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AGENDA DOCUMENT NO. 97-86



FEDERAL ELECTION COMMISSION
Washington, DC 20463

November 26, 1997

MEMORANDUM

AGENDA ITEM
For Meeting of: 12-4-97

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Michael G. Marinelli
Staff Attorney

SUBJECT: Draft AO 1997-18

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 4, 1997.

Attachment

1
2 **ADVISORY OPINION 1997-18**

3
4 **John Evans, Treasurer**
5 **California Reform Party Congressional Committee**
6 **PO Box 81496**
7 **Bakersfield, CA 93380-1496**

DRAFT

8
9
10 **Dear Mr. Evans:**

11
12 **This refers to your letters dated October 6, July 31, and March 24, 1997, which**
13 **request advice concerning application of the Federal Election Campaign Act of 1971, as**
14 **amended ("the Act"), to the possible status of the California Reform Party Congressional**
15 **Committee ("Congressional Committee") as a local party committee of the 'National**
16 **Reform Party.'**

17 **Enclosed with your request is a copy of the Congressional Party's Bylaws.**

18 **The Bylaws declare that the purposes of the Congressional Committee include ensuring**
19 **"as far as possible, the election of members of the Reform Party of California to the**
20 **United States House of Representatives," providing "a vehicle to raise funds and provide**
21 **support" for those candidates such as training, and to "develop and implement a**
22 **coordinated campaign." Committee Bylaws, Article II.**

23 **You assert, however, that the Congressional Committee it is not affiliated with the**
24 **Reform Party of California.¹ You state that the Congressional Committee has total and**
25 **complete control over its own day-to-day operations and there is no financial, advisory or**
26 **any other relationship between the two groups. You further assert that the Congressional**

¹ You admit, however, that some members of the Congressional Committee are also members of the Reform Party of California.

1 Committee is not affiliated with any other State-wide organization of the Reform party.
2 You also emphasize that the Congressional Committee does not claim, or wish to claim,
3 State committee status that might conflict with the possible claims of the Reform Party of
4 California. Rather, the Congressional Committee proposes to be a local party committee
5 that is completely independent of any State committee. As you describe it, the
6 Congressional Committee would be a local committee that would operate in all 52
7 Congressional districts of California. You state that when the Reform Party of California
8 has received State Committee status, the Congressional Committee will determine
9 whether it wishes to affiliate with it.² You also state that the Congressional Committee
10 has no relationship with the 'National Reform Party' or any other national reform party
11 organization.³

12 The Congressional Committee was established in January 1996, with meetings
13 between the Reform Party Congressional candidates. All eleven candidates certified for
14 the March 1996 California primary were contacted for their input into forming a
15 committee and were offered help in filing, with the FEC, the necessary documents

² This opinion will not address issues relating to the possible affiliation of the Congressional Committee with other political committees and organizations within the Reform Party movement. The Commission reminds you, however, that under 11 CFR 110.3(b)(3), all contributions made by the political committees established, financed, maintained or controlled by a State party committee and by subordinate State party committees are presumed to be made by one political committee. This presumption is rebutted if the party unit in question has not received funds from any other political committee established, financed, maintained or controlled by any party unit and there is no cooperation, consultation or concert between the party unit and other political committees or party units regarding the making of contributions.

Even if the presumption is rebutted, a finding of affiliation, regardless of the intent of the organizations concerned, may be made should other factors of affiliation exist as set out in 11 CFR 110.3(a). Affiliation between two committees would be found, for example, if they are both controlled by the same group of persons. See 11 CFR 110.3(a)(2)(v).

³ The facts of your request and your characterization of your relationship with different committees indicates that your committee is, however, part of the same political movement as the California Reform Party and the 'National Reform Party.'

1 relating to their Federal campaigns. Seven of the ten candidates remaining after the
2 March primary approved the Bylaws of the Committee. Your request includes statements
3 of affinity and support for your request by these seven candidates, all of whom were on
4 the ballot in California as Reform Party candidates for Congress in 1996.

5 Under the Act and Commission regulations, the term "State committee" means the
6 organization which, by virtue of the bylaws of a political party, is responsible for the day-
7 to-day operation of such political party at the State level, as determined by the
8 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee
9 also requires the existence of a political party. The term "political party" is defined under
10 2 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization
11 which nominates a candidate for election to any Federal office whose name appears on
12 the election ballot as the candidate of such association, committee, or organization.

13 The term "subordinate committee" is defined under 11 CFR 100.14(b)
14 as any organization which is responsible for the day-to-day operation of the political
15 party at the level of city, county, neighborhood, ward, district, precinct, or any other
16 subdivision of a State or any organization under the control or direction of the State
17 Committee. The Act and Commission regulations do not expressly define the term "local
18 committee" of a political party. However, since the above cited definition includes
19 reference to political party committee operations at various levels of local government
20 (county, city, district, etc.) below the State level, it can be viewed as the functional
21 equivalent of a definition of "local committee." (In addition, see the definition of "Local
22 Party Committee" which is used for explanatory purposes in the Commission's
23 *Campaign Guide For Political Party Committees*, August 1996, p. 83.)

1 Although this has not been explicitly stated in previous advisory opinions, the
2 Commission notes that a political party can only have one State committee, as was the
3 case in previous opinions conferring or confirming State committee status. See Advisory
4 Opinions 1997-7, 1997-3, 1996-51, and 1996-35. A State committee, however, can have
5 any number of subordinate and local committees or other affiliated committees. You
6 have explicitly stated your intention not to claim a State committee status that might
7 interfere with the claims of the Reform Party of California. Therefore, the analysis to
8 follow will only concern the Congressional Committee's claim to local committee status.

9 The Commission has not previously examined in an advisory opinion the claims of
10 an organization for local party committee status, as opposed to State committee or
11 national committee status. However, a prerequisite (as with State and national committee
12 status) is the existence of a political party. See Advisory Opinions 1997-7, 1997-3, 1996-
13 51, 1996-43 and 1996-35. The Commission notes the efforts and support given to
14 Reform Party candidates by the Congressional Committee in 1996. Seven of these
15 Congressional candidates have identified themselves with your request for local
16 committee status. Two of them had sufficient financial activity to qualify as candidates
17 under 2 U.S.C. §431(2). See Advisory Opinion 1997-7. On this basis, the Commission
18 concludes that there is an organization (or association) of the Reform Party movement in
19 the State of California that would be a "political party" for purposes of the Act and
20 Commission regulations, and that the Congressional Committee is an instrumentality of
21 that organization. See Advisory Opinions 1997-7, 1997-3, 1996-51, and 1996-35.

22 However, the Congressional Committee's status as a local committee of a political
23 party presents a separate question. The Congressional Committee does not currently

1 meet either of the two definitional requirements of "subordinate committee" in section
2 100.14(b) of Commission regulations. Your request characterizes the Congressional
3 Committee's area of operations as 'local' because it will operate only in Congressional
4 Districts. However, you also explain that the Committee intends to be active in every
5 Congressional district of California which would entail Committee activity throughout
6 the entire State of California, rather than in one specific geographic region or subdivision,
7 such as a county or city. Thus, the Committee's operations are more consistent with
8 statewide, rather than local activity.

9 As noted above, section 100.14(b) recognizes that some subordinate committees
10 may operate beyond a local geographic or jurisdictional area. However, these committees
11 must be under the direction and control of a State Committee. You have stated that the
12 Congressional Committee is not currently affiliated with any other State entity and has no
13 link to the Reform Party of California. Furthermore, the Commission has not yet
14 recognized any entity as the California State committee of the Reform Party. Therefore,
15 the Congressional Committee cannot qualify as a subordinate committee under the
16 direction or control of a State committee.⁴

17 Considering these factors together, the Commission concludes that California
18 Reform Party Congressional Committee does not qualify as the local committee of a
19 political party at this time.⁵ Your request materials present the possibility that should the

⁴ The Commission's findings are consistent with past advisory opinions that have concerned activities by subordinate or local party committees. These party committees either operated in only one county (Advisory Opinions 1996-8, 1982-38 and 1978-9) or were organizations like "Young Republicans, "Republican Women" and "College Republicans" that were under the control of the State party committee (Advisory Opinion 1978-9).

⁵ The Statement of Organization for the Congressional Committee should be amended to describe its type as "unofficial" or "unrecognized" committee of the California Reform Party. 11 CFR 102.2(a)(1)(i).

1 Reform Party of California gain recognition of its State committee status from the
2 Commission, the Congressional Committee may then affiliate with that State committee.
3 The Commission notes that if it determines, at some future date, that the Reform Party of
4 California is a State committee, and if your committee seeks affiliation with that entity,
5 then the conclusion reached in this opinion would no longer apply. However, the
6 Commission's conclusion on the facts presented at this time means that the Congressional
7 Committee may not make expenditures pursuant to 2 U.S.C. §441a(d). Furthermore, the
8 Congressional Committee may not avail itself of the exemptions from the definition of
9 "contribution" and "expenditure" for certain State or local political party activities found
10 at 2 U.S.C. §431(8)(B) and (9)(B).

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

14 Sincerely,

15

16 John Warren McGarry
17 Chairman

18

19 Enclosures (AOs 1997-7, 1997-3, 1996-51, 1996-43, 1996-35, 1996-8, 1982-38
20 and 1978-9)