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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 18-11-A
AGENDA ITEM
For meeting of March 8, 2018
[SUBMITTED LATE]

March 5, 2018

MEMORANDUM

TO: The Commission

FROM: Lisa Stevenson *LJS*
Acting General Counsel

Erin Chlopak *EC*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Sean J. Wright *SGW*
Attorney

Subject: Draft AO 2018-01 (Libertarian Party of Utah) Blue Draft

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 March 8, 2018.

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 2018-01

2

3 Ms. Caryn Terres
4 Libertarian Party of Utah
5 584 Hillside Circle
6 Alpine, UT 84004

DRAFT

7

8 Dear Ms. Terres:

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

13 ***Background***

14 The facts presented in this advisory opinion are based on your letter received on January
15 24, 2018, and supplemental information received on February 2, 2018, and February 5, 2018
16 (collectively “advisory opinion request” or “AOR”), and on public disclosure reports filed with
17 the Commission.

18 In 1976, the Commission determined that the Libertarian National Party (“LNP”)
19 qualified as a political party. Advisory Opinion 1975-129 (National Committee of the
20 Libertarian Party). The LNP’s national committee is the Libertarian National Committee, Inc.
21 (“LNC”). The LNC’s Director of Operations, Mr. Robert S. Kraus, has confirmed by letter that
22 the Committee is the LNC’s “sole qualifying organization in Utah.” AOR041.

23 The Committee placed the LNP’s presidential nominee, Gary Johnson, on the general
24 election ballot in Utah in 2012 and 2016. *See* AOR001, AOR007-008, AOR016, AOR043.
25 Gary Johnson’s campaign committees for the 2012 and 2016 presidential election cycles each
26 reported receiving contributions or making expenditures in excess of \$5,000.¹

¹ *See, e.g.,* Gary Johnson 2012 Inc., *FEC Financial Summary of Reported Activity* at

1 The Committee also placed nominees for the United States House of Representatives on
2 the general election ballot in Utah in 2016 and 2017.² *See* AOR018, AOR042-043. At least one
3 of those nominees, Joseph Buchman, received contributions or made expenditures in excess of
4 \$5,000.³

5 Pursuant to its bylaws, the Committee engages in various political party activities in
6 Utah. *See generally* AOR002-006, AOR009-014. These activities include nominating
7 candidates for partisan public office and sending delegates to the LNP's national convention.
8 *See* AOR009-14. The bylaws also contain provisions on the payment of dues, the timing and
9 procedures for party conventions and nominating candidates for public office, and the election of
10 delegates to the LNP's national convention. *Id.*

11 ***Question Presented***

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

14 ***Legal Analysis and Conclusion***

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

<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); and 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).

² Craig Bowden was the LNP candidate for the United States House of Representatives on the general election ballot for Utah's 1st Congressional District in 2016 and Joseph Buchman was the LNP candidate for the United States House of Representatives on a special general election ballot for Utah's 3d Congressional District in 2017.

³ *See* Joseph G. (Joe) Buchman for Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00652925/?cycle=2018> (reflecting the candidate's receipt and spending of over \$9,300 during the 2017 special election cycle).

1 A “[s]tate committee” is an organization that, “by virtue of the bylaws of a political party
2 . . . is part of the official party structure and is responsible for the day-to-day operation of the
3 political party at the [s]tate level . . . as determined by the Commission.” 11 C.F.R. § 100.14(a);
4 *see* 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization
5 that nominates a candidate for election to any [f]ederal office whose name appears on the
6 election ballot as the candidate of such association, committee, or organization.” 52 U.S.C.
7 § 30101(16); 11 C.F.R. § 100.15.

8 The determination of whether a state party organization qualifies as a state committee of
9 a national political party turns on three elements: (1) the national organization with which the
10 state party organization is affiliated must itself be a “political party;” (2) the state party
11 organization must be part of the official structure of the national party; and (3) the state party
12 organization must be responsible for the day-to-day operation of the national party at the state
13 level. *See, e.g.*, Advisory Opinion 2017-09 (Libertarian Association of Massachusetts);
14 Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.); Advisory
15 Opinion 2016-14 (11 Libertarian State Committees). The Commission addresses each of these
16 elements in turn.

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

18 The national party, the LNP, must qualify as a “political party” under the Act and
19 Commission regulations, and the Commission has previously determined that it does. *See*
20 Advisory Opinion 1975-129 (National Committee of the Libertarian Party). The Commission is
21 not aware of any factual changes that would alter that determination.

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

2 To determine whether a state party organization is part of the official structure of a
3 national party, the Commission evaluates documentation from the national party. *See, e.g.*,
4 Advisory Opinion 2017-09 (Libertarian Association of Massachusetts); Advisory Opinion 2016-
5 17 (Libertarian Party of Michigan Executive Committee, Inc.); Advisory Opinion 2016-14 (11
6 Libertarian State Committees). The letter from Mr. Robert S. Kraus, Director of Operations of
7 the LNC, confirms that the Committee is part of the official structure of the LNP. AOR041.

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

10 To determine whether a state party organization is responsible for the day-to-day
11 operations of a national party at the state level, the Commission considers: (a) whether the state
12 organization has placed a federal candidate on the ballot (thereby qualifying as a “political party”
13 under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents of the
14 state party organization indicate activity commensurate with the day-to-day functions and
15 operations of a political party at the state level. *See, e.g.*, Advisory Opinion 2017-09 (Libertarian
16 Association of Massachusetts); Advisory Opinion 2016-17 (Libertarian Party of Michigan
17 Executive Committee, Inc.); Advisory Opinion 2016-14 (11 Libertarian State Committees).

18 (a) *Candidate on the Ballot*

19 Because an organization must place a federal candidate on the ballot to qualify as a
20 “political party,” *see* 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15, an organization must obtain
21 ballot access for a federal candidate to qualify as a “state committee” of a political party. *See* 52
22 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); Advisory Opinion 2017-09 (Libertarian Association of
23 Massachusetts); Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive

1 Committee, Inc.); Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory
2 Opinion 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of
3 Connecticut).

4 The Committee placed the LNP's nominee for President, Gary Johnson, on the general
5 election ballot in Utah in 2012 and 2016. *See* AOR001, AOR007-008, AOR016, AOR043.
6 During the 2012 and 2016 presidential election cycles, Gary Johnson received contributions or
7 made expenditures in excess of \$5,000 according to public disclosure reports filed with the
8 Commission, therefore satisfying the Act's definition of a "candidate." *See* 2 U.S.C. § 30101(2);
9 11 C.F.R. § 100.3(a). In addition, the Committee placed LNP nominees for the United States
10 House of Representatives on the general election ballot in Utah in 2016 and 2017. *See* AOR018,
11 AOR042-043. Because one of those nominees received contributions or made expenditures in
12 excess of \$5,000, that nominee also satisfied the Act's definition of a "candidate."

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

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

18 Here, the bylaws indicate that the Committee engages in various political party activities
19 in Utah. *See generally* AOR002-006, AOR009-014. These activities include nominating
20 candidates for partisan public office and sending delegates to the LNP's national convention.
21 *See* AOR009-14. The bylaws also provide for the payment of dues, the timing and procedures
22 for party conventions and nominating candidates for public office, and the election of delegates
23 to the LNP's national convention. *Id.*

1 The bylaws indicate activity commensurate with the day-to-day functions and operations
2 of a political party at the state level and is similar to other state party rules that the Commission
3 has found sufficient to qualify an organization for state-committee status. *See, e.g.*, Advisory
4 Opinion 2017-09 (Libertarian Association of Massachusetts); Advisory Opinion 2016-17
5 (Libertarian Party of Michigan Executive Committee, Inc.); Advisory Opinion 2016-14 (11
6 Libertarian State Committees); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory
7 Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2010-22 (Working Families
8 Party of Connecticut). The Committee therefore satisfies the requirement of being responsible
9 for the day-to-day operation of the LNP at the state level pursuant to 52 U.S.C. § 30101(15) and
10 11 C.F.R. § 100.14(a).

11 ***Conclusion***

12 The Commission concludes that the Committee qualifies as the state committee of a
13 political party under the Act and Commission regulations because: (1) the LNP qualifies as a
14 political party; (2) the Committee is part of the official structure of the LNP; and (3) the
15 Committee is responsible for the day-to-day operation of the LNP at the state level.

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

1 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
2 affected by subsequent developments in the law including, but not limited to, statutes,
3 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
4 on the Commission's website.

5 On behalf of the Commission,

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9 Caroline C. Hunter
10 Chair
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