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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For meeting of: JUN 6 1996

May 29, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Susan E. Propper
Assistant General Counsel

SUBJECT: Draft AO 1996-22

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 6, 1996

Attachment

DRAFT

1 ADVISORY OPINION 1996-22

2
3 Ross Clayton Mulford
4 Hughes & Luce
5 1717 Main Street
6 Suite 2800
7 Dallas, Texas 75201

8
9 Dear Mr. Mulford

10
11 This responds to your letter dated April 30, 1996, requesting an advisory opinion
12 on behalf of Ross Perot and the Perot Reform Committee, which has registered as
13 Mr. Perot's principal campaign committee for the office of President in the 1996
14 election. Your request concerns the application of the Presidential Election Campaign
15 Fund Act (the "Fund Act") and Commission regulations to the eligibility of Mr. Perot and
16 any other candidate who may be the nominee of the Reform Party for pre-election
17 funding, and the eligibility of the Reform Party for convention funding.

18 You state that Mr. Perot has filed a letter with the Commission in lieu of Form 2,
19 the Statement of Candidacy, because "he could be deemed to fall within the technical
20 definition of a 'candidate' under Commission regulations." Mr. Perot designated the
21 Perot Reform Committee as his principal campaign committee. You also explain that the
22 Reform Party is a political party that "will likely" be formed if efforts to create state
23 Reform Parties and gain ballot status are successful

24 Your first question concerns the eligibility of Mr. Perot for pre-election funding
25 as a candidate for President in the 1996 election. As you note, Mr. Perot was a candidate
26 for President in the 1992 election and received nearly 19% of the total popular vote. You
27 ask whether, if Mr. Perot seeks and obtains the Reform Party nomination for President
28 and otherwise meets the applicable conditions for eligibility under the Presidential

1 Election Campaign Fund Act, he would be eligible for certification by the Commission to
2 receive pre-election payments as a new party candidate.

3 The Fund Act provides, at 26 U.S.C. §9004(a)(2)(B), that a candidate of one or
4 more political parties for the office of President who was a candidate for such office in
5 the preceding presidential election and received 5% or more, but less than 25%, of the
6 popular vote in that election, and who meets the other conditions for eligibility, shall be
7 entitled to pre-election payments. Since Mr. Perot received over 5% of the popular vote
8 in 1992, he would be eligible for pre-election funding in the 1996 election under this
9 provision if he obtains the nomination of the Reform Party or any other non-major party
10 and he meets the other conditions for eligibility under the Fund Act. (Compare Advisory
11 Opinion 1982-62 (Presidential candidate of non-major party who received more than 5%
12 of the vote in previous election would be eligible for pre-election funding in next
13 Presidential election once he became a candidate of one or more political parties and met
14 other conditions for eligibility). The amount of Mr. Perot's entitlement would be a
15 proportionate amount of the funding available for major party general election
16 candidates, based on the ratio of the total popular votes received by Mr. Perot in 1992
17 compared to the average of the total popular votes received by the major party candidates
18 for President in that election. 26 U.S.C. §9004(a)(2).

19 One of the conditions for public funding eligibility is the submission of a letter,
20 signed by the candidates, agreeing to comply with certain conditions established by the
21 Fund Act and the Commission. 11 CFR 9003.1. In the case of non-major party
22 candidates, this letter must be submitted within 14 days after the candidate has qualified

1 to appear on the general election ballot in 10 or more states. 11 CFR 9003.1(a)(2).

2 However, on written request by the candidate at any time prior to the date of the general
3 election, the Commission may extend the time for filing this letter provided the date set
4 for filing is prior to the date of the general election. *Id.* You state that "it is anticipated
5 that Reform Party nominees for national office will be selected by convention." If
6 Mr. Perot seeks and receives the nomination of the Reform Party, you ask whether this
7 letter would be timely submitted if it is submitted within 14 days of the Reform Party
8 convention

9 The Commission will consider this advisory opinion request as the requisite
10 written request for an extension of the deadline for filing the required candidate
11 agreement letter. If Mr. Perot does receive the Reform Party's nomination as its
12 candidate for President and the letter is submitted within 14 days of the Reform Party
13 convention, Mr. Perot's letter will be considered timely submitted.¹

14 You then pose three questions regarding the status and eligibility for funding of
15 the Reform Party and of others who might become the party's nominee for President. In
16 particular, you ask whether the Reform Party can be considered a "minor party" under
17 the Fund Act, whether a nominee of the Reform Party who is someone other than Mr.
18 Perot would be eligible for pre-election funding, and whether the Reform Party would be
19 eligible for convention funds

¹ The Commission anticipates, but cannot guarantee, that full funding in the amount of Mr. Perot's potential entitlement would be available if this letter is received after the Commission has certified funding for the two major party nominees

1 As noted earlier, the efforts underway to seek ballot recognition for state Reform
2 Parties "will likely result in the formation of a Reform Party". In connection with your
3 arguments for recognition of the Reform Party as a minor party, you note that non-major
4 party candidates must run as the candidate of a party in certain states. Although Mr.
5 Perot ran in 1992 as an independent in 43 states, he also ran as "the candidate ... of a new
6 political party in seven states"². Your letter states you understand that all but one of
7 these parties continue to exist under state law and that "each of these political parties is
8 expected to affiliate with the Reform Party."

9 Responses to all three of these questions depend on whether the Reform Party can
10 qualify as a minor party. The Fund Act, at 26 U.S.C. §9002(7), defines a minor party,
11 "with respect to any presidential election, [as] a political party whose candidate for the
12 office of President in the preceding Presidential election received, as the candidate of
13 such party, 5 percent or more but less than 25 percent of the total number of popular
14 votes received by all candidates for such office." Non-major party candidates who were
15 not candidates for President in the preceding election, and who wish to qualify for pre-
16 election funding in the current presidential election, can become eligible only as
17 candidates of a minor party. 26 U.S.C. §9004(a)(2)(A). In addition, only the national
18 committee of a major or minor party is eligible for convention funding under 26 U.S.C.

² According to Commission records, designations under which Mr. Perot appeared on the 1992 ballot, other than as an independent or unaffiliated candidate, included the No Party Party (AK and NY), Independents (CO), Americans for Perot (CT), Prudence, Action, Results (LA), Minnesota for Perot (MN), Independent Initiative Party of Oregon (OR), Pennsylvanians for Perot (PA), and Perot for President (RI). It is not clear from your letter which of these designations are the "new political part[ies]" you have referenced.

1 §9008. Your letter indicates that the Reform Party does not yet exist.³ In addition, other
2 events such as the possible affiliation of the state political parties with the Reform Party
3 have not yet occurred. Therefore, questions related to the Reform Party's status as a
4 minor party are hypothetical and cannot be answered by the Commission at this time. See
5 11 CFR 112.1(b).

6 If the efforts to obtain ballot status for state Reform Parties are successful, and the
7 Reform Party is formed, the Party may wish to resubmit these questions for Commission
8 consideration. At that time, the Commission would consider, in connection with the
9 Party's request for minor party status, whether Mr. Perot ran as the candidate of the
10 Reform Party in the 1992 election. In addition, to find that the Party is eligible for
11 convention funds, it would need to demonstrate that it qualifies as a national committee.
12 See 26 U.S.C. §9008(b)(2). See also, 2 U.S.C. §431(14) and Advisory Opinions 1995-
13 16, 1992-44, 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-
14 95, and 1975-129

³ No Statement of Organization for a political committee is on file with the Commission for the Reform Party, nor have any reports of its financial activity been submitted to date. The Commission also notes that your letter does not indicate that you represent the Reform Party at this time.

