

October 27, 2003

NOTICE AO DRAFT COMMENT PROCEDURES

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2003-27 is available for public comments under this procedure. It was requested by Timothy V. Barnhart, Treasurer on behalf of the Missouri Green Party, Inc.. The draft may be obtained from the Public Disclosure Division of the Commission.

Proposed Advisory Opinion 2003-14 will be on the Commission's agenda for its public meeting of Thursday November 6, 2003.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (EDT) on November 5, 2003.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case by case basis in special circumstances.

4) All comments timely received will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Disclosure Division.

CONTACTS

Press inquiries: Ron Harris (202) 694-1220

Acting Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copy of draft AO 2003-27 contact Public Records Office-
Public Disclosure Division (202) 694-1120, or 800-424-9530.

For questions about comment submission procedure contact
Rosemary C. Smith, Acting Associate General Counsel, (202) 694-1650.

ADDRESSES

Submit single copy of written comments to:

Commission Secretary
Federal Election Commission
999 E Street NW
Washington, DC 20463



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM
For Meeting of: 11-6-03

October 27, 2003

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson *JAP*
Staff Director

FROM: Lawrence H. Norton *LHN*
General Counsel

James Kahl *JK*
Deputy General Counsel

Rosemary C. Smith *RCS*
Acting Associate General Counsel

Mai T. Dinh *MTD*
Acting Assistant General Counsel

Robert M. Knop *RMK*
Attorney

SUBJECT: Draft AO 2003-27

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 6, 2003.

Attachment

DRAFT

1 **ADVISORY OPINION 2003-27**

2
3 **Timothy V. Barnhart, Treasurer**
4 **Missouri Green Party, Inc.**
5 **6420 Murdoch Avenue**
6 **Saint Louis, Missouri 63109**

7
8 **Dear Mr. Barnhart:**

9
10 **This responds to your letters dated May 13, 2003, and September 8, 2003, with**
11 **enclosures, requesting an advisory opinion concerning the status of the Missouri Green**
12 **Party, Inc. ("the Party") as a State committee of a political party under the Federal**
13 **Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations.**

14 ***Background***

15 **Your request includes various documents including a copy of the Party bylaws**
16 **("the Bylaws"). This governing document details various aspects of the organization of**
17 **the Party such as the manner in which the Party, using several different subgroups**
18 **including its Coordinating Committee, engages in various activities; for example,**
19 **selecting Party officers, creating local Party chapters, holding regular Party meetings, and**
20 **endorsing Party candidates.¹ You state that the Party successfully placed candidates for**
21 **Federal office on the ballot in the 2000 and 2002 elections. These candidates were:**
22 **Ralph Nader for U.S. President and Winona LaDuke for Vice President (2000); Evaline**
23 **Taylor for U.S. Senate (2000); Brenda "Ziah" Reddick, Mike Odell, Mary Maroney,**
24 **Charles Reitz, Tom Sager, and Devin Scherubel for U.S. House of Representatives**
25 **(2000); Daniel "digger" Romano for U.S. Senate (2002); and Keith Brekhus for U.S.**
26 **House of Representatives (2002). Your request includes letters from two of these**

¹ The Federal political committee registered by the Party is the Missouri Green Party, Inc., which first filed with the Commission in 2002.

1 candidates, Ms. LaDuke and Mr. Romano. Ms. LaDuke confirms that the Party obtained
2 ballot access for herself and her Presidential running mate, Mr. Nader, in the State of
3 Missouri in the 2000 general election. Mr. Romano confirms that the Party obtained
4 ballot access for his candidacy in the 2002 general election.

5 Your request states that the Party is officially affiliated with The Greens/Green
6 Party USA ("the Greens USA"), which is one of the two national Green Party
7 organizations.² Included with the request is a letter from Mitchel Cohen, Barbara
8 Chichericio, and Alva D'Orgeix, members of the Coordinating Committee of the Greens
9 USA, confirming the status of the Party as the affiliate of the Greens USA in the State of
10 Missouri. You also state that the Party filed an application for affiliation with the other
11 national Green Party organization, the Green Party of the United States ("GPUS"), but
12 that the GPUS has neither accepted nor rejected that application after approximately two
13 years.³ You state that another Green Party organization in the State of Missouri, the
14 Progressive Party of Missouri, has been recognized by the GPUS as its affiliate in the
15 State of Missouri. You also state that the Party is affiliated with two local Green Party
16 organizations in the State of Missouri: the Gateway Green Alliance (also known as the
17 Green Party of St. Louis) and the Green Party Central Committee, City of St. Louis.

18 ***Question Presented***

19 *Is the Party a State party committee within the meaning of the Act and*
20 *Commission regulations?*

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² In Advisory Opinion 1996-35, the Commission determined that The Greens/Green Party USA did not qualify as the national committee of a political party.

³ In Advisory Opinion 2001-13, the Commission determined that the Green Party of the United States qualified as the national committee of a political party.

1 ***Legal Analysis and Conclusions***

2 Yes, the Party qualifies as a State party committee. Under the Act, the term "State
3 committee" means the organization that, by virtue of the bylaws of a political party, is
4 responsible for the day-to-day operation of such political party at the State level, as
5 determined by the Commission. 2 U.S.C. 431(15). The Commission's regulations
6 include the additional factor that such organization must be "part of the official party
7 structure" either by virtue of the political party's bylaws or by operation of state law. 11
8 CFR 100.14. The definition of "State committee" also requires the existence of a
9 political party. The term "political party" is defined under 2 U.S.C. 431(16) and 11 CFR
10 100.15 as an association, committee, or organization that nominates a candidate for
11 election to any Federal office, whose name appears on the election ballot as the candidate
12 of such association, committee, or organization. An individual becomes a candidate for
13 purposes of the Act if he or she receives contributions aggregating in excess of \$5,000, or
14 makes expenditures in excess of \$5,000. 2 U.S.C. 431(2).

15 As stated in 2 U.S.C. 431(15), the first element of the requirements for State
16 committee status is that the bylaws of a political party establish that the party entity is
17 responsible for the day-to-day operation of such political party at the State level. *See also*
18 11 CFR 100.14(a). The Commission has considered either the bylaws of State party
19 organizations or other governing documents in making these determinations. Advisory
20 Opinions 2001-2, 2000-39, 2000-35, 2000-27, 2000-21, 2000-14, and 1999-26. In
21 reviewing State party affiliates of entities that qualified as national committees of
22 political parties under 2 U.S.C. 431(14), the Commission has looked to the existence of a
23 State affiliate agreement that "delineates activities commensurate with the day-to-day

1 operation of [a political party] on a State level,” and then concluded that “[t]o the extent
2 the relationship between [a political party] and an affiliate is based on this agreement and
3 the affiliate displays evidence of activity by obtaining ballot access for both its
4 Presidential and other Federal candidates, . . . [that] particular affiliate is a State
5 committee of the [political party].” Advisory Opinions 1999-26 and 1992-30. The
6 Commission has also found State party committee status with respect to party
7 organizations affiliated with national political parties that had not achieved national
8 committee status, and with respect to party organizations not affiliated with any national
9 political party. State committee status in these advisory opinions was based on the
10 existence of State bylaws detailing activities commensurate with the day-to-day operation
11 of a party on the State level, and the placement of at least one Federal candidate on the
12 ballot. Advisory Opinions 2001-2, 2000-39, 2000-35, 2000-27, 2000-21, and 2000-14.

13 As noted above, the Party’s governing document sets out an identifiable
14 organizational structure for the Party with varying responsibilities. See Bylaws, articles
15 VII, VIII, and IX. As they delineate activity commensurate with the day-to-day functions
16 and operations of a political party on a State level, the Bylaws meet the requirements of 2
17 U.S.C. 431(15) and 11 CFR 100.14, and they are consistent with the State party rules
18 reviewed in previous situations where the Commission has affirmed the State committee
19 status of a political organization. See Advisory Opinions 2002-10, 2002-6, 2002-3, 2001-
20 2, 2000-39, 2000-35, 2000-27, 2000-21, and 2000-14. The fact that the Party is
21 apparently not affiliated with a recognized national committee does not prevent its
22 recognition as a State committee of a political party. See Advisory Opinions 2001-2,

1 2000-39, 2000-35, 2000-27, 2000-21, and 2000-14. Therefore, the Commission
2 concludes that the Party meets the first element.

3 Under the Commission's regulations, the second element to obtain State
4 committee status is that the organization must be part of the official party structure. See
5 11 CFR 100.14. By virtue of being the State party organization in Missouri, the Party is
6 part of the official party structure.

7 The third element for qualifying as a State committee of a political party, and an
8 essential element for qualifying as a political party, is that the party organization actually
9 obtains ballot access for one or more Federal candidates, as defined in the Act. See 2
10 U.S.C. 431(16); Advisory Opinions 2002-10, 2002-6, 2002-3, 2001-6, 2001-2, and 2000-
11 27. Of the Federal candidates identified in your request, Mr. Nader received or expended
12 in excess of \$5,000 in his 2000 campaign according to disclosure reports filed with the
13 Commission.⁴ Accordingly, Mr. Nader satisfies the Act's definition of a "candidate." 2
14 U.S.C. 431(2). Although the Party is not affiliated with the GPUS, which nominated Mr.
15 Nader for the office of President of the United States, the evidence indicates that the Party
16 was instrumental in obtaining ballot access for Mr. Nader in the State of Missouri. Mr.
17 Nader's name appeared on the 2000 ballot in the State of Missouri as the Presidential
18 candidate of the Party. Because Mr. Nader appeared on the 2000 ballot in Missouri as a
19 candidate of the Party, the Commission concludes that the Party satisfies the definition of
20 "political party" under the Act. It thus meets the third element for establishing State
21 committee status.

⁴ The Commission has granted State committee status to a State affiliate of a qualified national party committee where its only Federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. Advisory Opinions 2000-39, 1999-26, and 1997-3.

1 In view of the fact that all three elements discussed in this advisory opinion have
2 been satisfied, the Commission concludes that the Green Party of Missouri, Inc. qualifies
3 as the State committee of a political party under the Act and Commission regulations.

4 This response constitutes an advisory opinion concerning the application of the
5 Act and Commission regulations to the specific transaction or activity set forth in your
6 request. *See* 2 U.S.C. § 437f. The Commission emphasizes that, if there is a change in
7 any of the facts or assumptions presented, and such facts or assumptions are material to a
8 conclusion presented in this advisory opinion, then the requestor may not rely on that
9 conclusion as support for its proposed activity.

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Sincerely,

Ellen L. Weintraub
Chair

20 Enclosures (AOs 2002-10, 2002-6, 2002-3, 2001-13, 2001-2, 2001-6, 2000-39, 2000-35,
21 2000-27, 2000-21, 2000-14, 1999-26, 1997-3, 1996-35, and 1992-30)