

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 2009-16 is available for public comments under this procedure. It was requested by Michael Johnston, Treasurer on behalf of the Libertarian Party of Ohio.

Draft Advisory Opinion 2009-16 is scheduled to be on the Commission's agenda for its public meeting of Tuesday, July 28, 2009.

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 July 27, 2009.

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: Judith Ingram (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2009-16, 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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AGENDA ITEM
For Meeting of: 07-28-09

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Theodore Lutz *TL*
Law Clerk

Subject: Draft AO 2009-16 (Libertarian Party of Ohio)

SUBMITTED LATE

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for July 28, 2009.

Attachment

1 ADVISORY OPINION 2009-16

2 Mr. Michael Johnston
3 Libertarian Party of Ohio
4 2586 Tiller Lane; Ste 2K
5 Columbus, OH 43231-2265

DRAFT

6
7 Dear Mr. Johnston:

8 We are responding to your inquiry regarding the status of the Libertarian Party of Ohio
9 (the "LPO") as a State party committee of a political party under the Federal Election Campaign
10 Act of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes
11 that the LPO qualifies as a State party committee because: (1) the Libertarian Party qualifies as a
12 political party; (2) the LPO is part of the official Libertarian Party structure; and (3) the LPO is
13 responsible for the day-to-day operations of the Libertarian Party at the State level.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received on June 15,
16 2009, reports filed with the Commission, and information on the Ohio Secretary of State's
17 website.

18 The LPO's Constitution ("State Party Constitution") and Bylaws detail various aspects of
19 the functions, organization, and operation of the LPO.¹ As articulated in the State Party
20 Constitution, the LPO seeks to "nominate, endorse, support, and elect candidates, and to support
21 issues best representative of the ideals of libertarianism" *State Party Const.* pmb1. The
22 State Party Constitution establishes a Central Committee, which is charged with "[e]stablish[ing]
23 all compensation to staff and officers." *State Party Const.* art. IV, sec. 2. The Central
24 Committee is also charged with the selection of an Executive Committee. *State Party Const.* art.
25 V, sec. 1. The LPO Executive Committee consists of a Chair, Vice Chair, Secretary, Treasurer,

¹ These documents are included in the Advisory Opinion Request, which is available at
<http://saos.nictusa.com/saos/searchao>.

1 and three at-large members. *Id.* The Chair of the Executive Committee is responsible for
2 maintaining the party headquarters, creating new committees when necessary, and “perform[ing]
3 all other duties prescribed by statute or usually exercised by the Chair and not inconsistent with
4 the Constitution and Bylaws of the Party.” Bylaw C, sec. 1. The Bylaws also describe specific
5 responsibilities of the Vice Chair, Secretary, and Treasurer. *See* Bylaw C, sec. 1-4. The LPO
6 also holds conventions in “even-numbered years . . . [where] the Platform of the Party [is]
7 formulated and adopted.” Bylaw F, sec. 1.

8 The LPO placed a candidate for President of the United States, former Representative
9 Bob Barr, on the 2008 Ohio general election ballot. Former Representative Barr was identified
10 on the ballot as a Libertarian candidate.² The LPO also succeeded in placing candidates for the
11 U.S. House of Representatives on the 2008 general election ballot in four Ohio congressional
12 districts.³

13 The Commission has recognized the Libertarian National Committee (the “LNC”) as a
14 national committee of a political party since 1975. *See* Advisory Opinions 2008-16 (Libertarian
15 Party of Colorado), 2007-06 (Libertarian Party of Indiana), 2007-02 (Arizona Libertarian Party),
16 and 1975-129 (National Committee of the Libertarian Party). A letter from Mr. Robert S. Kraus,
17 Acting Executive Director of the LNC, confirms the status of the LPO as the LNC’s sole affiliate
18 for the State of Ohio.

² Election results that list former Representative Barr as a Libertarian candidate appear on the Ohio Secretary of State’s website at <http://www.sos.state.oh.us/SOS/Text.aspx?page=10417&AspxAutoDetectCookieSupport=1> (last visited June 23, 2009).

³ These candidates include Paul Conroy, Steve Linnabary, David Macko, and Mark Noble. These candidates’ results are available at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults/congress110408.aspx> (last visited June 23, 2009). However, for the purposes of this advisory opinion, the Commission is relying solely on the candidacy of former Representative Barr because the remaining individuals named by the LPO in its request did not receive contributions or make expenditures in excess of \$5,000 and, therefore, do not meet the definition of “candidate” under the Act. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a).

1 ***Question Presented***

2 *Does the LPO qualify as a State committee of a political party within the meaning of the*
3 *Act and Commission regulations?*

4 ***Legal Analysis and Conclusion***

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

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

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

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

22 First, the Commission must assess whether the national party qualifies as a “political
23 party” under the Act and Commission regulations. 2 U.S.C. 431(15) and (16); 11 CFR 100.14

1 and 100.15; *see* Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2008-13 (Pacific
2 Green Party of Oregon), 2007-06 (Libertarian Party of Indiana). As noted above, the
3 Commission has determined in previous advisory opinions that the Libertarian Party qualifies as
4 a political party, and the LNC qualifies as the national committee of the Libertarian Party. The
5 Commission is aware of no factual changes that would alter that conclusion.

6 *(2) Status of LPO as Part of Official Libertarian Party Structure*

7 Second, the LPO must qualify as part of the official party structure of the national party,
8 pursuant to 11 CFR 100.14. In numerous advisory opinions, the Commission has looked to
9 supporting documentation indicating the State party was part of the official party structure. *See*,
10 *e.g.*, Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2008-13 (Pacific Green Party
11 of Oregon), 2007-06 (Libertarian Party of Indiana), and 2007-02 (Arizona Libertarian Party).
12 Here, the letter from Mr. Robert S. Kraus, Acting Executive Director and Director of Operations
13 for the LNC, suffices to establish the LPO as part of the Libertarian Party's official party
14 structure.

15 *(3) Responsibility of LPO for Day-to-Day Operations of Libertarian Party*

16 Third, the LPO must maintain responsibility for the day-to-day operations of the
17 Libertarian Party at the State level. 2 U.S.C. 431(15); 11 CFR 100.14. In previous advisory
18 opinions, the Commission has evaluated this third element by considering: (a) whether the
19 organization has placed a "candidate" on the ballot (thereby qualifying as a "political party");
20 and (b) 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 the

1 State level.⁴ *See* Advisory Opinions 2008-16 (Libertarian Party of Colorado) and 2007-13
2 (Pacific Green Party of Oregon).

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 State
5 party organization must actually obtain ballot access for one or more “candidates,” as defined in
6 the Act. *See* 2 U.S.C. 431(2), (15), and (16); 11 CFR 100.3(a); 100.14(a); 100.15; *see also*
7 Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2007-02 (Arizona Libertarian
8 Party).

9 Former Representative Bob Barr, as identified in the request, has received contributions
10 or made expenditures in excess of \$5,000 according to disclosure reports filed with the
11 Commission, and therefore satisfies the Act’s definition of “candidate.”⁵ *See* 2 U.S.C. 431(2);
12 11 CFR 100.3(a). Former Representative Barr’s name was listed on the 2008 Ohio ballot as the
13 LPO’s candidate for President. Accordingly, the LPO qualifies as a “political party” under the
14 Act.

15 As discussed above, the State Party Constitution and Bylaws establish the organizational
16 structure of the LPO and detail specific responsibilities of party officers. *See State Party Const.*
17 *pmbl.*; art. V, sec.1; art. VI, sec. 1; art. VII, sec. 1; art. VIII, sec. 2; Bylaws C, F, and I. The State
18 Party Constitution and Bylaws delineate activity commensurate with the day-to-day functions
19 and operations of a political party on a State level. For example, the State Party Constitution
20 establishes a Central Committee, which elects the Executive Committee. *State Party Const.* art

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

⁵ Disclosure reports for former Representative Barr can be found at http://query.nictusa.com/cgi-bin/can_detail/P80005580.

1 IV, sec. 1; art. V, sec. 1. The Bylaws authorize the Executive Committee to hire staff and set an
2 annual budget. Bylaw C, sec. 5; Bylaw D, sec. 1. The Chair of the Executive Committee is
3 responsible for maintaining a party headquarters, establishing committees, and “perform[ing] all
4 other duties prescribed by statute or usually exercised by the Chair” Bylaw C, sec. 1. The
5 State Party Constitution and Bylaws are consistent with the State party rules reviewed in
6 previous situations where the Commission has recognized the State committee status of a
7 political organization. *See, e.g.*, Advisory Opinion 2008-16 (Libertarian Party of Colorado)
8 (finding that the Constitution and Bylaws of the Libertarian Party of Colorado sufficiently
9 established the performance of day-to-day operations because the documents articulated a clear
10 purpose, operating structure, and duties for officers). Therefore, the Constitution and Bylaws
11 satisfy the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14(a).

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

15 This response constitutes an advisory opinion concerning the application of the Act and
16 Commission regulations to the specific transaction or activity set forth in your request. *See* 2
17 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or
18 assumptions presented and such facts or assumptions are material to a conclusion presented in
19 this advisory opinion, then the requester may not rely on that conclusion as support for its
20 proposed activity. Any person involved in any specific transaction or activity which is
21 indistinguishable in all its material aspects from the transaction or activity with respect to which
22 this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B).
23 Please note the analysis or conclusions in this advisory opinion may be affected by subsequent

1 developments in the law including, but not limited to, statutes, regulations, advisory opinions,
2 and case law. All cited advisory opinions are available on the Commission's website at
3 <http://saos.nictusa.com/saos/searchao>.

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On behalf of the Commission,

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7

Steven T. Walther

8

Chairman