



FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 14, 1995

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1995-16

Mr. David P. Goch
Webster, Chamberlain & Bean
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dear Mr. Goch:

This responds to your letters of May 9, and June 15, 1995, requesting an advisory opinion regarding whether the National Committee of U.S. Taxpayers Party (the "Committee") is a "national committee" of a political party for purposes of the Federal Election Campaign Act of 1971, as amended ("the Act").

Your letter states that the U.S. Taxpayers Party (the "Party") was formed at a national convention on September 4 and 5, 1992 in New Orleans, Louisiana, which also nominated the Party's 1992 Presidential candidate, Howard Phillips, and three Vice Presidential candidates.^{1/} Among the documents that you have included in your request are minutes of the September 1992 convention, the Party constitution and the Party platform.

The Party constitution lists the various purposes of the Party, the first of which is "to provide a national vehicle through which the member state parties may fully participate in the national election process, including the nomination of national candidates and the adoption of national platforms."^{2/} Party constitution, Article II, section 1.

To support your assertion that the Committee is a national committee of a political party, you state that Mr. Phillips achieved ballot access for the 1992 Presidential election in 21 states.^{3/} He was on the ballot in 10 states as the candidate of a party you describe as affiliated with the U.S. Taxpayers Party and was listed as an independent in the other 11 states. You further state that the Party has successfully placed other candidates on the ballot since 1992. One was a

candidate in the 1993 special election in the 17th Congressional district in California. In 1994, the Party had ballot status for a total of 16 Federal candidates in 6 states.^{4/}

You also state that the Party has established a national party headquarters located in Vienna, Virginia, and intends to promote its principles and candidates through the appointment by the Party of "a national media coordinator" who will "propose and implement a national strategic plan regarding media." The coordinator would also encourage the Party's state affiliates to take similar steps. These efforts will take the form of future public forums to educate the public on issues important to the Party.

Your request also presents evidence of party building activity by the Party. You state that the Party conducted a voter registration drive in Delaware that registered one-half of one percent of the existing registered voters as Delaware Taxpayers Party members. You also state that the national committee of the Party has met twice per year since the Party's formation (in Denver, Colorado and Memphis, Tennessee during 1993; and in Milwaukee, Wisconsin and Reno, Nevada in 1994) with future meetings scheduled in St. Louis, Missouri and in Cleveland, Ohio. The 1996 National Convention of the Party is scheduled for August 1996 in San Diego, California.

The term "national committee" is defined by the Act as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission." 2 U.S.C. 431(14). See also 11 CFR 100.13. The term "political party" is defined by the Act as "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. 431(16).

Therefore, to determine whether the Committee is eligible for national committee status, the Commission must first determine whether the Party qualifies as a "political party" under the Act. You have provided documentation consisting of correspondence from state authorities verifying that the Party's Presidential and Vice Presidential candidates in 1992 achieved ballot access in several states under the designation of political parties that you say are affiliated with the U.S. Taxpayers Party. Secondary information (publicly available) confirms that the Party's Presidential candidate achieved ballot status as the candidate of several other parties apparently identified with the U.S. Taxpayers Party. Similar ballot status was attained by other Party candidates for Federal office in 1993 and 1994. On this basis, the Commission concludes that the U.S. Taxpayers Party would be a political party for purposes of the Act. See Advisory Opinions 1992-44, 1992-30, 1988-45, 1980-121, 1980-96 and 1980-3.

The Commission has applied a number of criteria to determine whether a political party or its committees have demonstrated sufficient activity on a national level to attain national committee status. A committee demonstrates that it is a national committee of a political party by the nomination of candidates for various Federal offices in numerous states; by engaging in certain activities on an ongoing basis (rather than with respect to a particular election) such as supporting voter registration and get-out-the-vote drives; and by publicizing issues of importance to the political party and its adherents throughout the nation. Other indicia include the holding of

a national convention, the establishment of a national office and the establishment of state affiliates. See Advisory Opinions 1992-44, 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-95 and 1975-129.

A committee of a political party will not qualify for national committee status if its activity is focused solely on the Presidential and Vice Presidential election (Advisory Opinions 1980-131 and 1978-58), or if it is limited to one state (Advisory Opinion 1976-95), or if it currently has only a limited number of Federal candidates on state ballots (Advisory Opinions 1992-44 and 1988-45).

In a previous advisory opinion, the Commission examined the request of the U.S. Taxpayers Party for recognition as the national committee of a political party. In Advisory Opinion 1992-44, the Commission concluded that due to its nascent status, the Party had not yet reached a level of national activity to qualify as the national committee of a political party under the Act.

The current circumstances of the Party differ significantly from the previous request. The Commission notes that the Party has engaged in substantial party building activity as evidenced by the voter registration drive in the state of Delaware. This indicates that the Party's own promotional or party building activities are no longer merely in the planning stage, as was the case previously. The Commission also notes the national committee meetings held throughout the nation following the convention. Additionally, the Party's financial development in 1994 shows its growth beyond a formative state. In Advisory Opinion 1992-44, the Commission noted that as of the date the request was submitted, it was unclear whether the Party had established a bank account or procedures for disbursing or raising money. According to reports filed with the Commission during the 1993-1994 campaign cycle, the Party had received total receipts of \$60,000 and had made \$58,000 in disbursements.

An important element in determining an organization's national committee status is the degree to which successful ballot access efforts extend beyond the Presidential and Vice Presidential level to other Federal races as well. See Advisory Opinions 1992-44, 1992-30 and 1988-45. Here again, the circumstances of the current request show significant development. At the time of the previous request, the Party had achieved ballot access for nine candidates seeking election to the U.S. Congress in three states. In the 1994 election cycle, the Party achieved ballot access for fourteen candidates in six states, which are located in several different sections of the nation. (5) Considering all these factors together, the Commission now concludes that the U.S. Taxpayers Party has manifested sufficient activity to qualify as the national committee of a political party.

This determination of national committee status is applicable only with regard to the contribution limitations of 2 U.S.C. 441a and the national party expenditure limits of 2 U.S.C. 441a(d). Since no specific transaction or activity relating to Chapters 95 or 96 of the Internal Revenue Code of 1954 was presented, this opinion does not reach any issues as to the eligibility of the Party's Presidential candidate(s) to receive Federal matching funds under 26 U.S.C. 9031-9042 for use in the primary elections, nor as to entitlement to general election funding under 26

U.S.C. 9001-9012. Similarly, this opinion does not reach the issue of entitlement of the Party to receive convention financing under 26 U.S.C. 9008.

This response constitutes an advisory opinion concerning the 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.

Sincerely,

(signed)

Danny L. McDonald
Chairman

Enclosures (AOs 1992-44, 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-112, 1976-95 and 1975-129)

1 Robert Tisch was nominated as the Party's Vice Presidential candidate for the state of Michigan. Steven Graves was nominated as the Party's Vice Presidential candidate for the states of Louisiana and Wyoming. The candidate who was nominated to serve as the Party's Vice Presidential candidate in the remaining states was Albion W. Knight.

2 The other purposes of the Taxpayers Party include promoting the election of Party nominated Presidential and Vice Presidential candidates, assisting member state parties in organizational efforts and promoting allegiance to the principles and objectives of the Declaration of Independence, the U.S. Constitution, and the Bill of Rights "as conceived and set forth by our Founding Fathers in their establishment of our Republic." Party constitution, Article II, sections 2 and 4.

3 According to information collected from public sources, Mr. Phillips received .04% of the vote in the 1992 Presidential election.

4 These states are: California, Kentucky, Mississippi, Nevada, Ohio and Wisconsin. Your initial letter also identified South Carolina. However, you indicate that that candidate ran as a Republican, rather than as a candidate of a party affiliated with the U.S. Taxpayers Party.

5 In Advisory Opinion 1992-44, the Commission stated that the Party's ballot access effort, successful in three states, was similar to the level reached by the Populist Party in Advisory Opinion 1988-45. In that opinion, the Populist Party was denied national committee status because it achieved ballot access for its Federal candidates in only one state. As seen above, the U.S. Taxpayers development indicates that this characterization is no longer accurate. The U.S. Taxpayers Party has not achieved ballot access to the same extent as the last party to be granted national committee status, the Natural Law Party, which, at the time Advisory Opinion 1992-30 was issued, had achieved ballot access in fourteen states. However, the Commission notes that Advisory Opinion 1992-30 was not intended to create a specific threshold number for ballot access. Rather, the facts in the current situation indicate that the U.S. Taxpayers Party has now shown ballot access success for Federal office that indicates significant activity on a national level.