



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

November 18, 1996

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-35

Betty K. Wood, Clearinghouse Coordinator  
Greens/Green Party USA  
P.O. Box 100  
Blodgett Mills, NY 13738

Dear Ms. Wood:

This refers to your letter dated August 2, 1996, and subsequent submissions requesting an advisory opinion regarding whether the Greens/Green Party USA ("the Green Party") is a "national committee" of a political party for purposes of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.

You state that your organization is recognized throughout the U.S. as the national representative organization of the Green Party movement.<sup>1</sup> You state that the Green Party is mounting a national presidential campaign with Ralph Nader as its candidate. According to publicly available sources, Mr. Nader is on the ballot as a candidate of the Green Party or its affiliates in 16 states.<sup>2</sup> Your party is also running 8 candidates for the U.S. Congress in 5 states.<sup>3</sup>

Besides the involvement of the Green Party in electoral contests, you cite various other elements of party building activity which you present to support a claim to national committee status. Among these elements are: the affiliation of the Green Party with 14 state organizations, the publication of party journals, the maintenance of a website on the internet, and the holding of party conventions.<sup>4</sup> The Party has also established national headquarters located in Blodgett Mills, NY.<sup>5</sup>

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 Green Party 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 Congressional candidates achieved ballot access in several states under the designation of either the Green Party or a state affiliate. Secondary information (publicly available) confirms their ballot status. On this basis, the Commission concludes that the Green Party would be a political party for purposes of the Act. See Advisory Opinions 1995-16, 1992-44 and 1992-30.

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 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 1995-16, 1992-44, 1992-30, 1988-45, 1980-131, 1980-121, 1980-96, 1980-3, 1978-58, 1976-95 and 1975-129.

A committee or 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 Opinion 1992-44, 1988-45).

The most important element in determining the extent of a committee or party's national activity is the degree to which the organization successfully attains ballot access for its Presidential and Congressional candidates. Every determination made by the Commission regarding a party's national committee status has involved a political entity that had, at a minimum, nominated and secured ballot access for its Presidential candidates in a significant number of states. See, for example, Advisory Opinions 1995-16, 1992-44, 1992-30, 1980-131 and 1978-58. While ballot access for Presidential candidates will not alone qualify an organization as a national committee, the Commission concludes that this element is a necessary prerequisite. The Commission notes the success of the Party in attaining ballot access for Mr. Nader as its candidate for President. However, there is a unique and problematic aspect to accepting Mr. Nader's campaign as a Presidential candidacy for national committee purposes. Both your request and publicly available information attest to Mr. Nader's determination to keep his spending within the limits that would avoid his qualifying as a candidate under the Act.<sup>6</sup> This intention is based on his stated desire to avoid the registration and reporting obligations that apply to Federal candidates under the Act and Commission regulations.<sup>7</sup> However, if Mr. Nader is not a candidate for purposes of the Act, it follows he could not be considered a candidate for purposes of 2 U.S.C. 431(16) and 431(14).<sup>8</sup>

The Green Party's efforts on behalf of its other Federal candidates also indicate the limited extent of the Party's efforts both in terms of the number of States and number of candidates. For example, in the 1996 general election, the Party had achieved ballot access in only five states for only eight of its candidates seeking election to the U.S. House or Senate.<sup>9</sup> Considering all these factors together, the Commission concludes that Greens/Green Party USA, at this time, has not manifested sufficient national activity to qualify as the national committee of a political party under the Act. The Commission's determination does not preclude the attainment by the Green Party of national committee status at a future date pursuant to another advisory opinion request. See Advisory Opinion 1992-44 (U.S. Taxpayers Party denied national committee status) and Advisory Opinion 1995-16 (U.S. Taxpayers Party granted national committee status).

This conclusion means that the Green Party may not accept contributions for its Federal account in amounts greater than \$5,000 per year, per donor. See 2 U.S.C. 441a(a)(1)(C), 441a(a)(2)(C). Furthermore, the Party and its committees may not make expenditures pursuant to 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 Greens/Green Party USA'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 Green 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)

Lee Ann Elliott  
Chairman

Enclosure (AOs 1995-16, 1992-44, 1992-30, 1988-45, 1980- 131,1980-121, 1980-96, 1980-3, 1978-58, 1976-112, 1976-95 and 1975-129)

1 As part of your request, you have provided copies of the Party's Bylaws and Articles of Incorporation. These indicate that the Green Party is organized as an incorporated nonprofit membership organization in the State of Missouri. Its purpose is listed in Article V of the Articles of Incorporation as promoting conduct and political action within the context of the ten "key values": ecological wisdom, grassroots democracy, social justice, nonviolence, decentralization, community based economics, feminism, respect for diversity, personal and global responsibility and future focus/sustainability. These ten values are repeated in the Green Party Bylaws, sections 1.2 and 1.3. Various factions within the decentralized Green Movement strongly contest the claim of the Green Party to represent the movement. This is illustrated in a September 9, 1996, comment to the request made by Mr. Hank Chapot, a leader of the Green

movement in California. Your original request and your response to Mr. Chapot's comment concede that not all Green organizations and Green state parties support, or are part of, the Greens/Green Party USA. In considering the claim of the Green Party to national committee status, this opinion will only consider political activity which, according to the submitted materials and other public sources, is linked to individuals or parties affiliated with Greens/Green Party USA. See footnotes two and three below.

2 Mr. Nader is on the ballot as a presidential candidate in a total of 22 states. However, in five of these states he is listed as an independent candidate and in Oregon he is listed as the candidate of a party (the Pacific Party) that does not seem to be affiliated with the Green Party.

3 These states are: Alaska, California, Massachusetts, New Mexico, and New York. Again, the candidates running in these states are either themselves members of the Green Party or are members of state parties that are affiliated with Greens/Green Party USA.

4 The Green Party held its first nominating National Convention as part of its annual party meeting on August 19, 1996, in Los Angeles California.

5 Mr. Chapot's comment challenged the existence of a national office for the Green Party. However, the facts of the opinion indicate that Blodgett Mills is the location of the Greens/Green Party USA Clearinghouse which serves as the Party Secretariat. See Green Party Bylaws, sections 3.3 .2.4; 4.2.1; and 5.2. The highest legislative body of the Green Party is its Green Congress which meets during the Party's annual convention. See Green Party Bylaws, section 3.1. The Green Congress, in turn elects portions of the membership of the Green National Committee, which serves as its chief executive body. Other members of the Green National Committee are selected from the various Party caucus and state or local Party organizations. See Green Bylaws, section 3.3.

6 2 U.S.C. 431(2) and 11 CFR 100.3 provide, in part, that candidate means an individual who seeks nomination for election, or election, to Federal office. An individual becomes a candidate for Federal office whenever any one of several events occur. One such event is when the individual has received contributions aggregating in excess of \$5,000 or made expenditures in excess of \$5,000.

7 Under the Act and Commission regulations, a Federal candidate must designate a principal campaign committee which itself must register and file reports with the Commission. See 2 U.S.C. 432(e), 433(a) and 434(a)(3); and 11 CFR 101.1(a), 102.1(a) and 104.1.

8 The Commission assumes that Mr. Nader intends to restrict his campaign contributions and expenditures to a level below the financial threshold for candidate status. This assumption is accepted for the limited purpose of this opinion only and without regard to any factual determination or findings that might be made as part of any other Commission process. See 2 U.S.C. 437g.

9 This level of activity is distinguishable from the situation in Advisory Opinion 1995-16, where the Commission granted national committee status to the U.S. Taxpayers Party following the denial of such status in Advisory Opinion 1992-44. At the time of its second request, the U.S. Taxpayers Party had obtained ballot access for 14 of its candidates for the U.S. Congress or Senate in six States. The current situation of the Green Party would seem closer to that of the U.S. Taxpayers Party in its first request in Advisory Opinion 1992-44. The Commission, in denying the Party's first request for national committee status, found that the US Taxpayers Party had obtained ballot access for nine Congressional candidates in three States. The Commission also notes that in both requests, the candidate status of the U.S. Taxpayers party's Presidential candidate did not contain the problematic aspects found in Mr. Nader's candidacy.