



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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COMMISSION
SECRETARIAT

JAN 3 4 00 PM '96

January 3, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 1995-45

AGENDA ITEM
For Meeting of: JAN 10 1996

Attached is a proposed draft of the subject advisory opinion.

We request that this draft be placed on the agenda for January 10, 1996.

Attachment

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2
3 **ADVISORY OPINION 1995-45**

4 **Michael Spivak, Treasurer**
5 **Dr. John Hagelin for President 1996**
6 **51 West Washington Avenue**
7 **Fairfield, Iowa 52556**

DRAFT

8 **Dear Mr. Spivak:**

9 **This responds to your letter dated November 17, 1995,**
10 **requesting an advisory opinion on behalf of Dr. John Hagelin**
11 **for President 1996 ("the Hagelin Committee" or "the**
12 **Committee") concerning the application of the Presidential**
13 **Primary Matching Payment Account Act ("the Matching Payment**
14 **Act"), and Commission regulations to the treatment of**
15 **expenditures for ballot access as qualified campaign**
16 **expenses.**

17 **You state that Dr. Hagelin is seeking the nomination of**
18 **the Natural Law Party as its 1996 candidate for president of**
19 **the United States. He has completed his threshold submission**
20 **for presidential primary matching funds and has qualified for**
21 **such funds. If he obtains the nomination, he seeks to appear**
22 **on the general election ballot in as many states as possible**
23 **as the candidate of the Natural Law Party.**

24 **Dr. Hagelin's campaign expenses will include expenses to**
25 **obtain signatures for nominating petitions in some states so**
26 **that his name will appear on the ballot as a presidential**
27 **candidate. His campaign expenses will also include spending**
28 **in other states to secure a place on the ballot for the**
29 **Natural Law Party, with the objective of securing the party's**
30 **nomination and thereby having his name appear on the general**
election ballot as the party's nominee.

3 You note that each state has its own ballot access
4 requirements and procedures. Some states provide that, in
5 order for a candidate such as Dr. Hagelin to appear on the
6 ballot as a candidate of a particular party, the party itself
7 must qualify for the ballot. You state, in addition, that it
8 is simpler and more cost-effective in some states to obtain a
9 ballot position for the candidate's political party than for
10 the candidate as an independent candidate. In California,
11 for example, the number of signatures required to gain a
12 general election ballot position for an independent candidate
13 is greater than the number of voter registrations required to
14 place the party on the ballot permanently.

15 In each state, the Hagelin Committee selects the method
16 of ballot access which it believes will be the most effective
17 means of securing a place on the ballot for Dr. Hagelin as
18 the Natural Law Party candidate. In Iowa, for example, the
19 Hagelin Committee will seek signatures on nominating
20 petitions to place Dr. Hagelin's name on the ballot. In
21 California, the Committee will conduct voter registration
22 activities to obtain a ballot position for the party.

23 You ask whether the above-described ballot access
24 expenses of the Hagelin Committee will be treated as
25 qualified campaign expenses, provided they are made or
26 incurred during the matching payment period.

27 The Matching Payment Act and Commission regulations
28 provide that a candidate who seeks a political party's
29 nomination for election to be President of the United States
30

3 and actively conducts campaigns in more than one state is
4 eligible for matching payments, provided the candidate
5 receives the requisite amount in contributions in the
6 requisite number of states and agrees to other conditions.
7 26 U.S.C. §§9032(2), 9033(a) and (b); 11 CFR 9032.7 and
8 9033.2(b). The Matching Payment Act further requires that
9 matching payments and disbursements of an eligible
10 candidate's campaign committee(s) be used only for qualified
11 campaign expenses. 26 U.S.C. §§9033, 9038, and 9042; 11 CFR
12 9032.9, 9033.1(b)(1), and 9034.4.^{1/} Qualified campaign
13 expenses, by definition, must be made in connection with the
14 candidate's campaign for nomination. 26 U.S.C. §9032(9)(A);
15 11 CFR 9032.9(a)(2).

16 You have stated that you are a candidate for the Natural
17 Law Party's nomination for election as President of the
18 United States.^{2/} The Commission has previously examined
19 whether disbursements during the matching payment period by a
20 presidential candidate's campaign committee for placing the
21 candidate's name on the general election ballot constituted
22 qualified campaign expenses. See Advisory Opinions 1984-25

23
24 ^{1/} More specifically, contributions and matching funds may
25 also be used to repay loans or otherwise restore funds (other
26 than contributions which were received and expended to defray
27 qualified campaign expenses) which were used to defray
28 qualified campaign expenses. 11 CFR 9034.4(a)(1).

29
30 ^{2/} According to Advisory Opinion 1992-30, the Natural Law
Party's bylaws provide for a national convention where a
presidential candidate and a vice presidential candidate are
nominated.

3 and 1984-11. It has long been the view of the Commission
4 that, for non-major party candidates, the process by which
5 they satisfy the requirements of State law governing
6 qualification for a position on the general election ballot
7 serve purposes similar to a primary election or other
8 nominating process. See Advisory Opinions 1984-11 and
9 1975-44. This view is supported by the Commission
10 regulations defining the term "election," which state that,
11 for non-major party and independent candidates, the day
12 prescribed by applicable State law as the last day to qualify
13 for a position on the general election ballot may be
14 designated as the primary election for such candidate. 11
15 CFR 100.2(c)(4)(i). Based on this reasoning, the Commission
16 concluded in Advisory Opinions 1984-25 and 1984-11, that the
17 ballot access expenses of candidates for minor party
18 nominations would be qualified campaign expenses.

19 Your request includes a type of ballot access expenses
20 not specifically addressed in previous Advisory Opinions.
21 You state that, because it is simpler and more cost effective
22 to do so, the Committee will obtain a ballot position for Dr.
23 Hagelin in some states by securing ballot status for the
24 Natural Law Party. The Commission concludes that expenses
25 for such efforts, as well as the expenses for securing a
26 ballot position for Dr. Hagelin himself, would be qualified
27 campaign expenses. Although the residual effect of securing
28 ballot placement for the party may be to qualify its Senate
29 and House candidates for the ballot, the principal purpose
30

3 and outcome relate to obtaining a ballot position for Dr.
4 Hagelin's presidential candidacy.

5 The Commission cautions that, in a state where Dr.
6 Hagelin has already qualified for the 1996 presidential
7 ballot prior to any ballot access efforts for the 1996
8 election, e.g., by virtue of his qualification for the State
9 ballot in 1992 or his 1992 vote percentage, expenses to place
10 the Natural Law Party on the State ballot will not be
11 qualified campaign expenses.

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

16 Sincerely,

17 Lee Ann Elliott
18 Chairman

19 Enclosures (AOs 1992-30, 1984-25, 1984-11, and 1975-44))
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