



FEDERAL ELECTION COMMISSION
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May 11, 2000

MEMORANDUM

AGENDA ITEM

For Meeting of: 5-25-00

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 2000-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 18, 2000.

25

Attachment

1 ADVISORY OPINION 2000-06

2
3 Gerald M. Moan, Chairman
4 2000 Convention Committee of the
5 Reform Party USA
6 9219 E. Shonto Lane
7 Tucson; Arizona 85749

DRAFT

8
9 Dear Mr. Moan:

10
11 This refers to your letter dated April 6, 2000, on behalf of the 2000 Convention
12 Committee of the Reform Party of the United States of America ("the Committee")
13 concerning the application of the Presidential Election Campaign Fund Act ("the Fund
14 Act") and Commission regulations to the permissible uses of convention funds received
15 from the Treasury of the United States, in connection with the Reform Party's
16 Presidential nominating process.

17 **FACTS**

18 You state that you are the Chairman and Treasurer of the Committee. You explain
19 that as a result of its 1996 presidential candidate having received more than five percent
20 of the popular vote in the 1996 general election, the Reform Party achieved minor party
21 status under 11 CFR 9002.7.¹ On November 23, 1999, the Commission certified
22 \$2,468,921 for payment from the U.S. Treasury to the Reform Party for its 2000
23 Presidential nominating convention. At a 1998 convention of the Reform Party held in
24 Atlanta, Georgia, the nominating procedure, which is the subject of this request, was
25 adopted. Minor amendments were passed at the 1999 Reform Party convention in
26 Dearborn, Michigan. A copy of these rules, as amended, is provided on the official web

¹ In Advisory Opinion 1998-2, the Commission recognized the National Committee of the Reform Party USA as the national committee of a political party under Commission regulations.

1 page of the Reform Party.²

2 You explain that the Reform Party nominating process consists of two parts: (1)
3 qualifying for the Reform Party's presidential nominating ballot; and (2) the nomination
4 balloting itself. A candidate qualifies by achieving eligibility to run as an independent
5 candidate for President of the United States in enough states in which the Reform Party
6 (or one of its affiliates) has not achieved legal ballot status so that the total electoral
7 votes, assigned to the states where the candidate qualifies, is equal to at least one half of
8 the total electoral votes of non-ballot status states. Nomination rules, section III (3)-(5).
9 The nomination balloting consists of a national vote cast by members of the Reform Party
10 or an affiliated state party and all other persons who signify their desire to participate in a
11 Reform Party (or affiliated) organization in their state, along with all persons who sign a
12 nominating petition for a candidate seeking to qualify. Nomination rules, section IV(2).
13 The names of these persons will be placed in a computer data base, and they will be
14 mailed ballots for an election to be held by telephone, mail and e-mail during the month
15 of July 2000. Each voter may cast a vote for his or her first, second and third choices.
16 The ballots will be tabulated by computer and the results announced at the Reform Party
17 National Convention to be held in August, 2000. Nomination rules, section IV(5). If no
18 candidate secures a majority, the computer will generate a second result by eliminating
19 the candidate with the lowest number of votes and distributing the second choice votes of
20 those who voted for the eliminated candidate to the remaining candidates. The procedure
21 continues (using the third choice if necessary) until one candidate receives a majority.
22 Nomination rules, section IV(9) and (10). The candidate for Vice President is chosen by

² The Internet address for the web site is <http://www.reformparty.org/>.

1 convention delegates. Nomination rules, section V(5).

2 You ask, given this process, whether the convention funds available to the Reform
3 Party under 26 U.S.C. §9008 may be used to finance phase two of the described process;
4 namely, the development of a voter data base and the conduct of the balloting to choose
5 the Reform Party presidential candidate.³ You further explain that such uses would be in
6 addition to the expenses of organizing and conducting the August, 2000 meeting.⁴

7 **FUND ACT AND COMMISSION REGULATIONS**

8 Under 26 U.S.C. §9008(b)(2) the national committee of a minor party is entitled
9 to Federal (or "public") funding for its presidential nominating convention. However, no
10 part of any payment made under section 9008 shall be used to defray the expenses of any
11 candidate or delegate who is participating in any presidential nominating convention. 26
12 USC §9008(c). Such payments shall be used only to defray expenses incurred with
13 respect to a presidential nominating convention (including the payment of deposits) by or
14 on behalf of the national committee receiving such payments; or to repay loans the
15 proceeds of which were used to defray such expenses, or otherwise to restore funds (other
16 than contributions to defray such expenses received by such committee) used to defray
17 such expenses. *See* 26 U.S.C. §9008(c)(1) and (2); *see also* 11 CFR 9008.7(a)(1) and (2).

18 Commission regulations provide some guidance as to what expenses may qualify
19 as convention expenses. Under 11 CFR 9008.7(a)(4), "Convention expenses" includes all

³ The Commission understands the terms "development of a voter data base" and "the conduct of balloting" to be limited to the preparation and dissemination of materials needed directly for the Presidential nomination process connected to the convention and does not include the preparation and dissemination of additional materials to be used for fundraising or party building activities.

⁴ Your request concerns the use of funds available to the Reform Party for its Presidential nominating convention under 26 U.S.C. §9008(b)(2). Therefore, this opinion does deal with any question relating to the eligibility of Reform Party candidates to receive and use Federal matching funds under 26 U.S.C. §§9031-9042. Neither does this opinion deal with any question regarding the use general election funding

1 expenses incurred by or on behalf of a political party's national committee or convention
2 committee with respect to, and for the purpose of, conducting a presidential nominating
3 convention or convention-related activities. This regulation includes a list of convention
4 activities or functions that are payable from public funds as permissible convention
5 expenses, but provides that: "Such expenses include, but are not limited to" the activities
6 so listed. *Id.* The examples provided include, among other expenses, payments for
7 preparing, maintaining, and dismantling the physical site of the convention, (including
8 rental of the hall), platforms and seating, decorations, telephones, security, convention
9 hall utilities, and other related costs; salaries and expenses of convention committee
10 employees, volunteers and similar personnel, whose responsibilities involve planning,
11 management or otherwise conducting the convention; expenses for conducting meetings
12 of or related to committees dealing with the conduct and operation of the convention,
13 such as rules, credentials, platform, site, contests, call, arrangements and permanent
14 organization committees, including printing materials and rental costs for meeting space;
15 and administrative and office expenses for conducting the convention, including
16 stationery, office supplies, office machines, and telephone charges; but excluded from
17 these expenses are the cost of any services supplied by the national committee at its
18 headquarters or principal office if such services are incidental to the convention and not
19 utilized primarily for the convention. 11 CFR 9008.7(a)(4)(i),(ii),(v) and (x).

20 **APPLICATION TO PROPOSAL**

21 As the regulations themselves note, the list of permissible convention expenses
22 delineated in section 9008.7(a)(4) is not meant to be exclusive. The Commission stated

1 in the Explanation and Justification to the original regulations:

2 Subsection (a)(4) sets forth a list of expenses which are convention related
3 and which may be defrayed with public funds. The list of expenses does
4 not, however, include all convention expenses. The national committee is
5 thus not limited to using its public funds only for the expenses listed but
6 may also use public funds to defray any other expense with respect to the
7 convention.

8
9 44 *Fed. Reg.* 83036 (November 1, 1979).

10 Therefore, the fact that the expenses discussed in your request are not explicitly
11 mentioned in the list discussed above does not determine whether public convention
12 funding may be used to pay for them.

13 The Commission understands that the development of a voter data base and the
14 conduct of the balloting to nominate the Reform Party presidential candidate, who will
15 seek office in the November general election, are integral parts of the Reform Party
16 convention process. It is through the creation of the voter data base and the balloting
17 prior to the convention that the Presidential candidate is chosen and announced at the
18 convention.⁵ These expenses, again, while not explicitly mentioned in section
19 9008.7(a)(4), could be viewed as akin to the administrative and office expenses for the
20 conducting of the convention that are not for services merely incidental to the convention,
21 but instead cover services "utilized primarily for the convention." 11 CFR
22 9008.7(a)(4)(x).

⁵ The Commission notes that even if the selection of the candidate may take place prior to the convention, the convention plays an important role in the candidate selection process. Not only do the convention delegates choose the Vice Presidential candidate of the party, but under certain circumstances the convention delegates may override the result of the Presidential primary. To override the selection made by party members prior to the convention, a motion to override must be made and joined by the governing bodies of at least a majority of State delegations or by the majority of State delegations. However, once the motion is made, it must then receive the vote of two thirds of the delegates of the convention. At that point, the Presidential nominee is then chosen by majority vote of the delegates to the convention. Nomination rules, section IV(10).

