

RECEIVED

By Office of the Commission Secretary at 1:13 pm, Nov 30, 2016



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 16-67-A
AGENDA ITEM
For meeting of December 8, 2016

November 30, 2016

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
Acting General Counsel

Adav Noti *AN*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Anthony T. Buckley *TB by RMK*
Joanna S. Waldstreicher *JSW*
Joseph P. Wenzinger *JPW by RMK*
Attorneys

Subject: AO 2016-22 (6 Libertarian State Committees) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on December 7, 2016.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <http://www.fec.gov/law/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-22

2

3 Christina Sirois, Esq.
4 DB Capitol Strategies PLLC
5 203 South Union Street
6 Suite 300
7 Alexandria, VA 22314

DRAFT A

8

9 Dear Ms. Sirois:

10 We are responding to your request on behalf of the Alaska Libertarian Party, Inc., the
11 Libertarian Party of Georgia, Inc., the Libertarian Party of Maine, Inc., the Libertarian Party of
12 Minnesota, the South Dakota Libertarian Party, and the Libertarian Party of Tennessee (the
13 “Committees”) regarding their status as state committees of a political party under the Federal
14 Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations. The
15 Commission concludes that the Committees qualify as state committees of a national political
16 party.

17 ***Background***

18 The facts presented in this advisory opinion are based on your advisory opinion request
19 (“AOR”) submissions dated August 31 and November 1, 2016; public filings with the
20 Commission; and public filings with the applicable Secretaries of State and State Boards of
21 Elections.

22 In 1975, the Commission determined that the Libertarian National Party (“LNP”) is a
23 national political party. Advisory Opinion 1975-129 (National Committee of the Libertarian
24 Party). The Libertarian National Committee, Inc. (“LNC”) is the national party committee of the
25 LNP. The LNC’s Executive Director, Mr. Wes Benedict, has confirmed by letter that the
26 Committees are all “chartered state-level affiliate parties” of the LNC. AOR082-084. As

1 discussed below, the governing documents of the Committees (*e.g.*, bylaws, constitutions, rules)
2 show their organizational structure and activities as Libertarian committees.

3 ***Question Presented***

4 *Do the Committees qualify as state committees of a political party within the meaning of*
5 *the Act and Commission regulations?*

6 ***Legal Analysis and Conclusion***

7 Yes, the Committees qualify as state committees of a political party within the meaning
8 of the Act and Commission regulations.

9 A “state committee” is an organization that, “by virtue of the bylaws of a political party
10 . . . is part of the official party structure and is responsible for the day-to-day operation of the
11 political party at the [s]tate level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a);
12 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization that
13 nominates a candidate for election to any [f]ederal office whose name appears on the election
14 ballot as the candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16);
15 11 C.F.R. § 100.15. The determination as to whether a state party organization qualifies as a
16 state committee of a national political party turns on three elements: (1) the national party of
17 which the state party organization is a part must itself be a “political party;” (2) the state party
18 organization must be part of the official structure of the national party; and (3) the state party
19 organization must be responsible for the day-to-day operation of the national party at the state
20 level. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory
21 Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia).
22 The Commission addresses each of these three elements in turn.

1 (1) *Qualification of the LNP as Political Party*

2 The Commission has previously determined that the LNP qualifies as a political party.
3 *See* Advisory Opinion 1975-129 (National Committee of the Libertarian Party). The
4 Commission is aware of no factual changes that would alter that conclusion.

5 (2) *Status of the Committees as Part of the Official Structure of the LNP*

6 To determine whether a state party organization is part of the official structure of a
7 national party, the Commission evaluates documentation from the national party. *See, e.g.*,
8 Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01
9 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The letter from
10 Mr. Wes Benedict, Executive Director of the LNC, confirms that the Committees are part of the
11 official party structure of the LNP.

12 (3) *Responsibility of the Committees for Day-to-Day Operation of the LNP at the*
13 *State Level*

14 To determine whether a state party organization is responsible for the day-to-day
15 operations of a national party at the state level, the Commission considers: (a) whether the state
16 organization has placed a federal candidate on the ballot (thereby qualifying as a “political party”
17 under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents of the
18 state party organization indicate activity commensurate with the day-to-day functions and
19 operations of a political party at the state level. *See, e.g.*, Advisory Opinion 2016-14 (11
20 Libertarian State Committees); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory
21 Opinion 2012-36 (Green Party of Connecticut).

1 (a) *Candidate on the Ballot*

2 Because an organization must place a federal candidate on the ballot to qualify as a
3 “political party,” *see* 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15, the organization responsible for
4 the operation of a political party at the state level must obtain ballot access for a federal
5 candidate to qualify as a “state committee.” *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); *see*
6 *e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01
7 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory Opinion
8 2012-36 (Green Party of Connecticut).

9 Each of the Committees “assisted in placing” the LNP’s nominee for President, Gary
10 Johnson, on the 2016 general election ballot in its state. AOR001, 015, 041, 052, 065, 070.
11 Further, Mr. Johnson received contributions or made expenditures in excess of \$5,000 according
12 to disclosure reports filed with the Commission.¹ Mr. Johnson therefore satisfies the Act’s
13 definition of a “candidate.” *See* 2 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

14 (b) *Day-To-Day Functions and Operations*

15 In addition to gaining ballot access for a candidate for federal office, each of the
16 Committees must also show, in its bylaws, constitution, or other governing documents, that it is
17 responsible for activity commensurate with the day-to-day functions and operations of a political
18 party at the state level.

19 For the reasons explained below, the governing documents of the six Libertarian
20 committees that are parties to this request indicate activity commensurate with the day-to-day
21 functions and operations of a political party at the state level and are similar to other state party

¹ *See, e.g.*, Gary Johnson 2016, FEC Report 3P at 2 (Sep. 20, 2016), http://docquery.fec.gov/cgi-in/fecimg?_201609209032026391+0 (showing net election cycle contributions totaling more than \$7,921,000).

1 rules that the Commission has found sufficient to qualify an organization for state committee
2 status. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory
3 Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia);
4 Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2010-22 (Working
5 Families Party of Connecticut). Therefore, the Committees satisfy the requirement of being
6 responsible for the day-to-day operation of the LNP at the state level pursuant to 52 U.S.C.
7 § 30101(15) and 11 C.F.R. § 100.14(a).

8 The activity of each of the Committees is discussed in turn.

9 (I) *Alaska*

10 Pursuant to its bylaws and constitution, the Alaska Libertarian Party, Inc. engages in
11 various political party activities in Alaska. *See generally* AOR009-014. These activities
12 include: (1) encouraging and supporting party candidates for political office; (2) advancing
13 public policy issues in keeping with libertarian philosophy, including passing legislative
14 initiatives and supporting legislation that advances the party's platform; (3) supporting political
15 education concerning libertarian philosophy; (4) seeking publicity for libertarian philosophy; and
16 (5) maintaining and growing the Alaska Libertarian Party to achieve election of candidates to
17 public office. AOR012.

18 Additionally, the bylaws set forth the duties of each of the organization's officers,
19 AOR009-010, who "[d]irect all activities of the" Alaska Libertarian Party, Inc. AOR013. The
20 Alaska Libertarian Party, Inc. holds an annual convention at which, among other business,
21 candidates for public office may be chosen. AOR010.

1 (II) *Georgia*

2 The first purpose stated for the Libertarian Party of Georgia, Inc. in its articles of
3 incorporation is “[n]ominating and endorsing political candidates for both national and state
4 offices.” AOR017. The party’s bylaws provide for the selection of candidates for political
5 office at an annual convention, AOR028, and for the election of delegates to the LNP
6 convention, AOR030.

7 The party’s bylaws also provide for the election of its officers. AOR022. These officers
8 compose the Executive Committee, which serves as “the Board of Directors and ‘State
9 Committee’ as provided under the election laws of the State of Georgia.” *Id.* The Executive
10 Committee’s organizational and political responsibilities include: (1) chartering state district
11 organizations and county parties; (2) appointing state officials; (3) approving applications for
12 membership in the Libertarian Party of Georgia, Inc.; (5) calling special conventions; (6)
13 selecting convention sites and dates; and (7) selecting the electors to be listed on the ballot for
14 presidential elections. AOR023.

15 (III) *Maine*

16 Pursuant to its bylaws, the Libertarian Party of Maine, Inc. engages in various political
17 party activities in Maine. *See generally* AOR042-048. These activities include: (1) promoting
18 candidates for public office within Maine; (2) working for the election of the national Libertarian
19 Party nominee for President and Vice President; (3) promoting, chartering, and coordinating
20 affiliate parties throughout the state of Maine; (4) entering into informational and educational
21 activities; and (5) supporting or opposing referenda, ballot initiatives, citizen vetoes, and other
22 ballot questions. AOR042.

1 The Libertarian Party of Maine, Inc. elects its officers at its biennial convention.
2 AOR043. These officers, along with two district members from each congressional district, and
3 one at-large member, compose the State Committee, which acts as the Board of Directors for the
4 party. AOR044. If the party adopts a platform, that platform must at least include “the
5 Libertarian Party’s National Committee’s ‘Statement of Principles’ and the implementation of
6 the principles contained in the ‘Statement’ in the form of planks.” AOR046. “Candidates for
7 statewide races, state legislative races, and U.S. Congressional district races, may be nominated
8 at the biennial convention, or any special convention called by the State Committee for such a
9 purpose.” AOR048. The Libertarian Party of Maine, Inc. also sends delegates to the LNP’s
10 national convention. *See* AOR047-048.

11 (IV) *Minnesota*

12 According to its bylaws, the “purpose of the Libertarian Party of Minnesota shall be to
13 function primarily as a political party to elect people to political office in order to achieve the
14 values in the [bylaw’s] Statement of Principles. Its secondary purpose is educational work for
15 the same goal.” AOR053. Under its bylaws, the Libertarian Party of Minnesota “shall remain
16 affiliated with the National Libertarian Party and shall endorse their candidates as long as it and
17 they remain consistent with the [Libertarian Party of Minnesota’s] Statement of Principles.”
18 AOR054. The bylaws also set out several methods for nominating and approving candidates for
19 elective office at the state and federal levels. *See* AOR060-062.

20 The Libertarian Party of Minnesota’s officers are elected to one-year terms at its annual
21 convention. *See* AOR055-056. The officers, along with up to eight at-large voting members
22 who are also elected at the annual convention, compose the Executive Committee. *Id.* The
23 Executive Committee is responsible for administrating the party. AOR057.

1 (V) *South Dakota*

2 The bylaws of the South Dakota Libertarian Party set out the duties of its officers and
3 provide for the election of its officers at an annual meeting. AOR074. The officers and two
4 members at large, who are also elected at an annual meeting, compose the party's Executive
5 Committee. *See* AOR075-076. The party's officers oversee its day-to-day operations, while the
6 Executive Committee oversees its overall functioning. *See, generally* AOR075-077. The
7 officers are responsible for maintaining membership records, communicating the activities of the
8 Executive Committee and annual meeting to the members, and complying with state and federal
9 law concerning committee finances. AOR074. At the annual meeting, party members endorse
10 candidates for elective office and elect delegates to the LNP national convention. AOR077.
11 Party members may form precinct committees to act as the local point of contact for local
12 government agencies and to coordinate party activities in the precinct. AOR080.

13 (VI) *Tennessee*

14 The bylaws of the Libertarian Party of Tennessee provide for the election of its officers
15 and set out their duties, which generally involve oversight of the functioning of the party on a
16 day-to-day basis. The officers "find, develop, and assist coordinators, county chairs, and/or
17 regional chairs;" represent the Libertarian Party of Tennessee as spokespeople to the LNP, the
18 media, and the state; account for and disburse funds; maintain membership rolls; and file
19 required documents with the Commission and the IRS. *See* AOR066-067. The party holds an
20 annual convention. AOR067. In years without statewide elections, conventions are held for the
21 purpose of electing officers. *Id.* In years with statewide elections, conventions are held for the
22 purpose of nominating candidates for elective office. *Id.* The Libertarian Party of Tennessee

1 elects delegates to the LNP national convention and selects presidential electors in years in
2 which a presidential election is held. *See* AOR068.

3 *Conclusion*

4 The Commission determines that the Committees qualify as state committees of a
5 national political party under the Act and Commission regulations because: (1) The LNP
6 qualifies as a political party; (2) the Committees are part of the official structure of the LNP; and
7 (3) the Committees are responsible for the day-to-day operation of the LNP at the state level.

8 This response constitutes an advisory opinion concerning the application of the Act and
9 Commission regulations to the specific transaction or activity set forth in your request. *See*
10 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
11 assumptions presented, and such facts or assumptions are material to a conclusion presented in
12 this advisory opinion, then the requestors may not rely on that conclusion as support for their
13 proposed activity. Any person involved in any specific transaction or activity which is
14 indistinguishable in all its material aspects from the transaction or activity with respect to which
15 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
16 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
17 affected by subsequent developments in the law including, but not limited to, statutes,
18 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
19 on the Commission's website.

20 On behalf of the Commission,

21
22
23
24 Matthew S. Petersen
25 Chairman