See* Bylaws Art. 9,
7 Para. 1. The Co-Chairpersons supervise and control the affairs of the WFP OR and the
8 activities of the officers, perform all duties incident to their offices, required by the
9 Bylaws or by law, or which are prescribed from time to time by the State Committee.
10 *See* Bylaws, Art. 9, Paras. 1 and 3.

11 The WFP OR placed two candidates on the 2010 general election ballot in Oregon
12 as candidates of the WFP OR: Bruce Cronk for the U.S. Senate and Representative Peter
13 DeFazio for the U.S. House of Representatives (Oregon’s 4th District). Both Mr. Cronk
14 and Representative DeFazio were identified on the ballot as candidates of the WFP OR.¹
15 Mr. Cronk and Representative DeFazio each received contributions and made
16 expenditures in excess of \$5,000 in their respective campaigns for the U.S. Senate and

¹ The Commission notes that Representative DeFazio appeared on the 2010 general election ballot as a candidate of the WFP OR, the Progressive Party, and the Democratic Party. The political party identification of Representative DeFazio on the general election ballot appears on the Oregon Secretary of State’s website at <https://secure.sos.state.or.us/orestar/cfFilings.do?cfSearchButtonName=&cfName=defazio&cfyearActive=&cfOffice=&cfPartyAffiliation=&cfFilingFromDate=&cfFilingToDate=&cfWithdrawFromDate=&cfWithdrawDate=>, and the political party identification of Mr. Cronk appears at <https://secure.sos.state.or.us/orestar/cfFilings.do?cfSearchButtonName=&cfName=cronk&cfyearActive=&cfOffice=&cfPartyAffiliation=&cfFilingFromDate=&cfFilingToDate=&cfWithdrawFromDate=&cfWithdrawDate=> (last visited 11/23/10).

1 the U.S. House of Representatives during the 2010 election cycle, according to disclosure
2 reports filed with the Commission.²

3 ***Question Presented***

4 *Does the WFP OR qualify as a State committee of a political party within the*
5 *meaning of the Act and Commission regulations?*

6 ***Legal Analysis and Conclusion***

7 Yes, the WFP OR qualifies as a State committee of a political party within the
8 meaning of the Act and Commission regulations.

9 A “State committee” of a political party is an organization that, by virtue of the
10 bylaws of a political party, is part of the official party structure and is responsible for the
11 day-to-day operation of such political party at the State level, as determined by the
12 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an association,
13 committee, or organization that nominates a candidate for election to any Federal office
14 whose name appears on the election ballot as the candidate of the association, committee,
15 or organization. 2 U.S.C. 431(16); 11 CFR 100.15.

16 The determination as to whether a State party organization that is not affiliated
17 with a national political party qualifies as a State committee of a political party turns on
18 three elements: (1) the State party organization must itself qualify as a “political party”;
19 (2) the State party organization must possess an official party structure; and (3) the State
20 party organization must be responsible for the day-to-day operations of a party at the
21 State level. *See, e.g.*, Advisory Opinions 2010-22 (Working Families Party of

² Disclosure reports for Mr. Cronk and Representative DeFazio appear on the Commission’s website at <http://query.nictusa.com/cgi-bin/fecimg/?C00491084> and <http://query.nictusa.com/cgi-bin/fecimg/?H6OR04047>, respectively (last visited 11/23/10).

1 Connecticut), 2008-12 (Independent Party of Oregon), and 2007-23 (Independence Party
2 of New York). The Commission addresses each of these three elements in turn.

3 *(1) Qualification of the WFP OR as a Political Party*

4 To qualify as a political party, the WFP OR must have at least one candidate for
5 Federal office whose name is on the ballot as a candidate of the WFP OR. *See id.* An
6 individual qualifies as a candidate for Federal office if the individual, the individual's
7 authorized committee, or other persons authorized by the individual have received
8 contributions aggregating in excess of \$5,000 or have made expenditures aggregating in
9 excess of \$5,000. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a)(1). Mr. Cronk and
10 Representative DeFazio each received contributions and made expenditures in excess of
11 \$5,000 in their respective campaigns for the U.S. Senate and the U.S. House of
12 Representatives during the 2010 election cycle; thus, both Mr. Cronk and Representative
13 DeFazio qualify as Federal candidates under the Act and Commission regulations.
14 Additionally, both candidates appeared on the November 2010 Connecticut general
15 election ballot as candidates of WFP OR.³ Further, the Oregon Secretary of State Letter
16 noted above evidences the WFP OR's status as a minor political party under Oregon law.

17

³ As noted previously, Representative DeFazio also appeared on the 2010 general election ballot as a candidate of the Progressive Party and the Democratic Party. In previous advisory opinions, the Commission has concluded that a candidate's association with more than one political party is not relevant when reviewing a party's qualification for State committee status. *See, e.g.,* Advisory Opinion 2010-22 (Working Families Party of Connecticut) at n.3, and Advisory Opinion 2007-23 (Independence Party of New York) at n.6 and advisory opinions cited therein.

1 Accordingly, the WFP OR qualifies as a political party. *See* Advisory Opinions
2 2010-22 (Working Families Party of Connecticut), 2010-13 (Libertarian Party of
3 Florida), 2008-12 (Independent Party of Oregon), and 2000-14 (New York Working
4 Families Party).

5 *(2) Official Party Structure of the WFP OR*

6 The WFP OR is not affiliated with any national political party. In cases involving
7 a State party organization that is not affiliated with a national political party, the State
8 party organization must itself possess an official party structure. *See* Advisory Opinions
9 2010-22 (Working Families Party of Connecticut), 2008-12 (Independent Party of
10 Oregon), and 2007-23 (Independence Party of New York). The Commission concludes
11 that the WFP OR possesses an official party structure because: (1) the WFP OR's Bylaws
12 establish an official party structure; and (2) the Oregon Secretary of State has determined
13 that WFP OR qualifies for status as a minor political party under Oregon law and, as
14 such, placed two candidates on its party line on the 2010 general election ballot.
15 Accordingly, the WFP OR satisfies the second element required to qualify as a State
16 committee of a political party.

17 *(3) Responsibility of the WFP for Day-to-Day Operations of the party*

18 The third element in determining whether a State party organization is a State
19 committee of a political party is whether the organization, by virtue of its bylaws or by
20 operation of State law, is responsible for the day-to-day operations of a political party at
21 the State level. *See* 2 U.S.C. 431(15); 11 CFR 100.14(a); *see also* Advisory Opinions
22 2010-22 (Working Families Party of Connecticut), 2008-12 (Independent Party of
23 Oregon), and 2007-23 (Independence Party of New York).

1 The Bylaws clearly identify the role and responsibilities of the WFP OR, through
2 its State Committee, for the day-to-day functions and operations of the party at the State
3 level. *See* Bylaws, Arts. 7 and 8. The WFP OR’s responsibility for the operations of the
4 party at the State level is commensurate with the responsibility of other State party
5 committees that the Commission has previously recognized. *See, e.g.*, Advisory
6 Opinions 2010-22 (Working Families Party of Connecticut) and 2008-12 (Independent
7 Party of Oregon). Thus, the WFP OR is responsible for the day-to-day operations of a
8 political party at the State level.

9 Because all three elements of the definition of “State committee” are satisfied, the
10 Commission determines that the WFP OR qualifies as a State committee of a political
11 party under the Act and Commission regulations.

12 This response constitutes an advisory opinion concerning the application of the
13 Act and Commission regulations to the specific transaction or activity set forth in your
14 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
15 any of the facts or assumptions presented, and such facts or assumptions are material to a
16 conclusion presented in this advisory opinion, then the requester may not rely on that
17 conclusion as support for its proposed activity. Any person involved in any specific
18 transaction or activity which is indistinguishable in all its material respects from the
19 transaction or activity with respect to which this advisory opinion is rendered may rely on
20 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
21 conclusions in this advisory opinion may be affected by subsequent developments in the
22 law, including, but not limited to, statutes, regulations, advisory opinions and case law.

1 The cited advisory opinions are available on the Commission's website at

2 <http://saos.nictusa.com/saos/searchao>.

3 On behalf of the Commission,

4

5

6 Matthew S. Petersen

7 Chairman