

November 23, 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 2004-40 is available for public comments under this procedure. It was requested by treasurer, Joseph J. Miller on behalf of The Libertarian Party of Maryland.

Proposed Advisory Opinion 2004-40 is scheduled to be on the Commission's agenda for its public meeting of Thursday, December 2, 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 December 1, 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 2004-40, 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

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Federal Election Commission
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Washington, DC 20463**

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Associate General Counsel
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November 23, 2004

AGENDA ITEM

For Meeting of: 12-02-04

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
Staff Attorney

Subject: Draft AO 2004-40

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for December 2, 2004.

Attachment

DRAFT

1 Advisory Opinion 2004-40
2
3
4 Joseph J. Miller, Jr.
5 Treasurer
6 Libertarian Party of Maryland
7 211 Coronet Drive
8 Linthicum Heights, MD 21090-1706
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Dear Mr. Miller,

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We are responding to your inquiry regarding the status of the Libertarian Party of Maryland (the "Party") as a State party committee of a political party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. In this opinion, the Commission concludes that the Party qualifies as a State party committee because (1) the Party is a political party that is affiliated with the national committee of the Libertarian Party, (2) is responsible for the day-to-day operation of the Libertarian Party at the State level, and (3) is part of the official Libertarian Party structure.

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Background

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The facts of this request are presented in letters dated September 27 and October 18 and 22, 2004.

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The Party's constitution (the "Party Constitution") details various aspects of the organization of the Party. It illustrates how the Party, through the State Central Committee and the Local Central Committee in each county, engages in various activities in Maryland, including: creating a yearly plan of action to promote the Party in Maryland, communicating regularly with its members, nominating candidates for State and local

1 public offices, supporting the election of the Party's candidates, and engaging in
2 educational social, and fundraising activities to advance the Party's goals.¹

3 The Party has provided printouts from the Maryland State Board of Elections
4 website that show that the Party placed candidates for Federal office on the Maryland
5 ballot for the 1988, 1992, 1996, and 2000 Presidential elections. The candidates were
6 Ronald E. Paul for President in 1998; Andre Marrou for President in 1992; and Harry
7 Browne for President in 1996 and 2000. These candidates were listed on the ballot as
8 candidates of the Libertarian Party.²

9 In Advisory Opinion 1975-129, the Commission recognized the Libertarian
10 National Committee as the national committee of a political party.³ See also Advisory
11 Opinions 2002-14 and 1978-58. The Party has been officially affiliated with the national
12 Libertarian Party since at least 1988 and a letter from Mr. Joseph Seehusen, National
13 Director of the Libertarian Party, confirms the status of the Party as an affiliate of the
14 Libertarian Party.

15 ***Question Presented***

16 Is the Party a State party committee within the meaning of the Act and
17 Commission regulations?

18 ***Legal Analysis and Conclusions***

19 Yes, the Party qualifies as a State party committee. Under the Act, the term
20 "State committee" means the organization that, by virtue of the bylaws of a political

¹ The Federal political committee registered by the Party is the Libertarian Party of Maryland, which first filed with the Commission in 2003.

² The Maryland State Board of Elections website indicates that a Libertarian Party candidate – Michael Badnarik – was listed on the 2004 Presidential ballot in Maryland. See http://www.elections.state.md.us/current_election/cand/cand-list.php?input=001.

³ 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 party, is responsible for the day-to-day operation of such political party at the State level,
2 as determined by the Commission. 2 U.S.C. 431(15). The Commission's regulations
3 include the additional factor that such organization must be "part of the official party
4 structure" either by virtue of the political party's bylaws or by operation of State law.
5 11 CFR 100.14. The definition of "State committee" also requires the existence of a
6 political party. *Id.* The term "political party" is defined under 2 U.S.C. 431(16) and 11
7 CFR 100.15 as an association, committee, or organization that nominates or selects a
8 candidate for election to any Federal office, whose name appears on the election ballot as
9 the candidate of such association, committee, or organization. An individual becomes a
10 candidate for purposes of the Act if he or she receives contributions aggregating in excess
11 of \$5,000, or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. 431(2) and
12 11 CFR 100.3.

13 The requesting organization's existence as a political party is necessary for State
14 committee status. This requires that the organization actually obtain ballot access for one
15 or more Federal candidates, as defined in the Act. *See* 2 U.S.C. 431(16); Advisory
16 Opinions 2004-34 and 2003-27. At least one Federal candidate identified in your request,
17 Mr. Harry Browne, received or expended in excess of \$5,000 in both his 1996 and 2000
18 campaign according to disclosure reports filed with the Commission. Accordingly, Mr.
19 Browne satisfies the Act's definition of a "candidate." 2 U.S.C. 431(2). Additionally,
20 Mr. Browne's name appeared on the 1996 and 2000 ballots in Maryland as the
21 Presidential candidate of the Party. Because Mr. Browne appeared on the ballot in

1 Maryland as a candidate of the Party, the Commission concludes that the Party satisfies
2 the definition of "political party" under the Act.⁴

3 As stated in 2 U.S.C. 431(15), the next element of the requirements for State
4 committee status is that the bylaws of a political party establish that the party entity is
5 responsible for the day-to-day operation of such political party at the State level. *See also*
6 11 CFR 100.14(a). The Commission has considered either the bylaws of State party
7 organizations or other governing documents in making these determinations. *Advisory*
8 *Opinions* 2003-27 and 2002-10. In determining whether organizations are State party
9 affiliates of entities that qualified as national committees of political parties under 2
10 U.S.C. 431(14), the Commission has required supporting documentation indicating that
11 the State party is affiliated with the national party committee. *See Advisory Opinions*
12 2002-10.

13 As noted above, the Party Constitution sets out the organizational structure for the
14 Party and establishes specific responsibilities for Party officials. *See Party Constitution,*
15 *articles V and VI.* As this governing document delineates activity commensurate with the
16 day-to-day functions and operations of a political party on a State level, the Party
17 Constitution meets the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14, and it is
18 consistent with the State party rules reviewed in previous situations where the
19 Commission has affirmed the State committee status of a political organization. *See*
20 *Advisory Opinions* 2004-34 and 2003-27. Additionally, the letter you have provided
21 confirms the status of the Party as the State affiliate of the Libertarian National

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* 2004-34 and 2004-9.

1 Committee, an organization that has qualified as a national committee of a political party.
2 See Advisory Opinions 2002-10. Therefore, the Commission concludes that the Party
3 meets this element.

4 Under Commission regulations, the final element to obtain State party committee
5 status is that the organization must be part of the official party structure. See 11 CFR
6 100.14. By virtue of being the State party organization in Maryland, as acknowledged by
7 the national Libertarian Party in its letter, the Party is part of the official party structure.
8 See Advisory Opinions 2004-34 and 2004-9.

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

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

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Sincerely,

Bradley A. Smith
Chairman

Enclosures (AOs 2004-34, 2004-9, 2003-27, 2002-14, 2002-10, 1978-58, and 1975-129)