



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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**AGENDA DOCUMENT NO. 17-38-A
AGENDA ITEM
For meeting of September 14, 2017**

September 7, 2017

MEMORANDUM

TO: The Commission

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

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Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Cheryl Hemsley *cafh*
Attorney

Subject: AO 2017-09 (Libertarian Association of Massachusetts) 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 September 13, 2017.

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 <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2017-09

2

3 Dr. Susan M. M. Ruiz
4 Libertarian Association of Massachusetts
5 P.O. Box 787
6 Framingham, MA 01701

DRAFT A

7

8 Dear Dr. Ruiz:

9

We are responding to your request on behalf of the Libertarian Association of
10 Massachusetts (“Committee”) regarding its status as the state committee of a political party
11 under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations. The Commission concludes that the Committee qualifies as a state committee of a
13 political party.

14 ***Background***

15 The facts presented in this advisory opinion are based on your advisory opinion request
16 (“AOR”) received on July 28, 2017, and public disclosure reports filed with the Commission.

17 In 1975, the Commission determined that the Libertarian National Party (“LNP”)
18 qualified as a political party. Advisory Opinion 1975-129 (National Committee of the
19 Libertarian Party). The LNP’s national committee is the Libertarian National Committee, Inc.
20 (“LNC”). The LNC’s Director of Operations, Mr. Robert S. Kraus, has confirmed by letter that
21 the Committee is the LNC’s “sole affiliate for the State of Massachusetts.” AOR022.

22 The Committee placed the LNP’s presidential nominees on the general election ballot in
23 Massachusetts in 2000, 2004, 2008, 2012, and 2016.¹ See AOR002, AOR026-027. Each of

¹ The Committee placed the following LNP presidential candidates on the general election ballot in Massachusetts: Harry Browne (2000), Michael Badnarik (2004), Bob Barr (2008), and Gary Johnson (2012 and 2016).

1 those nominees' campaign committees reported receiving contributions or making expenditures
2 in excess of \$5,000 during the relevant presidential election cycle.²

3 The Committee also placed United States Senate candidates on the general election ballot
4 in Massachusetts in 2000 and 2002, and candidates for the United States House of
5 Representatives on the general election ballot in Massachusetts in 1998, 2000, 2002, 2012, and
6 2016.³ AOR003. Each of those candidates also received contributions or made expenditures in
7 excess of \$5,000.⁴ See AOR003, AOR029, AOR031-032.

² See, e.g., Harry Browne for President Inc., *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00357582/?cycle=2000> (reflecting the candidate's receipt and spending of over \$2 million during 2000 election cycle); Badnarik/Campagna 2004, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00384966/?cycle=2004> (reflecting the candidate's receipt and spending of over \$1 million during 2004 election cycle); Barr 2008 Presidential Committee, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00450841/?cycle=2008> (reflecting the candidate's receipt and spending of over \$1.4 million during 2008 election cycle); Gary Johnson 2012 Inc., *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00495622/?cycle=2012> (reflecting the candidate's receipt and spending of over \$2.7 million during 2012 election cycle); Gary Johnson 2016, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00605568/?cycle=2016> (reflecting the candidate's receipt and spending of over \$11.7 million during 2016 election cycle).

³ Carla Howell and Michael Cloud were the LNP's Senate candidates on the general election ballot in Massachusetts in 2000 and 2002, respectively. The LNP candidates for the United States House of Representatives on the general election ballot in Massachusetts between 1998 and 2016 were: George Phillies (1998), David Euchner (2000), Ilana Freedman (2002), Daniel Fishman (2012), and Thomas Simmons (2016).

⁴ See, e.g., Carla Howell for U.S. Senate, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00347070/?cycle=2000> (reflecting the candidate's receipt and spending of over \$850,000 during 2000 election cycle); Michael Cloud for U.S. Senate, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00367763/?cycle=2002> (reflecting the candidate's receipt and spending of over \$200,000 during 2002 election cycle); Phillies for Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00332056/?cycle=1998> (reflecting the candidate's receipt and spending of over \$8,900 during 1998 election cycle); David Euchner for Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00358655/?cycle=2000> (reflecting the candidate's receipt and spending of over \$8,600 during 2000 election cycle); Freedman Committee 2002, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00366765/?cycle=2002> (reflecting the candidate's receipt and spending of over \$162,000 during 2002 election cycle); Committee to Election Dan Fishman, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00524298/?cycle=2012> (reflecting the candidate's receipt of over \$8,200 and spending of over \$6,600 during 2012 election cycle); Simmons4Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00619338/?cycle=2016> (reflecting the candidate's receipt and spending of over \$17,800 during 2016 election cycle).

1 Pursuant to its constitution and its bylaws, the Committee engages in various political
2 party activities in Massachusetts. *See generally* AOR034-051. These activities include
3 promoting libertarian principles, endorsing candidates for public office, conducting voter
4 identification and get-out-the-vote campaigns, sending delegates to the LNP's national
5 convention, and chartering district and local party committees. *See* AOR003, AOR034.

6 The Committee's constitution and bylaws provide for the election of members of its
7 "State Committee" at an annual convention. *See* AOR035, AOR049-051. In addition to
8 governing the affairs of the party, the State Committee supervises and manages the Committee's
9 annual convention, at which candidates for office may be endorsed. *See* AOR035. The State
10 Committee consists of various working groups, each responsible for specific areas of the
11 Committee's party activities such as: (1) encouraging and supporting local libertarian
12 organizations; (2) recruiting, training, and assisting candidates and volunteers with publications,
13 fundraising, and get-out-the-vote drives; (3) supporting substantive political activities not related
14 to candidates, such as referenda, ballot measures, and letter-writing campaigns; (4) publishing a
15 Committee newsletter; (5) operating the Committee's website; (6) engaging in public relations
16 activities; (7) recruiting new members; (8) conducting Committee fundraising drives;
17 (9) organizing and overseeing the Committee's annual convention; (10) establishing and
18 managing the Committee's annual budget; and (11) maintaining and auditing the Committee's
19 financial records. AOR0046-047.

20

1 ***Question Presented***

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

4 ***Legal Analysis and Conclusion***

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

7 A “[s]tate 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 *see* 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization
11 that nominates a candidate for election to any [f]ederal office whose name appears on the
12 election ballot as the candidate of such association, committee, or organization.” 52 U.S.C.
13 § 30101(16); 11 C.F.R. § 100.15.

14 The determination of whether a state party organization qualifies as a state committee of
15 a national political party turns on three elements: (1) the national organization with which the
16 state party organization is affiliated must itself be a “political party;” (2) the state party
17 organization must be part of the official structure of the national party; and (3) the state party
18 organization must be responsible for the day-to-day operation of the national party at the state
19 level. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory
20 Opinion 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.). The Commission
21 addresses each of these elements in turn.

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

2 The national party, the LNP, must qualify as a “political party” under the Act and
3 Commission regulations, and the Commission has previously determined that it does. *See*
4 Advisory Opinion 1975-129 (National Committee of the Libertarian Party); Advisory Opinion
5 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.). The Commission is not
6 aware of any factual changes that would alter that determination.

7 (2) *Status of the Committee as Part of the Official Structure of the LNP*

8 To determine whether a state party organization is part of the official structure of a
9 national party, the Commission evaluates documentation from the national party. *See, e.g.*,
10 Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2016-17
11 (Libertarian Party of Michigan Executive Committee, Inc.). The letter from Mr. Robert S.
12 Kraus, Director of Operations of the LNC (*see* AOR022), confirms that the Committee is part of
13 the official structure of the LNP.

14 (3) *Responsibility of the Committee for Day-to-Day Operation of the LNP at the State*
15 *Level*

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

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, an organization must obtain
4 ballot access for a federal candidate to qualify as a “state committee” of a political party. *See* 52
5 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); Advisory Opinion 2016-14 (11 Libertarian State
6 Committees); Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive Committee,
7 Inc.); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green
8 Party of Connecticut).

9 The Committee placed the LNP’s nominees for President on the general election ballot in
10 Massachusetts in 2000, 2004, 2008, 2012, and 2016. *See* AOR002, AOR026-027. Each of these
11 candidates received contributions or made expenditures in excess of \$5,000 according to public
12 disclosure reports filed with the Commission, therefore satisfying the Act’s definition of a
13 “candidate.” *See* 2 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). In addition, the Committee placed
14 numerous LNP nominees for the United States Senate and/or House of Representatives on the
15 general election ballot in Massachusetts in 1998, 2000, 2002, 2012, and 2016. *See* AOR003,
16 AOR029, AOR031-032. Because each of those nominees received contributions or made
17 expenditures in excess of \$5,000, all such nominees also satisfied the Act’s definition of a
18 “candidate.”

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

20 In addition to gaining ballot access for a candidate for federal office, the Committee must
21 show, in its bylaws, constitution, or other governing documents, that it is responsible for activity
22 commensurate with the day-to-day functions and operations of a national political party at the
23 state level.

1 Here, the constitution and the bylaws establish the organizational structure of the
2 Committee and describe the election process for, and responsibility of, party officers. They also
3 set forth the Committee's responsibilities with respect to its role as the operational arm of the
4 LNP, membership, fundraising, communications, and other party-related tasks.

5 These governing documents indicate activity commensurate with the day-to-day
6 functions and operations of a political party at the state level and are similar to other state party
7 rules that the Commission has found sufficient to qualify an organization for state-committee
8 status. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory
9 Opinion 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.); Advisory Opinion
10 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut);
11 Advisory Opinion 2010-22 (Working Families Party of Connecticut). The Committee therefore
12 satisfies the requirement of being responsible for the day-to-day operation of the LNP at the state
13 level pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

14 *Conclusion*

15 The Commission concludes that the Committee qualifies as the state committee of a
16 political party under the Act and Commission regulations because: (1) the LNP qualifies as a
17 political party; (2) the Committee is part of the official structure of the LNP; and (3) the
18 Committee is responsible for the day-to-day operation of the LNP at the 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.
21 *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts
22 or 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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10
11
12 Stephen T. Walther
13 Chairman