



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 8, 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2008-13

Mr. Patrick Driscoll
Treasurer
Pacific Green Party of Oregon
454 Willamette Street
Eugene, OR 97401

Dear Mr. Driscoll:

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

Background

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

By way of background to this request, the PGPO first applied for, and received, recognition as a State party affiliate of the Association of State Green Parties¹ on November 2, 2000. *See* Advisory Opinion 2000-39 (Pacific Green Party of Oregon). On

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).

September 15, 2003, the PGPO filed a Report of Receipts and Disbursements on FEC Form 3 with the Commission, which reported no receipts or disbursements between January 1 and June 30, 2003, and requested that that document be considered a termination of registration report.² On October 23, 2003, the Commission advised the PGPO of its acceptance of the FEC Form 3 as a valid termination of registration. The letter indicated that if the PGPO again became active in Federal elections, it would be required to re-register with the Commission as a new committee and the Commission would treat it as a new entity. On July 9, 2008, the PGPO re-registered with the Commission by filing a new Statement of Organization on FEC Form 1, thereby precipitating this request.³

The PGPO's Constitution provides that, to achieve its purposes, the PGPO "is organized to operate within the State of Oregon election laws as a political party." Constitution, Article II. The functions of the party, as detailed in the Constitution and Bylaws, include: (1) "[n]ominating or endorsing any candidates for partisan public offices or statewide non-partisan public offices," Bylaws, Article IX, A.1.a; (2) serving as an affiliate organization of the GPUS, Bylaws, Article XVIII A.1⁴; and (3) authorizing the establishment of local chapters and county central committees, Constitution, Article IV, A&B and Bylaws, Articles XVI and XVII. The PGPO is controlled and managed by a "Coordinating Committee," consisting of seven members, who are responsible for discharging such responsibilities as managing the PGPO's finances, ensuring compliance with State election law, and scheduling conventions. Constitution, Article IV, C. Statewide conventions are held at least three times a year. Constitution, Article V. The nomination or endorsement of candidates for all levels of government takes place at statewide conventions, as does the election of PGPO representatives to the GPUS National Committee. Bylaws, Articles IX and XVIII, A.1.

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

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.

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.

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

Question Presented

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

Legal Analysis and Conclusion

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

A "State committee" is an organization that, by virtue of the bylaws of a "political party," is part of the official party structure and is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a). A "political party," is an "association, committee, or organization that nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. 431(16); 11 CFR 100.15.

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

(1) Qualification of GPUS as Political Party

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

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.

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

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

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

The PGPO must be responsible for the day-to-day operations of the GPUS at the State level under the Act and Commission regulations. In previous advisory opinions, the Commission has evaluated this third element by considering: (a) whether the organization has placed a "candidate" on the ballot (thereby qualifying as a "political party"); and (b) whether the bylaws or other governing documents of the State party organization indicate activity commensurate with the day-to-day functions and operations of a political party at the State level.⁷ *See, e.g.*, Advisory Opinions 2007-06 (Indiana Libertarian Party) and 2007-02 (Arizona Libertarian Party).

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

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

Provisions of the PGPO's Constitution and Bylaws noted above detail its organizational structure and establish specific responsibilities for PGPO officials. *See* Constitution, Articles IV and V, and Bylaws, Articles VI, IX, and XVI - XVIII. The

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).

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

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

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

On behalf of the Commission,

(signed)
Donald F. McGahn II
Chairman