

September 29, 2008

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when on the agenda for a Commission meeting.

DRAFT ADVISORY OPINION 2008-13 is available for public comments under this procedure. It was requested by Patrick Driscoll, on behalf of the Pacific Green Party of Oregon.

Draft Advisory Opinion 2008-13 is scheduled to be on the Commission's agenda for its public meeting of Thursday, October 2, 2008.

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 12:00pm noon (Eastern Time) on October 1, 2008.

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 2008-13, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at www.fec.gov.

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

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 29, 2008

MEMORANDUM

AGENDA ITEM
For Meeting of: 10-02-08

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *ACS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joshua S. Blume *JSB*
Attorney

Subject: Draft AO 2008-13

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for October 2, 2008.

Attachment

1 ADVISORY OPINION 2008-13

2

3 Mr. Patrick Driscoll

DRAFT

4 Treasurer

5 Pacific Green Party of Oregon

6 454 Willamette Street

7 Eugene, OR 97401

8

9 Dear Mr. Driscoll:

10

11 We are responding to your advisory opinion request regarding the status of the
12 Pacific Green Party of Oregon (the "PGPO"), as a State party committee of a political
13 party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and
14 Commission regulations. The Commission concludes that the PGPO qualifies as a State
15 party committee because: (1) the Green Party of the United States (the "GPUS") qualifies
16 as a political party; (2) the PGPO is part of the official GPUS structure; and (3) the PGPO
17 is responsible for the day-to-day operation of the GPUS at the State level.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 August 25, 2008, an e-mail received from the PGPO dated September 2, 2008, an e-mail
21 from the GPUS dated September 8, 2008, telephone conversations with Commission
22 attorneys, and publicly available information on the Commission's and other websites.

23 By way of background to this request, the PGPO first applied for, and received,
24 recognition as a state party affiliate of the Association of State Green Parties¹ on
25 November 2, 2000. See Advisory Opinion 2000-39 (Pacific Green Party of Oregon). On
26 September 15, 2003, the PGPO filed a Report of Receipts and Disbursements on FEC
27 Form 3 with the Commission, which reported no receipts or disbursements between

¹ The Association of State Green Parties was the predecessor of the current GPUS. It became the GPUS in July 2001. See Advisory Opinion 2001-13 (Green Party of the United States).

1 January 1 and June 30, 2003, and requested that that document be considered a
2 termination of registration report.² On October 23, 2003, the Commission advised the
3 PGPO of its acceptance of the FEC Form 3 as a valid termination of registration. The
4 letter indicated that if the PGPO again became active in Federal elections, it would be
5 required to re-register with the Commission as a new committee and the Commission
6 would treat it as a new entity. On July 9, 2008, the PGPO re-registered with the
7 Commission by filing a new Statement of Organization on FEC
8 Form 1, thereby precipitating this request.³

9 The PGPO's Constitution provides that, to achieve its purposes, the PGPO "is
10 organized to operate within the State of Oregon election laws as a political party."
11 Constitution, Article II. The functions of the party, as detailed in the Constitution and
12 Bylaws, include: (1) "[n]ominating or endorsing any candidates for partisan public
13 offices or statewide non-partisan public offices," Bylaws, Article IX, A.1.a; (2) serving as
14 an affiliate organization of the GPUS, Bylaws, Article XVIII A.1⁴; and (3) authorizing
15 the establishment of local chapters and county central committees, Constitution, Article
16 IV, A&B and Bylaws, Articles XVI and XVII. The PGPO is controlled and managed by
17 a "Coordinating Committee," consisting of seven members, who are responsible for

² See 2 U.S.C. 433(d)(1), 11 CFR 102.3(a)(1) (a political committee may terminate its registration when it files a written statement indicating that it will no longer receive any contributions or make any disbursements and that it has no outstanding debts or obligations).

³ The FEC Form 3, the Commission's letter, and the FEC Form 1 are available on the Commission's website at http://query.nictusa.com/cgi-bin/fecimg/?_23038202042+0 (last visited Sept. 9, 2008), http://query.nictusa.com/cgi-bin/fecimg/?_23038212738+0 (last visited Sept. 9, 2008), and http://query.nictusa.com/cgi-bin/fecimg/?_28039762840+0 (last visited Sept. 9, 2008), respectively.

⁴ This article states that the PGPO is a member of the GPUS and is entitled to representation on its National Committee.

1 discharging such responsibilities as managing the PGPO's finances, ensuring compliance
2 with state election law, and scheduling conventions. Constitution, Article IV, C.
3 Statewide conventions are held at least three times a year. Constitution, Article V. The
4 nomination or endorsement of candidates for all levels of government takes place at
5 statewide conventions, as does the election of PGPO representatives to the GPUS
6 National Committee. Bylaws, Articles IX and XVIII, A.1.

7 The PGPO has placed a candidate for President of the United States, former
8 Representative Cynthia McKinney, on the 2008 Oregon general election ballot. Former
9 Representative McKinney is identified on the ballot as a candidate of the PGPO.⁵

10 Beginning in 2001, the Commission has recognized the GPUS as a national
11 committee of a political party. See Advisory Opinion 2001-13 (Green Party of the United
12 States). A letter from Ms. Holly Hart, Secretary of the GPUS, dated September 5, 2008,
13 confirms the status of the PGPO as the GPUS's sole affiliate in the State of Oregon.

14 ***Question Presented***

15 *Does the PGPO qualify as a State committee of a political party within the*
16 *meaning of the Act and Commission regulations?*

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⁵ The ballot identification for former Representative McKinney appears on the Oregon Secretary of State's website at <https://secure.sos.state.or.us/eim/cfDetail.do?page=search&cfRsn=6689> (last visited Sept. 4, 2008). Although the PGPO's advisory opinion request also refers to four candidates the PGPO nominated as House of Representatives candidates, the PGPO's Treasurer indicated that for the purpose of qualification as a State party committee, the PGPO is relying solely on former Representative McKinney's candidacy.

1 ***Legal Analysis and Conclusion***

2 Yes, the PGPO qualifies as a State committee of a political party within the
3 meaning of the Act and Commission regulations.

4 A "State committee" is an organization that, by virtue of the bylaws of a "political
5 party," is part of the official party structure and is responsible for the day-to-day
6 operation of such political party at the State level, as determined by the Commission.

7 2 U.S.C. 431(15); 11 CFR 100.14(a). A "political party," is an "association, committee,
8 or organization that nominates a candidate for election to any Federal office whose name
9 appears on the election ballot as the candidate of such association, committee, or
10 organization." 2 U.S.C. 431(16); 11 CFR 100.15.

11 The determination as to whether a State party organization qualifies as a State
12 committee of a national political party⁶ turns on three elements: (1) The national party of
13 which the State party organization is a part must itself be a "political party;" (2) The State
14 party organization must be part of the official structure of the national party; and (3) The
15 State party organization must be responsible for the day-to-day operation of the national
16 party at the State level. *See, e.g.*, Advisory Opinions 2007-06 (Indiana Libertarian Party)
17 and 2007-02 (Arizona Libertarian Party). The Commission therefore addresses each of
18 these three elements in turn.

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⁶ A State committee need not be affiliated with a recognized national political party, or indeed any national political party, in order to obtain qualification as such. *See, e.g.* Advisory Opinions 2007-23 (Independence Party of New York) (State party not affiliated with any national political party), 2001-02 (Green Party of Kentucky) (State party not affiliated with a recognized national political party). In such cases, the Commission's analytical framework differs slightly from that which is presented in this advisory opinion.

1 *(1) Qualification of GPUS as Political Party*

2 The national party, which here is the GPUS, must qualify as a “political party”
3 under the Act and Commission regulations. The Commission has previously determined
4 that the GPUS qualifies as a national committee of a political party. *See* Advisory
5 Opinion 2001-13 (Green Party of the United States). The Commission is aware of no
6 factual changes that would alter that conclusion.

7 *(2) Status of PGPO as Part of Official GPUS Structure*

8 The PGPO must qualify as part of the official structure of the national party, the
9 GPUS, under the Act and Commission regulations. In previous advisory opinions, the
10 Commission has evaluated supporting documentation from the national party indicating
11 that the State party is part of the official party structure. *See, e.g.,* Advisory Opinions
12 2007-06 (Indiana Libertarian Party) and 2007-02 (Arizona Libertarian Party). Here, the
13 letter from GPUS Secretary Holly Hart confirms the status of the PGPO as part of the
14 GPUS’s official party structure.

15 *(3) Responsibility of PGPO for Day-to-Day Operation of GPUS*

16 The PGPO must be responsible for the day-to-day operations of the GPUS at the
17 State level under the Act and Commission regulations. In previous advisory opinions, the
18 Commission has evaluated this third element by considering: (a) whether the organization
19 has placed a “candidate” on the ballot (thereby qualifying as a “political party”); and (b)
20 whether the bylaws or other governing documents of the State party organization indicate
21 activity commensurate with the day-to-day functions and operations of a political party at

1 the State level.⁷ *See, e.g.*, Advisory Opinions 2007-06 (Indiana Libertarian Party) and
2 2007-02 (Arizona Libertarian Party).

3 Ballot placement on behalf of a “candidate” is required because the requesting
4 organization’s existence as a “political party” is necessary for State committee status. A
5 State party organization must actually obtain ballot access for one or more “candidates,”
6 as defined in the Act. *See* 2 U.S.C. 431(2), 431(15) and 431(16);
7 11 CFR 100.3(a), 100.14(a) and 100.15; *see also* Advisory Opinions 2007-06 (Indiana
8 Libertarian Party), 2007-02 (Arizona Libertarian Party) and advisory opinions cited
9 therein.

10 The individual identified in your request, former Representative Cynthia
11 McKinney, has received contributions or made expenditures in excess of \$5,000
12 according to disclosure reports filed with the Commission, and, therefore, satisfies the
13 Act’s definition of a “candidate.”⁸ *See* 2 U.S.C. 431(2) and 11 CFR 100.3(a). Former
14 Representative McKinney’s name is listed on the 2008 Oregon ballot as the PGPO’s
15 candidate for President. Accordingly, the PGPO qualifies as a “political party” under the
16 Act.

17 Provisions of the PGPO’s Constitution and Bylaws noted above detail its
18 organizational structure and establish specific responsibilities for PGPO officials.
19 *See* Constitution, Articles IV and V, and Bylaws, Articles VI, IX, and XVI - XVIII. The
20 Constitution and Bylaws delineate activity commensurate with the day-to-day functions

⁷ Where appropriate, the Commission may also consider the operation of State law in making these determinations. *See* 11 CFR 100.14(a).

⁸ Disclosure reports for former Representative McKinney appear on the Commission’s website at http://query.nictusa.com/cgi-bin/fecimg/?_28991474730+0 (last visited Sept. 4, 2008).

1 and operations of a political party on a State level, and are consistent with the State party
2 rules reviewed in previous situations where the Commission has recognized the State
3 committee status of a political organization. Therefore, the Constitution and Bylaws
4 satisfy the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14(a).

5 Because all three elements of the definition of "State committee" are satisfied, the
6 Commission determines that the PGPO qualifies as a State committee of a political party
7 under the Act and Commission regulations.

8 This response constitutes an advisory opinion concerning the application of the
9 Act and Commission regulations to the specific transaction or activity set forth in your
10 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
11 of the facts or assumptions presented and such facts or assumptions are material to a
12 conclusion presented in this advisory opinion, then the requester may not rely on that
13 conclusion as support for its proposed activity. Any person involved in any specific
14 transaction or activity which is indistinguishable in all its material aspects from the
15 transaction or activity with respect to which this advisory opinion is rendered may rely on
16 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or conclusions
17 in this advisory opinion may be affected by subsequent developments in the law
18 including, but not limited to, statutes, regulations, advisory opinions and case law. All
19 cited advisory opinions are available on the Commission's website at
20 <http://saos.nictusa.com/saos/searchao>.

21 On behalf of the Commission,

22
23
24 Donald F. McGahn II
25 Chairman