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FEDERAL ELECTION COMMISSION
Washington, DC 20463

OK

June 18, 1997

AGENDA ITEM
For Meeting of: 6-26-97

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director *[Signature]*

FROM: Lawrence M. Noble
General Counsel *[Signature]*

N. Bradley Litchfield
Associate General Counsel *[Signature]*

Jonathan M. Levin *[Signature]*
Senior Attorney

Subject: Draft AO 1997-07

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 26, 1997.

Attachment

1. **ADVISORY OPINION 1997-7**

DRAFT

2
3 **Sue Harris Debauche**
4 **State Chair**
5 **The Virginia Reform Party**
6 **3809 Dillon's Fork Road**
7 **Fieldale, VA 24089**

8
9 **Dear Ms. DeBauche:**

10 **This responds to your letter dated May 21, 1997, requesting an advisory opinion**
11 **concerning the application of the Federal Election Campaign Act of 1971, as amended**
12 **("the Act"), and Commission regulations to the possible status of The Virginia Reform**
13 **Party, aka The Virginia Independent Party, ("the Party") as a State committee of a**
14 **political party.**

15 **You have enclosed a copy of the Party's "Plan of Organization," which is also**
16 **referred to as the "By-Laws" in the document's definitional section. This plan was**
17 **adopted in 1995. At that time, the Party was known as the Virginia Independent Party.¹**
18 **You list persons who sought election in 1996 to the U.S. House of Representatives as**
19 **candidates of the Party in three districts in 1996. These candidates were nominated by**
20 **the Party's committees in those districts and endorsed by the Party at its state convention**
21 **in July 1996. You also note that, at the same convention, the Party nominated Ross Perot**
22 **as its choice for the presidential nominee of the Reform Party, and that Ross Perot and**
23 **Pat Choate appeared on the Virginia ballot as the Reform Party candidates for president**
24 **and vice president.**

25 **Under the Act and Commission regulations, the term "State committee" means**
26 **the organization which, by virtue of the bylaws of a political party, is responsible for the**
27 **day-to-day operation of such political party at the State level, as determined by the**
28 **Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee**

¹ **You state that, in August 1996, the Party received permission from the Virginia State Board of Elections to do business as The Virginia Reform Party, and you have enclosed a copy of a fictitious name certificate filed that month in the relevant county court indicating that the Party is conducting business under that name. In April and May 1997, it filed amended statements of organization with the Virginia Elections Board and the Commission, respectively, indicating that its new name was "Virginia Independent Party (also dba Virginia Reform Party)." (The Party originally registered as a political committee with the Commission on April 19, 1996.)**

1 also requires the existence of a political party. The term "political party" is defined under
2 2 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization
3 which nominates a candidate for election to any Federal office whose name appears on
4 the election ballot as the candidate of such association, committee, or organization.

5 The Commission has examined a variety of state party organizations in making
6 these determinations. Advisory Opinions 1997-3, 1996-51, 1996-43, 1996-27, 1995-49,
7 and 1992-30. In examining state party affiliates of entities that qualified as national
8 committees of political parties under 2 U.S.C. §431(14), the Commission has looked to
9 the existence of a State affiliate agreement which "delineates activities commensurate
10 with the day-to-day operation of [a political party] on a State level," and then concluded
11 that "[t]o the extent the relationship between [a political party] and an affiliate is based on
12 this agreement and the affiliate displays evidence of activity by obtaining ballot access
13 for both its Presidential and other Federal candidates, ... [that] particular affiliate is a State
14 Committee of the [political party]." Advisory Opinions 1996-27 and 1992-30. The
15 Commission has also granted State party committee status to organizations that had
16 affiliated status with national political parties that had not achieved national committee
17 status, based on the existence of State by-laws detailing activities commensurate with the
18 day-to-day operation of a party on the State level and the placement of at least one
19 Congressional candidate on the ballot. Advisory Opinions 1996-51 and 1996-43. In
20 reaching this conclusion, the Commission made clear that a State political party could
21 qualify as a State party committee without an affiliation with any national political party
22 organization and indicated that a State party's candidate must be a candidate under 2
23 U.S.C. §431(2)² in order for that party to satisfy the second requirement. Advisory
24 Opinion 1996-51; see also Advisory Opinion 1976-95. Recently, the Commission
25 granted State committee status to a state affiliate of a qualified national party committee

² An individual becomes a candidate for purposes of the Act if he or she receives contributions aggregating in excess of \$5,000 or makes expenditures in excess of \$5,000. 2 U.S.C. §431(2). Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate and also become subject to various registration, recordkeeping, and reporting requirements. 2 U.S.C. §§432(e)(1), 433, and 434(a); 11 CFR 101.1, 102.1, and 104.1.

1 where its only Federal candidates, as defined under the Act, were the presidential and
2 vice presidential candidates of the national party. Advisory Opinion 1997-3.

3 The Party's By-laws set out a comprehensive organizational structure for the
4 Party from the statewide level down through various local levels. The By-laws mandate
5 the establishment of a state central committee to govern the Party, consisting of the State
6 chairman and other State Party officers and three members from each Congressional
7 district in Virginia, including the chairperson of the Party committee for that district.
8 Article III. The Bylaws provide for an executive committee, consisting of the district
9 chairpersons and chaired by the State chairperson, that is subject to the direction of the
10 State central committee and acts for it when it is not in session. Article III. In addition to
11 the creation of Congressional district committees, the By-laws also provide for party
12 committees at the legislative district level and the county and city level. Articles IV, V,
13 and VI. The By-laws define who is a member of the Party and make provision for State
14 conventions to elect the State chairperson and nominate statewide candidates and
15 presidential electors; Congressional district conventions to nominate Congressional
16 candidates; and local conventions or mass meetings at other levels to nominate candidates
17 for local office. Articles I, II, III, and VIII. There are also procedures for the conduct of
18 such conventions at all levels, including rules for calling the convention and for delegate
19 certification. Article VIII.³

20 The By-laws are consistent with the State party rules reviewed in the opinions
21 cited above as they delineate activity commensurate with the day-to-day functions and
22 operations of a political party on a State level. Advisory Opinions 1997-3, 1996-51,
23 1996-43, 1996-27, 1995-49, and 1992-30.

24 As indicated above, the second element for qualifying as a State committee of a
25 political party, and an essential element for qualifying as a political party, is that the party
26 organization actually obtains ballot access for its Federal candidates, as defined in the
27 Act. All three of the Party's Congressional candidates that appeared on the November

³ The Party's Web site includes a list of the State central committee's membership by Congressional district. There are members from ten of the eleven districts, and seven of the districts are represented by the full allotment of three members. There is also information about the schedule of State central committee meetings for the remainder of the year and information as to activities in some of the districts.

1 1996 ballot filed statements of candidacy (FEC Form 2) with the Commission, and each
2 had a principal campaign committee that registered and filed disclosure reports with the
3 Commission. Two of the candidates had sufficient activity to qualify as candidates under
4 2 U.S.C. §431(2).

5 The Act's definition of political party refers to the appearance of the candidate's
6 name on the ballot as the candidate of the particular association, committee, or
7 organization. The Commission understands that Congressional candidates in Virginia are
8 not listed on the ballot as candidates of any particular party, and thus the Party's name did
9 not appear with its candidates' names on the ballot. See Code of Virginia, §24.2-613.
10 However, a list of candidates issued by the Virginia State Board of Elections in
11 September 1996 and a list issued by the Commission the same month both denote that the
12 three candidates were candidates of the Party. Thus, it is clear that these individuals were
13 the Party's candidates. In view of these circumstances, the Commission concludes that
14 the Party meets the second element.

15 In view of the fact that both elements discussed in this opinion have been
16 satisfied, the Commission concludes that The Virginia Reform Party, aka The Virginia
17 Independent Party, qualifies as the State committee of a political party under the Act and
18 Commission regulations.

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

22 Sincerely,

23
24
25 John Warren McGarry
26 Chairman
27

28 Enclosures (AOs 1997-3, 1996-51, 1996-43, 1996-27, 1995-49, 1992-30, and 1976-95)
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