



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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For meeting of December 8, 2016
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December 6, 2016

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by AN*
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Subject: AO 2016-22 (2 Libertarian State Committees) Draft B

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 9:00 am (Eastern Time) on December 8, 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 B

8

9 Dear Ms. Sirois:

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

15 ***Background***

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

20 In 1975, the Commission determined that the Libertarian National Party (“LNP”) is a
21 national political party. Advisory Opinion 1975-129 (National Committee of the Libertarian
22 Party). The Libertarian National Committee, Inc. (“LNC”) is the national party committee of the
23 LNP. The LNC’s Executive Director, Mr. Wes Benedict, has confirmed by letter that the
24 Committees are “chartered state-level affiliate parties” of the LNC. AOR082-083. As discussed
25 below, the governing documents of the Committees (*e.g.*, bylaws, constitutions) show their
26 organizational structure and activities as Libertarian committees.

1 ***Question Presented***

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

4 ***Legal Analysis and Conclusion***

5 Yes, the Committees qualify as state committees of a political party within the meaning
6 of the 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 operation of the
9 political party at the [s]tate level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a);
10 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization that
11 nominates a candidate for election to any [f]ederal office whose name appears on the election
12 ballot as the candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16);
13 11 C.F.R. § 100.15. The determination as to whether a state party organization qualifies as a
14 state committee of a national political party turns on three elements: (1) the national party of
15 which the state party organization is a part must itself be a “political party;” (2) the state party
16 organization must be part of the official structure of the national party; and (3) the state party
17 organization must be responsible for the day-to-day operation of the national party at the state
18 level. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory
19 Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia).
20 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 Functions and Operations of the*
13 *LNP at the 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 itself qualifying as a “political
17 party” under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents
18 of the 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. AOR015, 065. Further, Mr. Johnson
11 received contributions or made expenditures in excess of \$5,000 according to disclosure reports
12 filed with the Commission.¹ Mr. Johnson therefore satisfies the Act’s definition of a
13 “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 two 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 functions and operations of the LNP at the state level pursuant to
7 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

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

9 (I) *Georgia*

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

15 The party’s bylaws also provide for the election of its officers. AOR022. These officers
16 compose the Executive Committee, which serves as “the Board of Directors and ‘State
17 Committee’ as provided under the election laws of the State of Georgia.” *Id.* The Executive
18 Committee’s organizational and political responsibilities include: (1) chartering state district
19 organizations and county parties; (2) appointing state officials; (3) approving applications for
20 membership in the Libertarian Party of Georgia, Inc.; (4) calling special conventions; (5)
21 selecting convention sites and dates; and (6) selecting the electors to be listed on the ballot for
22 presidential elections. AOR023.

1 (II) *Tennessee*

2 The bylaws of the Libertarian Party of Tennessee provide for the election of its officers
3 and set out their duties, which generally involve oversight of the functioning of the party on a
4 day-to-day basis. The officers “find, develop, and assist coordinators, county chairs, and/or
5 regional chairs;” represent the Libertarian Party of Tennessee as spokespeople to the LNP, the
6 media, and the state; account for and disburse funds; maintain membership rolls; and file
7 required documents with the Commission and the IRS. *See* AOR066-067. The party holds an
8 annual convention. AOR067. In years without statewide elections, conventions are held for the
9 purpose of electing officers. *Id.* In years with statewide elections, conventions are held for the
10 purpose of nominating candidates for elective office. *Id.* The Libertarian Party of Tennessee
11 elects delegates to the LNP national convention and selects presidential electors in years in
12 which a presidential election is held. *See* AOR068.

13 *Conclusion*

14 The Commission determines that the Committees qualify as state committees of a
15 national political party under the Act and Commission regulations because: (1) The LNP
16 qualifies as a political party; (2) the Committees are part of the official structure of the LNP; and
17 (3) the Committees are responsible for the day-to-day functions and operations of the LNP at the
18 state level.

19 This response constitutes an advisory opinion concerning the application of the Act and
20 Commission regulations to the specific transaction or activity set forth in your request. *See*
21 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
22 assumptions presented, and such facts or assumptions are material to a conclusion presented in
23 this advisory opinion, then the requestors may not rely on that conclusion as support for their

1 proposed activity. Any person involved in any specific transaction or activity which is
2 indistinguishable in all its material aspects from the transaction or activity with respect to which
3 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
4 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
5 affected by subsequent developments in the law including, but not limited to, statutes,
6 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
7 on the Commission's website.

8 On behalf of the Commission,

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11
12 Matthew S. Petersen
13 Chairman