



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

October 17, 1996

CERTIFIED MAIL,  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1996-43

Mark A. Dunlea  
Attorney at Law  
156 Big Toad Way  
Poestenkill, NY 12140

Dear Mr. Dunlea:

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

The Green Party of New York is a state affiliate of the Greens\Green Party USA.<sup>1</sup> You state in your request that for the last five years New York State members of the National Party have established the State Party as a central committee to coordinate its statewide electoral activities. The facts of your opinion indicate that there are several subordinate entities, including a campaign committee which operates day to day 1996 electoral activities. You state that you believe that the State Party qualifies as a political party under the Act and that its operations qualify as a state committee of a political party. As evidence of this status, you submit a copy of the Party's bylaws. You also present evidence, which is substantiated by letters from relevant New York State authorities, of the success of the State Party in obtaining ballot access for individuals who have received the State Party's nomination in 1996 for Federal office.<sup>2</sup>

Under the Act and Commission regulations, the term "State committee" means 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 State level, as determined by the Commission. See 2 U.S.C. 431(15) and 11 CFR 100.14. The definition of State committee also requires the existence of a political party. Political party is defined under 2 U.S.C. 431(16) 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.

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

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

The Bylaws submitted with your request describe the State Party as a "[S]tatewide organization of citizens working to set a political, social and economic framework to provide a peaceful, just, and environmentally sane world for the generation to come." Bylaws, Section 2.1. The Bylaws also list the responsibility of the party organization to hold State party assemblies and send State party representatives to "councils" of the Greens\Green Party USA. Bylaws, Sections 9.1 et seq. and 12.1 et seq. The Bylaws also contemplate the creation of local "confederations." Bylaws, Section 8.1 et seq. Finally, the Bylaws also create obligations between the State Party and its candidates. Such candidates must support the Green platform, and must run as candidates of the party on the Party ballot line. Bylaws, Sections 14.3 and 14.3. Successful Green candidates must also donate part of the income they receive from public office to the local Party organization. Bylaws, Section 14.7. These provisions are consistent with the State party rules reviewed in Advisory Opinions 1996-27, 1995-49 and 1992-30 as they delineate activity commensurate with the day- to-day functions and operations of a political party on a State level.

However, a second element is that the party organization actually obtains ballot access for its Federal candidates. You have presented official certification from the New York City Board of Elections that Thomas K. Leighton will be on the general election ballot as the candidate of the Green Party for the U.S. House of Representatives in the New York 14th Congressional district.<sup>4</sup> This accomplishment meets the second and last element to qualify as a State committee of a political party.<sup>5</sup> It also qualifies the Green Party of New York State as a political party. Therefore, the Commission concludes that the operations of the Green Party of New York, through its subordinate entities, constitute a State committee of a political party.<sup>6</sup>

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

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 1996-27, 1995-49, 1992-30 and 1976-95)

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.

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 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.

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.

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.