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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 12, 1994

**SUBMITTED LATE
AGENDA ITEM**
For Meeting of: AUG 18 1994

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director *JCS*

FROM: Lawrence M. Noble
General Counsel *LN*

N. Bradley Litchfield *NBL*
Associate General Counsel *for*

Michael Marinelli *mm*
Staff Attorney

SUBJECT: Draft AO 1994-25

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for August 18, 1994.

Attachment

1
2 CERTIFIED MAIL
3 RETURN RECEIPT REQUESTED

4 ADVISORY OPINION 1994-25

5 David K. Walter
6 Libertarian National Committee
7 1505 Cotswald Court
8 West Chester, PA 19382

DRAFT

9 Dear Mr. Walter:

10 This refers to your letters of June 13,
11 April 26, April 15 and March 23, 1994, on behalf of the
12 Libertarian National Committee (the "National Committee")
13 concerning the application of the Federal Election Campaign
14 Act of 1971, as amended ("the Act"), to procedures the
15 National Committee wishes to use in organizing its 1996
16 nominating convention.

17 You state that the National Committee has traditionally
18 designated individuals to take on the task of organizing,
19 promoting and staging the biannual conventions.^{1/} This is the
20 proposed method the National Committee wishes to adopt
21 regarding its 1996 convention in Washington D.C.

22 You state that individuals that have been selected for
23 organizing this convention wish to incorporate as a
24 for-profit corporation, identified in your request as FEE
25 Enterprises ("FEE"), and have reached an agreement on

26 1/ You state that this procedure has emerged out of the
27 special needs of the Libertarian Party. As a third party,
28 labor intensive efforts are need to secure ballot access in
as many states as possible for its candidates. You state
that this leaves insufficient staff to simultaneously run and
organize a national convention. You also state that the
Libertarian Party wishes to avoid any financial loss that
might attend an unsuccessful convention.

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2 arrangements with the National Committee. You wish to have
3 these arrangements reviewed to see if they meet the
4 requirements of the FEC regulations.

5 FEE, you state, would charge the National Committee for
6 the use of the convention hall for the period of time when
7 the party was nominating and electing its Presidential and
8 Vice Presidential candidates and for any time when the
9 banquet room was being used for either raising funds for the
10 Party or the candidates' committees. FEE would also be
11 purchasing advertising space in the National Committee's
12 monthly newspaper and renting the National Committee's
13 mailing lists in order to promote the convention to potential
14 attendees. Those wishing to attend would be paying fees
15 directly to FEE.^{2/}

16 You state that, except as described above, no other
17 funds would change hands between the National Committee, FEE
18 and the candidates. FEE, should it make a profit, would owe
19 nothing to the National Committee. Similarly, should a loss
20 occur, there would be no reimbursement from the National
21 Committee or the candidates.

22 It is your belief that FEE would not be required to file
23 with the FEC nor would it be required to report receipts and
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26 ^{2/} All charges in this arrangement would be at fair market
27 value. The hotel would charge the corporation fair market
28 rental value for space used and the National Committee would
charge normal advertising rates for space in its news
letter. You state that if sufficient rooms are rented by
convention attendees, the banquet hall would be provided free
of charge.

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2 expenditures. The National Committee would include revenue
3 from FEE and expenses paid to the corporation as part of its
4 regular quarterly FEC reports.

5 Under the Act, the term "political committee" means any
6 committee, club, association, or other group of persons which
7 receives contributions aggregating in excess of \$1,000 during
8 a calendar year or which makes expenditures aggregating in
9 excess of \$1,000 during a calendar year. 2 U.S.C.

10 §431(4)(A). When determining whether an entity should be
11 treated as a political committee, the standard that has been
12 used is whether a major purpose of the organization is to
13 make expenditures or solicit contributions for the nomination
14 or election of candidates. See Akins v FEC, No. 92-1864
15 (D.D.C. March 30, 1994). Political committees are required
16 to register and report in accordance with the requirements of
17 the Act. 2 U.S.C. §434(a)(1). Committees commonly
18 established, financed, maintained or controlled are
19 affiliated and are subject to common contribution
20 limitations. 11 CFR 100.5(g)(2).

21 The Act requires that each committee or other
22 organization which represents a national party in making
23 arrangements for the convention of such party to nominate a
24 Presidential or Vice Presidential candidate must file a full
25 and complete financial statement with the Commission. 2
26 U.S.C. §437(2). Each committee or other organization,
27 including a national committee, which represents a national
28 major, minor, or new political party in making arrangements

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2 for the party's convention held to nominate a Presidential or
3 Vice Presidential candidate must register with the Commission
4 on FEC form 1 as a political committee and file disclosure
5 reports. 11 C.F.R. § 9008.1(b). The reporting obligation
6 applies to all committees or organizations regardless of
7 whether the committees or organizations use public funds to
8 defray convention expenses. Id.

9 The Commission notes that FEE's only purpose, as
10 presented in the facts of this opinion, is to organize and
11 hold the 1996 Libertarian convention which will nominate its
12 Presidential and Vice Presidential candidates. All of its
13 financial activity is focused on this goal. Given the
14 purpose of FEE, the Commission concludes that FEE would be
15 considered a political committee for purposes of the Act and
16 would be required to register and report as required by 2
17 U.S.C. §434.

18 The materials you have presented identify the four
19 individuals who will form the corporation as John Famularo,
20 Donald Ernsberger, Louise Ernsberger and David Walter. All
21 four are Party members. Two of the four, John Famularo and
22 Donald Ernsberger, hold or have held substantial positions of
23 authority within the Party. Mr. Ernsberger and Mr. Famularo
24 are both members of the National Committee itself. Mr.
25 Ernsberger served as Party finance chair and organizer of the
26 1989 convention. Mr. Famularo has served as National
27 Secretary of the Party and as former chair of the
28 Pennsylvania Libertarian Party. The Commission notes the

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2 elements of affiliation found at 11 CFR 100.5(g)(4)(ii)(D),
3 (E), (F), (G) and (I), and 11 CFR 110.3(D), (E), (F), (G) and
4 (I), and the links in personnel between the corporation and
5 the National Committee. These factors lead to the conclusion
6 that FEE, as a political committee, and the National
7 Committee are affiliated.

8 Given the corporation's sole purpose to make the 1996
9 convention arrangements, the Commission also concludes that
10 the corporation formed by these individuals should be viewed
11 as representing the National Committee. It would be viewed
12 under section 437, as "a committee or other organization,
13 which represents a national party in making arrangements for
14 such party's convention held to nominate a candidate for the
15 office of President or Vice President." As such it must
16 fulfill the obligations of section 437 to register with the
17 Commission and file disclosure reports as required. See 11
18 CFR 9008.1.^{3/}

19 Because of the status of FEE as a political committee
20 and its affiliation with the National Committee, the
21 delineation of responsibilities and costs, including risk of

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23 ^{3/} Indeed, the circumstances of your request closely parallel
24 the facts of a prior enforcement case, MUR 3177. In that
25 case, the Commission examined the arrangements made for the
26 1988 Libertarian Presidential nomination convention by
27 the Libertarian National Committee. The Commission found
28 reason to believe that the National Committee and LPWS, a
corporation created to organize the convention, had violated
2 U.S.C. §437, 11 CFR 9008.1(b) and 9008.12(b) by failing to
report receipts and disbursements from convention activity.
In the exercise of its prosecutorial discretion, the
Commission determined to take no further action against the
parties in the case.

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2 loss between FEE and the National Committee, may be made
3 according to the wishes of the parties. The relationship
4 also means that these arrangements, in and of themselves,
5 would raise no issues under section 441b.^{4/} You have stated
6 that all charges would be at fair market value. You have
7 specifically mentioned the rental of the hotel space for the
8 convention. As long as all vendors provide their services
9 and goods to the corporation and the National Committee at
10 fair market value, no contribution to the National Committee
11 will result. See 2 U.S.C. §431(8)(A)(i) and 11 CFR
12 100.7(a)(1)(iii) and Advisory Opinions 1994-22, 1988-25 and
13 1987-24.

14 Your response also indicates that the four principals in
15 the corporation will "contribute start up capital of \$3,333
16 to the corporation to be created." These funds, donated for
17 the purpose of financing and organizing the 1996 nominating
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19 4/ The Commission in the past has examined situations which
20 raised questions whether political Federal political activity
21 was being conducted under the guise of a business purpose.
22 See 1991-32, 1991-18 and 1983-25. Advisory Opinion 1983-25
23 is somewhat relevant here. When determining whether a
24 business corporation providing media services for a campaign
25 could be viewed as a legitimate vendor for reporting
26 purposes, the Commission considered several factors as
27 relevant including whether the vendor was obligated to devote
28 its full efforts for the contract with the political
committee, whether the vendor had other clients during and
after the election cycle, and whether the vendor's principals
held any positions in the political committee.

Again, in this situation these factors would indicate that
FEE corporation is not an true vendor since its sole purpose
would be to organize the 1996 Party convention for the
National Committee, it does not seem to have any other
clients and, as noted above, several of its principals are
National Committee members.

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2 convention, would be considered contributions to a committee
3 affiliated with the National Committee and which thus shares
4 a common limit with the National Committee. While the
5 Libertarian National Committee as the national committee of a
6 political party may accept up to \$20,000 in contributions
7 from any individual, the donors must aggregate the donated
8 start up capital with any other contributions they may make
9 to the party or its affiliated committees.^{5/}

10 Any funds received by FEE for purposes of the convention
11 through its fundraising efforts would also be considered
12 contributions to the National Committee. In particular,
13 funds raised through the sale of advertising space in the
14 Party newsletter, if purchased by individuals or corporations
15 through the auspices of FEE, would be considered
16 contributions by those individuals and corporations and are,
17 therefore, subject to the limitations and prohibitions of the
18 Act.^{6/} See Advisory Opinions 1990-3 and 1978-46. Because of
19 the prohibitions of 2 U.S.C. §441b, funds received from
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21 ^{5/} In Advisory Opinion 1975-129, Commission determined that
22 the Libertarian National Committee qualified as a national
committee as defined by 2 U.S.C. §431(14).

23 ^{6/} The Commission notes the application of 11 CFR 102.5(a)(3)
24 to your situation. Under this section, any party committee
25 solicitation making references to a Federal candidate or
26 a Federal election shall be presumed to be for the purpose of
27 influencing a Federal election and contributions resulting
28 from that solicitation shall be subject to the prohibitions
and limitations of the Act. FEE and the National Committee
could refute this presumption only by demonstrating to the
Commission that the funds were solicited with the express
notice that they would not be used for Federal election
purposes. See 11 CFR 102.5(a)(3).

corporations could not be used for Federal purposes but could be placed in the nonfederal account of the National Committee and used for nonfederal purposes. See 1978-46.^{7/}

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. §437f.

For the Commission,

Trevor Potter
Chairman

Enclosures (AOs 1994-22, 1991-32, 1991-18, 1990-3, 1988-25, 1987-24, 1983-25, 1978-46 and 1975-129)

^{7/} You state in your request that all activities involving the selection of the Party's Presidential and Vice Presidential candidates, platform approval, Party and campaign fundraising occur on one day of the six day convention. The remaining days are typically social events or business meetings not specifically related to Federal candidate election campaigns.

However an examination of the proposed convention schedule included in your request shows little difference between its program and program of Major Party conventions in which party events and issues are intrinsically linked to Federal campaign purposes. For example, the proposed convention program lists a scheduled debate among Presidential candidates on one of the nonfederal days. Furthermore, the major purpose of your convention would seem to be the nomination of its Presidential and Vice presidential candidate. Therefore, while your request does not contain any specific inquiry regarding possible allocation issues and the Commission takes no position regarding these issues and the feasibility of dividing the convention into Federal and nonfederal components, the Commission cautions you regarding your assertion as to the division of convention time and the possible funding issues involved.