

October 14, 2004

**AO DRAFT COMMENT PROCEDURES**

The Commission 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 2004-34 is available for public comments under this procedure. It was requested by Treasurer Kevin McKenna, on behalf of The Libertarian Party of Virginia.

Proposed Advisory Opinion 2004-34 is scheduled to be on the Commission's agenda for its public meeting of Thursday, October 21, 2004.

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 (Eastern Time) on October 20, 2004.

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 timely received comments 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 Records Office.

**CONTACTS**

**Press inquiries: Robert Biersack (202) 694-1220**

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

**Other inquiries:**

To obtain copies of documents related to AO 2004-34, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

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

**MAILING ADDRESSES**

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

**Rosemary C. Smith  
Associate General Counsel  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
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Washington, DC 20463

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October 14, 2004

## AGENDA ITEM

For Meeting of: 10-21-04

### MEMORANDUM

**TO:** The Commission

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence H. Norton  
General Counsel

Rosemary C. Smith  
Associate General Counsel

Brad C. Deutsch  
Assistant General Counsel

Esa L. Sferra  
Attorney

**Subject:** Draft AO 2004-34

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 21, 2004.

Attachment

1 Advisory Opinion 2004-34

2

3

4 Kevin McKenna  
5 Treasurer  
6 Libertarian Party of Virginia  
7 2576 Nicky Lane  
8 Alexandria, VA 22311

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11 Dear Mr. McKenna,

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13 This responds to your letters dated June 3 and September 2, 2004, requesting an  
14 advisory opinion concerning the status of the Libertarian Party of Virginia (the "Party")  
15 as a State party committee of a political party under the Federal Election Campaign Act  
16 of 1971, as amended (the "Act"), and Commission regulations.

17 ***Background***

18 Your request includes a copy of the Party's bylaws (the "Party Bylaws"). This  
19 governing document details various aspects of the organization of the Party. It illustrates  
20 how the Party, through the State Central Committee, engages in various activities in  
21 Virginia, including: communicating regularly with its membership and district and local  
22 committees, recruiting candidates for State and local offices, coordinating and assisting  
23 campaign efforts of the Party's candidates, and raising and disbursing funds needed for  
24 operating the Party and its committees.<sup>1</sup>

25 You state that the Party successfully placed candidates for Federal office on the  
26 ballot in Virginia in the 2000 and 2002 elections. These candidates were Harry Browne  
27 for U.S. President in 2000, Art Olivier for Vice President in 2000, Sharon Wood, Ron

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<sup>1</sup> The Federal political committee registered by the Party is the Libertarian Party of Virginia, which first filed with the Commission in 2004.

1 Crickenberger, Brian Brown, and Robert McBride for U.S. House of Representatives in  
2 2000, and Ron Crickenberger for U.S. House of Representative in 2002.<sup>2</sup>

3 Your request indicates that the Party is officially affiliated with the national  
4 Libertarian Party. In Advisory Opinion 1975-129,<sup>3</sup> the Commission recognized the  
5 Libertarian National Committee as the national committee of a political party. *See also*  
6 *Advisory Opinions 2002-14 and 1978-58.* Included in your request is a letter from Mr.  
7 Robert W. Sullentrup, National Secretary of the Libertarian Party, confirming the status  
8 of the Party as an affiliate of the Libertarian Party and stating that the Party is currently –  
9 and was in 2000 – “the recognized state party organization in Virginia of the Libertarian  
10 Party.”

11 ***Question Presented***

12 Is the Party a State party committee within the meaning of the Act and  
13 Commission regulations?

14 ***Legal Analysis and Conclusions***

15 Yes, the Party qualifies as a State party committee. Under the Act, the term  
16 “State committee” means the organization that, by virtue of the bylaws of a political  
17 party, is responsible for the day-to-day operation of such political party at the State level,  
18 as determined by the Commission. 2 U.S.C. 431(15). The Commission’s regulations  
19 include the additional factor that such organization must be “part of the official party

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<sup>2</sup> You indicate that minor party Congressional candidates were not listed on the 2000 Virginia ballot as candidates of any particular party. Accordingly, in 2000, the Party’s name did not appear with its candidates’ names on the Virginia ballot. *See* Va. Code Ann. section 24.2-613 (2000). *See also* Advisory Opinion 1997-7. You state that minor party candidates could be listed on the 2002 Virginia ballot as candidates of a particular party; however, the Party’s name did not appear with Mr. Crickenberger’s name on the 2002 Virginia ballot because the Party failed to file the appropriate paperwork. *See* Va. Code Ann. section 24.2-613 (2004).

<sup>3</sup> The Libertarian National Committee is the governing body of the Libertarian Party at the national level when the national convention is not in session. *See* <http://www.lp.org/organization/inc>.

1 structure” either by virtue of the political party’s bylaws or by operation of State law.  
2 11 CFR 100.14. The definition of “State committee” also requires the existence of a  
3 political party. *Id.* The term “political party” is defined under 2 U.S.C. 431(16) and 11  
4 CFR 100.15 as an association, committee, or organization that nominates or selects a  
5 candidate for election to any Federal office, whose name appears on the election ballot as  
6 the candidate of such association, committee, or organization. An individual becomes a  
7 candidate for purposes of the Act if he or she receives contributions aggregating in excess  
8 of \$5,000, or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. 431(2) and  
9 11 CFR 100.3.

10 The existence of a political party is necessary for State committee status. This  
11 requires that the party organization actually obtain ballot access for one or more Federal  
12 candidates, as defined in the Act. *See* 2 U.S.C. 431(16); Advisory Opinions 2004-9,  
13 2003-27, 1997-7, and 1996-27. One Federal candidate identified in your request, Mr.  
14 Harry Browne, received or expended in excess of \$5,000 in his 2000 campaign according  
15 to disclosure reports filed with the Commission.<sup>4</sup> Accordingly, Mr. Browne satisfies the  
16 Act’s definition of a “candidate.” 2 U.S.C. 431(2). Additionally, Mr. Browne’s name  
17 appeared on the 2000 ballot in the Commonwealth of Virginia as the Presidential  
18 candidate of the Party. Because Mr. Browne appeared on the 2000 ballot in Virginia as a  
19 candidate of the Party, the Commission concludes that the Party satisfies the definition of  
20 “political party” under the Act.

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<sup>4</sup> 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 2004-9, 2002-3, and 1999-26.

1           As stated in 2 U.S.C. 431(15), the next element of the requirements for State  
2 committee status is that the bylaws of a political party establish that the party entity is  
3 responsible for the day-to-day operation of such political party at the State level. *See also*  
4 11 CFR 100.14(a). The Commission has considered either the bylaws of State party  
5 organizations or other governing documents in making these determinations. Advisory  
6 Opinions 2003-27, 2002-10, 2002-6, and 2002-3. In reviewing State party affiliates of  
7 organizations that qualified as national committees of political parties under 2 U.S.C.  
8 431(14), the Commission has required supporting documentation indicating that the State  
9 party is affiliated with the national party committee. *See* Advisory Opinions 2002-10,  
10 2002-6, and 2002-3.

11           As noted above, the Party Bylaws set out the organizational structure for the Party  
12 and establish specific responsibilities for Party officials. *See* Party Bylaws, sections  
13 03.03, 03.05, and 03.06. As they delineate activity commensurate with the day-to-day  
14 functions and operations of a political party on a State level, the Party Bylaws meet the  
15 requirements of 2 U.S.C. 431(15) and 11 CFR 100.14, and they are consistent with the  
16 State party rules reviewed in previous situations where the Commission has affirmed the  
17 State committee status of a political organization. *See* Advisory Opinions 2004-9, 2003-  
18 27, 2002-6, 1997-7, and 1996-27. Additionally, the letter you have provided confirms the  
19 status of the Party as the State affiliate of the Libertarian National Committee, an  
20 organization that has qualified as a national committee of a political party. *See* Advisory  
21 Opinions 2002-10, 2002-6, and 2002-3. Therefore, the Commission concludes that the  
22 Party meets this element.

1 Under Commission regulations, the final element to obtain State party committee  
2 status is that the organization must be part of the official party structure. See 11 CFR  
3 100.14. By virtue of being the State party organization in Virginia, as acknowledged by  
4 the national Libertarian Party in its letter, the Party is part of the official party structure.  
5 See Advisory Opinion 2004-9.

6 In view of the fact that all three elements discussed in this advisory opinion have  
7 been satisfied, the Commission concludes that the Libertarian Party of Virginia qualifies  
8 as a State committee of a political party under the Act and Commission regulations.

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

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Sincerely,

Bradley A. Smith  
Chairman

Enclosures (AOs 2004-9, 2003-27, 2002-14, 2002-10, 2002-6, 2002-3, 1999-26, 1997-7,  
1996-27, 1978-58, and 1975-129)