

DRAFT

1
2 **ADVISORY OPINION 1996-43**

3
4 **Mark A. Dunlea**
5 **Attorney at Law**
6 **156 Big Toad Way**
7 **Poestenkill, NY 12140**

8
9 **Dear Mr. Dunlea:**

10
11 **This refers to your letters dated September 16, and June 18, 1996, which request**
12 **advice concerning application of the Federal Election Campaign Act of 1971, as amended**
13 **("the Act"), to the possible status of the operations of the Green Party of New York as a**
14 **State party committee of the Green Party of New York ("the State Party").**

15 **The Green Party of New York is a state affiliate of the Greens\Green Party USA.¹**
16 **You state in your request that for the last five years New York State members of the**
17 **National Party have established the State Party as a central committee to coordinate its**
18 **statewide electoral activities. The facts of your opinion indicate that there are several**
19 **subordinate entities, including a campaign committee which operates day to day 1996**
20 **electoral activities. You state that you believe that the State Party qualifies as a political**
21 **party under the Act and that its operations qualify as a state committee of a political**
22 **party. As evidence of this status, you submit a copy of the Party's bylaws. You also**
23 **present evidence, which is substantiated by letters from relevant New York State**

¹ This advisory opinion concerns only issues relating to the State Party and its political party and State committee status. The Greens/Green Party USA has submitted a separate advisory opinion request concerning its possible status as a national committee of a political party to the Commission. See AOR 1996-35.

1 authorities, of the success of the State Party in obtaining ballot access for individuals who
2 have received the State Party's nomination in 1996 for Federal office.²

3 Under the Act and Commission regulations, the term "State committee" means
4 the organization, which, by virtue of the bylaws of a political party, is responsible for the
5 day-to-day operation of such political party at the State level, as determined by the
6 Commission. See 2 U.S.C. §431(15) and 11 CFR 100.14. The definition of State
7 committee also requires the existence of a political party. Political party is defined under
8 2 U.S.C. §431(16) as an association, committee, or organization which nominates a
9 candidate for election to any Federal office whose name appears on the election ballot as
10 the candidate of such association, committee, or organization.

11 In Advisory Opinion 1992-30, the Commission determined the elements
12 necessary to qualify an organization as a state committee. The first requirement was the
13 existence of a state affiliate agreement which "delineates activities commensurate with
14 the day-to-day operation of [a political party] on a State level." Advisory Opinion 1992-
15 30; see also Advisory Opinions 1996-27 and 1995-49. The Commission then concluded
16 that "[t]o the extent the relationship between [a political party] and an affiliate is based on
17 this agreement and the affiliate displays evidence of activity by obtaining ballot access
18 for both its Presidential and other Federal candidates..., [that] particular affiliate is a State
19 Committee of the [political party]." *Id.*³

² The Federal Green Party candidates in New York are Ralph Nader and Muriel Tillinghast for U.S. President and Vice President, and Tom Leighton for U.S. House of Representatives in 14th Congressional District. This opinion will not address issues raised by the U.S. Presidential candidacy of Ralph Nader. See footnote four below.

³ The Commission notes that this language is from prior opinions (1992-30, 1996-27 and 1995-49) which dealt with State committees that were linked to national political parties. Therefore, the facts in those opinions concerned State committees that secured ballot access for Presidential and Vice-Presidential

1 The Commission notes that these prior opinions are relevant to your situation
2 even though they concerned a state party affiliate also claiming a relationship with a
3 national party that had achieved national committee status. The entity known as
4 Greens/Green Party USA has not received this status. However, the definitions in the Act
5 and Commission regulations for State committee and political party do not require that a
6 national committee or national party be established before a state entity can be recognized
7 as the State committee of a political party. Indeed, the Commission notes that your
8 situation is very similar to Advisory Opinion 1976-95, the first opinion that examined
9 State committee status. In that opinion the Campaign Committee of the Liberal Party of
10 New York sought designation as a national committee of a political party. The
11 Commission noted that the activity of the requester (including its successful ballot
12 activity) was limited only to New York State. The Commission concluded that the
13 requester was not a national committee, but was instead "a subordinate [state] committee
14 of a political party." See Advisory Opinion 1976-95.

15 The Bylaws submitted with your request describe the State Party as a "[S]tatewide
16 organization of citizens working to set a political, social and economic framework to
17 provide a peaceful, just, and environmentally sane world for the generation to come."
18 Bylaws, Section 2.1. The Bylaws also list the responsibility of the party organization to
19 hold State party assemblies and send State party representatives to "councils" of the
20 Greens\Green Party USA. Bylaws, Sections 9.1 et seq. and 12.1 et seq. The Bylaws also

candidates as well as other Federal candidates. However, neither the Act nor Commission regulations require that ballot access be for a specific Federal office or a specific number of Federal candidates before an entity can qualify as a political party or a State committee of a political party. See 2 U.S.C. §§431(15), (16) and 11 CFR 100.14 and 100.15. See also the discussion below and footnotes five and six.

1 contemplate the creation of local "confederations." Bylaws, Section 8.1 et seq. Finally,
2 the Bylaws also create obligations between the State Party and its candidates. Such
3 candidates must support the Green platform, and must run as candidates of the party on
4 the Party ballot line. Bylaws, Sections 14.3 and 14.3. Successful Green candidates must
5 also donate part of the income they receive from public office to the local Party
6 organization. Bylaws, Section 14.7. These provisions are consistent with the State party
7 rules reviewed in Advisory Opinions 1996-27, 1995-49 and 1992-30 as they delineate
8 activity commensurate with the day-to-day functions and operations of a political party
9 on a State level.

10 However, a second element is that the party organization actually obtains ballot
11 access for its Federal candidates. You have presented official certification from the New
12 York City Board of Elections that Thomas K. Leighton will be on the general election
13 ballot as the candidate of the Green Party for the U.S. House of Representatives in the
14 New York 14th Congressional district.⁴ This accomplishment meets the second and last
15 element to qualify as a State committee of a political party.⁵ It also qualifies the Green
16 Party of New York State as a political party. Therefore, the Commission concludes that

⁴ Conversations with staff from the New York Board of Elections confirm that Mr. Leighton will be specifically identified on the ballot as a candidate of the New York Green Party.

⁵ The Commission notes that publicly available information confirms that Mr. Nader will be identified on the New York State ballot as the Presidential candidate of the Green Party. However, Mr. Nader has repeatedly asserted his intention not to qualify as a candidate for purposes of the Act. The question of whether the unique status of Mr. Nader's "noncandidacy" would qualify him as a political party candidate for purposes of the Act, is not reached in this opinion since the Green Party does have an additional Federal candidate on the ballot.

1 the operations of the Green Party of New York, through its subordinate entities, constitute
2 a State committee of a political party.⁶

3 As an alternative inquiry and in the event the Commission denies the request for
4 state committee status, you ask that the Commission issue an advisory opinion regarding
5 the ability of the New York Green Party to make independent expenditures on behalf of
6 its Presidential nominee, Ralph Nader. Since the Commission has responded in the
7 affirmative to your principal question, your alternative question is not addressed in this
8 opinion.

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

12 Sincerely,

13
14
15 Lee Ann Elliott
16 Chairman
17

18 Enclosure (AOs 1996-27, 1995-49, 1992-30 and 1976-95)

⁶ The Commission notes that any person involved in a specific activity indistinguishable in all its material aspects from the activity described in an advisory opinion issued to another person may rely on its conclusions. 11 CFR 112.5(a). Therefore, any other affiliate of the Greens/Green Party USA with State party rules similar to the New York Green Party, once it secures (or if it already has secured) Federal candidate ballot access for the 1996 election cycle (or a past election cycle) for at least one of its Congressional candidates, may rely on the conclusions reached in this opinion.