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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**AGENDA ITEM**  
For Meeting of: 12-14-00

December 7, 2000

**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkonig  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield *NBL (RC5)*  
Associate General Counsel

Jonathan M. Levin *JL*  
Senior Attorney

Subject: Draft AO 2000-38

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 14, 2000.

Attachment

1 ADVISORY OPINION 2000-38

2  
3 Eudaldo Baez-Galib, Chair  
4 Democratic Party of the Commonwealth of  
5 Puerto Rico  
6 P.O. Box 195634  
7 San Juan, Puerto Rico 00919-5634

**DRAFT**

8  
9 Dear Mr. Baez-Galib:

10 This responds to your letters dated October 24 and November 24, 2000,  
11 requesting an advisory opinion concerning the application of the Federal Election  
12 Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the  
13 political committee status of the Democratic Party of the Commonwealth of Puerto Rico  
14 ("DPPR").

15 You are the Chair of the DPPR. You state that the DPPR is the equivalent of a  
16 State party within the Democratic Party of the United States, according to the national  
17 Democratic Party rules. Neither the DPPR nor the local Republican Party nominates  
18 candidates for public office in Puerto Rico. Other parties, namely the Popular  
19 Democratic party, the New Progressive Party, and the Independence Party are the legal,  
20 recognized entities that participate in Puerto Rican general elections. You assert that  
21 neither the national Democratic nor national Republican parties, nor their local affiliates,  
22 "have any participation whatsoever in Commonwealth electoral processes."

23 Since Puerto Rico is not one of the 50 States, the presidential general election is  
24 not held there, and the only election for Federal office is for the Resident Commissioner  
25 to Congress. Although candidates for that office may identify themselves for Federal  
26 Election Commission records as Democrat, Republican, or Independent, they are not  
27 supported by the local national parties. The above-referenced Commonwealth parties  
28 support them.

29 You state that the DPPR's political activities consist of involvement in the  
30 Democratic National Convention, the Democratic National Committee (by the DPPR  
31 chair and vice chair, and national committeepersons), and the Association of State  
32 Democratic Chairs (the DPPR chair). In addition, you explain that the Democratic and  
33 Republican parties in Puerto Rico "are basically committees fostering relationship[s] with

1 Congress and the Executive Branch, and although segments of the Puerto Rican  
2 electorate express their affinity to either of the parties, there is no structure, either  
3 Democratic or Republican, to embrace them.”

4 You describe the actual and possible future financial activities of the DPPR. First,  
5 you refer to expenses related to the presidential nominating process. You state that the  
6 Commonwealth has established a presidential primary. The primary is to be financed by  
7 the Commonwealth but, if the Commonwealth does not finance them, the national party  
8 affiliates (e.g., the DPPR) must finance them. You indicate that the DPPR spent no funds  
9 with respect to a presidential primary or caucus.<sup>1</sup>

10 You state that DPPR has received donations totaling \$40,000. These donations  
11 came solely from individuals and the maximum donation was \$5,000. The funds were  
12 solicited orally at a breakfast sponsored by the DPPR. You explain that, in soliciting the  
13 donations, DPPR made no reference to Federal elections and made no statements  
14 supporting candidates for President, Resident Commissioner, or other Federal office, or  
15 supporting the election of delegates to the national convention. (The breakfast was held  
16 on a date after the delegates had been selected.) The DPPR did state, however, that some  
17 of the funds could be used to pay for the cost of delegates and other party members to  
18 attend the 2000 Democratic National Convention. It also stated that most of the funds  
19 would be used for the administration of the party and for funding a Federal court case  
20 challenging the constitutionality of a Puerto Rican law that provides that U.S. citizens  
21 residing in Puerto Rico could vote in presidential elections. You state that, ultimately,  
22 funds were not spent with respect to the court case.<sup>2</sup>

23 You further explain that, other than for administrative costs, the donations  
24 received were used for costs related to the attendance of five individuals at the  
25 Democratic National Convention. These individuals were the DPPR’s chair, vice chair,

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<sup>1</sup> You also state that reorganization process to select the officers of the DPPR was held by convention and that no funds were spent for that purpose.

<sup>2</sup> You indicate that the DPPR had intended to use the funds for public notices to advise voters that the law was ruled unconstitutional by the United States Court of Appeals in the event that the State Elections Commission proceeded with the voting process.

1 and executive director, all of whom were convention delegates, another delegate, and a  
2 secretary who was not a delegate or committee member. The delegates had full voting  
3 rights at the convention. Funds were used for the air fare, lodging, and food for these  
4 individuals. Funds were also used for administrative expenses including car rentals,  
5 office space in the hotel, a photocopy and fax machine, telephone service, coffee service,  
6 and expenses for the secretary. You indicate that these services were strictly to enable the  
7 delegates to communicate with their businesses and families and for "the coordination of  
8 their entertainment activities in Los Angeles." You state that the DPPR funded two  
9 events at the convention, a breakfast and a dinner at the delegation's hotel. Attendance  
10 was strictly for the Puerto Rican delegates, various other delegates, the delegates'  
11 families, and some members of the Puerto Rican press in attendance at the convention.  
12 You further explain that it was a "social and very private event" and no speeches or  
13 comments were made to attendees on behalf of candidates or a group of candidates.  
14 DPPR funds were also used to print polo shirts and stickers for the convention that  
15 alluded to the Commonwealth of Puerto Rico.

16 You ask the Commission to confirm that, since the DPPR does not spend funds to  
17 elect candidates and does not contribute "in any way" to the presidential candidates or to  
18 the Democratic Party, the DPPR does not have to register with the Commission as a  
19 political committee and report the above described donations and disbursements.

20 The Act and Commission regulations define a political committee to include, in  
21 pertinent part, "any committee, club, association, or other group of persons which  
22 receives contributions aggregating in excess of \$1,000 during a calendar year or which  
23 makes expenditures aggregating in excess of \$1,000 during a calendar year." 2 U.S.C.  
24 §431(4); 11 CFR 100.5(a). A committee that qualifies as a political committee must file  
25 a statement of organization with the Commission within 10 days after becoming a  
26 political committee. 2 U.S.C. §433(a); 11 CFR 102.1(d). As a political committee, it  
27 must file reports of its receipts and disbursements in accordance with the requirements of  
28 2 U.S.C. §§434(a) and (b) and 11 CFR Part 104.

29 The term "contribution" is defined as any gift, subscription, loan, advance, or  
30 deposit of money or anything of value made by any person for the purpose of influencing

1 any election for Federal office, and the term "expenditure" is defined as any purchase,  
2 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made  
3 by any person for the purpose of influencing any election for Federal office. 2 U.S.C.  
4 §431(8)(A)(i) and 431(9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1).

5 The Act and regulations include in the definition of election a caucus or  
6 convention of a political party if the caucus or convention has the authority to select a  
7 nominee for Federal office on behalf of that party. 2 U.S.C. §431(1)(B); 11 CFR  
8 100.2(e). Commission regulations on Federal funding of national nominating  
9 conventions define a nominating convention as a convention, caucus, or other meeting  
10 which is held by a political party at the national level and which chooses the party's  
11 presidential nominee through selection by delegates to that convention or through other  
12 similar means. 11 CFR 9008.2(g).

13 The DPPR is a political party committee that solicited funds for its operations.  
14 You note that it did not donate to, or make disbursements on behalf of, any candidate for  
15 Resident Commissioner or any other candidate for the U.S. House of Representatives or  
16 Senate or the presidency and did not refer to candidates for those offices in its solicitation  
17 of funds. However, in those solicitations the DPPR stated that it would use some of the  
18 solicited funds to pay for the cost of delegates and other party members to attend the  
19 Democratic National Convention. Such expenses would therefore be used for the support  
20 of persons at the convention who would cast votes for the nomination of a presidential  
21 candidate. In other words, such funds would be used to enable them to attend and  
22 participate in the convention and thus could be considered as for the purpose of  
23 influencing an election.

24 Commission regulations at 11 CFR 110.14 address contributions and expenditures  
25 by delegates and delegate committees. They provide that funds received and  
26 disbursements made for the purpose of furthering the selection of delegates to a national  
27 convention are contributions or expenditures for the purpose of influencing a Federal  
28 election. 11 CFR 110.14(c).<sup>3</sup> Such receipts and disbursements must be made from funds

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<sup>3</sup> A delegate committee is defined as a group of delegates, a group of individuals seeking election as delegates, or a group of individuals supporting delegates that receives contributions or makes expenditures

1 permissible under the Act, and the limitations on contributions to political committees at  
2 11 CFR 110.1 and 110.2 apply to contributions made to and by a delegate committee. 11  
3 CFR 110.14(c)(2) and (g); *see also* 11 CFR 110.1(m) and 110.2(j). Although  
4 contributions to delegates (as opposed to delegate committees) are not subject to the  
5 limits at 2 U.S.C. §441a(a)(1)(A) and (2)(A) because delegates themselves are not  
6 “candidates” under 2 U.S.C. §431(2), contributions from an individual to a delegate are  
7 subject to the individual’s annual limit on contributions at 2 U.S.C. §441a(a)(3) because  
8 “the aggregate annual limit applies generally to all contributions made for the purpose of  
9 influencing a Federal election.” 11 CFR 110.14(d)(1); Explanation and Justification,  
10 *Contributions and Expenditures by Delegates to National Nominating Conventions*, 52  
11 *Fed. Reg.* 35530, 35531 (September 22, 1987).<sup>4</sup>

12 The regulations include payments by a delegate or a delegate committee for the  
13 travel and subsistence of a delegate or delegates at the national convention as  
14 expenditures. 11 CFR 110.14(e)(1) and (h)(1). Although the regulations at 11 CFR  
15 110.14 provide that such expenditures (along with any other expenditures by a delegate or  
16 delegate committee that advocate only the selection of one or more delegates) are neither  
17 contributions to a particular candidate nor chargeable to the expenditure limits of a  
18 publicly funded candidate, they are nevertheless expenditures and, if expended by a  
19 delegate committee, must be reported by that committee. 11 CFR 110.14(h)(2). The  
20 Commission has applied 11 CFR 110.14(c) and (e) to conclude that the use of campaign  
21 funds by a Member of Congress for travel and subsistence expenses in his capacity as a  
22 delegate at a national convention were permissible under 2 U.S.C. §439a because those  
23 regulations “indicate that such costs would be for the purpose of influencing a Federal  
24 election.” Advisory Opinions 1996-20, n.2, 1996-19, n.5, and 1995-47, n.4. Moreover,  
25 the Commission has applied the delegate regulations to conclude that donations by a

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for the sole purpose of influencing the selection of one or more delegates. It qualifies as a political committee, obligated to register and report, if it meets the dollar threshold of 11 CFR 100.5(a). 11 CFR 100.5(e), 110.14(b)(2).

<sup>4</sup> Moreover, the regulations provide that contributions to a delegate made by an authorized committee of a presidential candidate count against the candidate’s expenditure limit. 11 CFR 110.14(d)(2).

1 labor organization for the travel and subsistence expenses of delegates would be  
2 prohibited. Advisory Opinion 1980-64.

3 Although the regulations do not specifically address disbursements by a party  
4 committee for the expenses of a delegate at a national convention, it appears from the  
5 definitions of contribution and expenditure, and the treatment of such spending with  
6 respect to delegates and delegate committees, that disbursements for the expenses of the  
7 delegates at the national convention would be expenditures or in-kind contributions to the  
8 delegates. Thus, amounts received in response to solicitations stating that the funds  
9 would be used for the support of delegates at the national nominating convention would  
10 be contributions to the party. Although other purposes were also mentioned in the  
11 solicitations, there is no method for dividing the receipts resulting from such a solicitation  
12 where there has been no procedure for the contributor to split the contribution into  
13 various parts (e.g., some funds for delegate expenses and some funds for other purposes).  
14 Thus, the receipt of \$40,000 in contributions exceeded the threshold for political  
15 committee status and the DPPR was obligated to register as a political committee within  
16 ten days of the date it received contributions in response to the solicitation that, taken  
17 together, exceeded \$1,000. 2 U.S.C. §433(a); 11 CFR 102.1(d). The DPPR was obligated  
18 to file the reports due after that point in time (e.g., quarterly reports). 2 U.S.C.  
19 §434(a)(4); 11 CFR 104.5(c).

20 In the reports, the DPPR should report the \$40,000 in contributions from the  
21 individuals on line 11a and itemize each contribution from individuals contributing above  
22 \$200. 2 U.S.C. §434(b)(2)(A) and (3)(A); 11 CFR 104.3(a)(2)(i) and (4)(i). Your  
23 disbursements appear to be limited to expenses related to the travel, subsistence, and  
24 activities of the delegates and their support staff at the national convention, and  
25 administrative expenses of the DPPR. Expenses for the travel, lodging, food, and  
26 convention-related entertainment (e.g., events with delegates from other States), as well  
27 as other DPPR administrative expenses (whether related to the convention or not) should  
28 be reported as operating expenditures while expenses related to polo shirts and stickers  
29 and the personal, non-convention related expenses of the delegates and the secretary  
30 should be reported as other disbursements. 2 U.S.C. §434(b)(4)(A), (4)(H)(v), (5)(A),

1 and (6)(B)(ii); 11 CFR 104.3)(b)(1)(i)(A) and (ix), 104.3(b)(3)(i) and (ix). The DPPR  
2 should file a Statement of Organization (FEC Form 1) and any reports (FEC Form 3X)  
3 previously due within thirty days of its receipt of this opinion.

4 After the DPPR files all the reports that were due after the date it qualified as a  
5 political committee, it may consider filing a termination report and requesting a  
6 termination of its status as a political committee. The DPPR may terminate if it will no  
7 longer receive any contributions or make any disbursements that will otherwise qualify it  
8 as a political committee and it has no outstanding debts or obligations. The termination  
9 report shall contain a final report of receipts and disbursements and shall include a  
10 statement as to the purpose for which its residual funds will be used. 11 CFR 102.3(a)(1)

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

14 Sincerely,

15  
16 Darryl R. Wold  
17 Chairman  
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19 Enclosures (AOs 1996-20, 1996-19, 1995-47, and 1980-64)  
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