

November 18, 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 2008-16 is available for public comments under this procedure. It was requested by Leah Kelley on behalf of Libertarian Party of Colorado.

Draft Advisory Opinion 2008-16 is scheduled to be on the Commission's agenda for its public meeting of Thursday, November 20, 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 November 19, 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 2008-16, contact the Public Records Office at (202) 694-1120 or (800) 424-9530 or visit the Commission's website at [www.fec.gov](http://www.fec.gov).

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

**MAILING ADDRESSES**

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999 E Street, NW  
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November 18, 2008

## AGENDA ITEM

For Meeting of: 11-20-08

### MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*  
General Counsel

Rosemary C. Smith *RCS*  
Associate General Counsel

Amy L. Rothstein *ALR (by RCS)*  
Assistant General Counsel

Esther Heiden *EH*  
Attorney

Subject: Draft AO 2008-16

**SUBMITTED LATE**

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for November 20, 2008.

Attachment

1 ADVISORY OPINION 2008-16

2

3 Ms. Leah Kelley  
4 Libertarian Party of Colorado  
5 6989 S. Jordan Rd., Suite 5  
6 Centennial, CO 80112

**DRAFT**

7

8 Dear Ms. Kelley:

9 We are responding to your inquiry regarding the status of the Libertarian Party of  
10 Colorado (the "LPCO") as a State party committee of a political party under the Federal  
11 Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations.

12 The Commission concludes that the LPCO qualifies as a State party committee because:  
13 (1) the Libertarian Party qualifies as a political party; (2) the LPCO is part of the official  
14 Libertarian Party structure; and (3) the LPCO is responsible for the day-to-day operation  
15 of the Libertarian Party at the State level.

16 ***Background***

17 The facts presented in this advisory opinion are based on your letter received on  
18 October 27, 2008, and publicly available information on the Commission's and other  
19 websites.

20 The LPCO's Constitution ("State Party Constitution") and the LPCO's Bylaws  
21 detail various aspects of the functions, organization, and operation of the LPCO.<sup>1</sup> The  
22 State Party Constitution provides that the purposes of the LPCO include "(b)  
23 communicating the message and positions of the party, (c) entering into political  
24 information and educational activities, (d) promoting, chartering, coordinating, and  
25 supporting Party affiliates...[and] (f) attracting, nominating, and promoting...Libertarian

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<sup>1</sup> These documents are included in the Advisory Opinion request, which is available at <http://saos.nictusa.com/saos/searchao> (last visited Nov. 3, 2008).

1 candidates for political office...” State Party Constitution, art. II, section 1. The “affairs,  
2 properties, and funds” of the LPCO are controlled and managed by the Board of  
3 Directors. State Party Constitution, art. VI, section 1. The Board of Directors consists of  
4 eleven Party Officers, who are elected by the delegates to the annual Convention of Party  
5 Delegates. State Party Constitution, art. V; art. VI, sec. 1. Delegates to the annual Party  
6 Convention also nominate candidates for federal offices. *See* State Party Constitution,  
7 arts. VII and VIII. Delegates to national conventions are selected at the Convention of  
8 Party Delegates. Bylaws, art. VII. The LPCO is also authorized to charter affiliates  
9 within the state of Colorado. State Party Constitution, art. IX.

10       The LPCO placed a candidate for President of the United States, former  
11 Representative Bob Barr, on the 2008 Colorado general election ballot. Former  
12 Representative Barr was identified on the ballot as a candidate of the LPCO.<sup>2</sup> The LPCO  
13 also placed a candidate for President, Michael Badnarik, and a candidate for U.S. House  
14 of Representatives, Norm Olsen, on the Colorado ballot in 2004.<sup>3</sup>

15       Since 1975, the Commission has recognized the Libertarian National Committee  
16 as the national committee of a political party. *See* Advisory Opinions 2007-06  
17 (Libertarian Party of Indiana), 2007-02 (Arizona Libertarian Party), and 1975-129  
18 (Libertarian National Committee). A letter from Mr. Robert S. Kraus, Acting Executive

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<sup>2</sup> The ballot identification for former Representative Barr appears on the Colorado Secretary of State’s website at <http://www.elections.colorado.gov/WWW/default/Candidates/2008%20GENERAL%20CANDIDATE%20LIST%20-%20WEB.pdf> (last visited Oct. 30, 2008).

<sup>3</sup> The ballot identifications for Mr. Badnarik and Mr. Olsen appear on the Colorado Secretary of State’s website at <http://www.elections.colorado.gov/DDefault.aspx?tid=398&vmid=67> (last visited Nov. 5, 2008). Although the LPCO’s advisory opinion request also refers to a candidate nominated by the LPCO for U.S. Senate and a candidate nominated by the LPCO for U.S. House of Representatives, the LPCO’s Treasurer indicated that for the purpose of qualification as a State party committee, the LPCO is relying solely on former Representative Barr, and Messrs. Badnarik and Olsen.

1 Director of the Libertarian National Committee, Inc. (the “LNC”), confirms the status of  
2 the LPCO as the LNC’s sole affiliate for the State of Colorado.

3 ***Question Presented***

4 *Does the LPCO qualify as a State party committee within the meaning of the Act*  
5 *and Commission regulations?*

6 ***Legal Analysis and Conclusion***

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

9 A “State committee” is an organization that, by virtue of the bylaws of a “political  
10 party,” is part of the official party structure and is responsible for the day-to-day  
11 operation of the political party at the State level, as determined by the Commission.  
12 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an “association, committee,  
13 or organization that nominates a candidate for election to any Federal office whose name  
14 appears on the election ballot as the candidate of such association, committee, or  
15 organization.” 2 U.S.C. 431(16); 11 CFR 100.15.

16 The determination as to whether a State party organization qualifies as a State  
17 committee of a national political party turns on three elements: (1) the national party of  
18 which the State party organization is a part must itself be a “political party;” (2) the State  
19 party organization must be part of the official structure of the national party; and (3) the  
20 State party organization must be responsible for the day-to-day operations of the national  
21 party at the State level. *See, e.g.,* Advisory Opinions 2008-13 (Pacific Green Party of  
22 Oregon), 2007-06 (Libertarian Party of Indiana), and 2007-02 (Arizona Libertarian  
23 Party). The Commission therefore addresses each of these three elements in turn.

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

2           The first question in determining whether a political committee is a State  
3 committee of a political party is whether the party itself qualifies as a “political party”  
4 under the Act and Commission regulations. *See, e.g.,* Advisory Opinions 2007-06  
5 (Libertarian Party of Indiana) and 2007-02 (Arizona Libertarian Party). As noted above,  
6 the Commission has previously determined that the Libertarian Party qualifies as a  
7 political party, and that the LNC qualifies as the national committee of the Libertarian  
8 Party. *See* Advisory Opinions 2007-06 (Libertarian Party of Indiana), 2007-02 (Arizona  
9 Libertarian Party), and 1975-129 (Libertarian National Committee). The Commission is  
10 aware of no factual changes that would alter those conclusions.

11 *(2) Status of LPCO as Part of Official Libertarian Party Structure*

12           The LPCO must qualify as part of the official structure of the national party, the  
13 Libertarian Party, under the Act and Commission regulations. In previous advisory  
14 opinions, the Commission has evaluated supporting documentation from the national  
15 party indicating that the State party was part of the official party structure.  
16 *See, e.g.,* Advisory Opinions 2008-13 (Pacific Green Party of Oregon), 2007-06  
17 (Libertarian Party of Indiana), and 2007-02 (Arizona Libertarian Party). Here, the letter  
18 from Mr. Robert S. Kraus, Acting Executive of the LNC, confirms the status of the LPCO  
19 as part of the Libertarian Party’s official party structure.

20 *(3) Responsibility of LPCO for Day-to-Day Operations of Libertarian Party*

21           The LPCO must be responsible for the day-to-day operations of the Libertarian  
22 Party at the State level under the Act and Commission regulations. In previous advisory  
23 opinions, the Commission has evaluated this third element by considering: (a) whether

1 the organization has placed a “candidate” on the ballot (thereby qualifying as a “political  
2 party”); and (b) whether the bylaws or other governing documents of the State party  
3 organization indicate activity commensurate with the day-to-day functions and operations  
4 of a political party at the State level.<sup>4</sup> *See, e.g.,* Advisory Opinions 2008-13 (Pacific  
5 Green Party of Oregon), 2007-06 (Libertarian Party of Indiana), and 2007-02 (Arizona  
6 Libertarian Party).

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

13 The individuals identified in your request, former Representative Bob Barr, Mr.  
14 Michael Badnarik, and Mr. Norm Olsen have received contributions or made  
15 expenditures in excess of \$5,000 according to disclosure reports filed with the  
16 Commission, and therefore satisfy the Act’s definition of a “candidate.”<sup>5</sup> *See* 2 U.S.C.  
17 431(2) and 11 CFR 100.3(a). Former Representative Barr’s name was listed on the 2008  
18 Colorado ballot as the LPCO’s candidate for President, and Messrs. Badnarik and Olsen

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<sup>4</sup> Where appropriate, the Commission may also consider the operation of State law in making these determinations. *See* 11 CFR 100.14(a).

<sup>5</sup> Disclosure reports for these individuals appear on the Commission’s website at [http://query.nictusa.com/cgi-bin/can\\_detail/P80005580/](http://query.nictusa.com/cgi-bin/can_detail/P80005580/) (last visited Oct. 30, 2008) (Barr); <http://images.nictusa.com/cgi-bin/fecimg/?C00384966> (last visited Nov. 5, 2008) (Badnarik); and <http://query.nictusa.com/cgi-bin/fecimg/?C00401638> (last visited Nov. 5, 2008) (Olsen).



1 were on the ballot as LPCO candidates for the 2004 general election. Accordingly, the  
2 LPCO qualifies as a “political party” under the Act.

3 As noted above, the State Party Constitution and Bylaws detail the organizational  
4 structure of the LPCO and establish specific responsibilities. *See* State Party Constitution  
5 art. II, sec. 1; art. IV, sec. 1; arts. VII, VIII, and IX; Bylaws, art. VII. The State Party  
6 Constitution and Bylaws delineate activity commensurate with the day-to-day functions  
7 and operations of a political party on a State level, and are consistent with the State party  
8 rules reviewed in previous situations where the Commission has recognized the State  
9 committee status of a political organization. *See, e.g.*, Advisory Opinions 2008-13  
10 (Pacific Green Party of Oregon), 2007-06 (Libertarian Party of Indiana), and 2007-02  
11 (Arizona Libertarian Party). Therefore, the State Party Constitution and Bylaws satisfy  
12 the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14(a).

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

16 This response constitutes an advisory opinion concerning the application of the  
17 Act and Commission regulations to the specific transaction or activity set forth in your  
18 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
19 of the facts or assumptions presented and such facts or assumptions are material to a  
20 conclusion presented in this advisory opinion, then the requester may not rely on that  
21 conclusion as support for its proposed activity. Any person involved in any specific  
22 transaction or activity which is indistinguishable in all its material aspects from the  
23 transaction or activity with respect to which this advisory opinion is rendered may rely on

1 this advisory opinion. See 2 U.S.C. 437f(c)(1)(B). Please note the analysis or  
2 conclusions in this advisory opinion may be affected by subsequent developments in the  
3 law including, but not limited to, statutes, regulations, advisory opinions and case law.  
4 All cited advisory opinions are available on the Commission's website at  
5 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

Donald F. McGahn II  
Chairman