



FEDERAL ELECTION COMMISSION
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

JAN 4 9 42 AM '01

January 4, 2001

MEMORANDUM

AGENDA ITEM
For Meeting of: 1-11-01

TO: The Commission
THROUGH: James A. Pehrkon *JAP*
Staff Director
FROM: Lois G. Lerner *LGL*
Acting General Counsel

N. Bradley Litchfield *NBL*
Associate General Counsel

Michael G. Marinelli *MG*
Staff Attorney

SUBJECT: Draft AO 2000-27

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 11, 2001.

Attachment

1
2
3
4
5 **ADVISORY OPINION 2000-27**

6
7 **Michael Avey, Vice Chair**
8 **United Citizens Party**
9 **402 Stroud Ct.**
10 **Greenwood, SC 29646**

DRAFT

11
12 **Dear Mr. Avey:**

13
14 **This refers to your letter dated September 15, 2000, requesting an advisory**
15 **opinion concerning the status of the United Citizens Party of South Carolina ("the Party")**
16 **as a State committee of a political party under the Federal Election Campaign Act of**
17 **1971, as amended ("the Act"), and Commission regulations.**

18 **Your request includes the Constitution and Party Bylaws which form one document**
19 **(the "Bylaws"). The Bylaws detail various aspects of the organization of the Party such**
20 **as the manner in which the Party, using several different subgroups including its State**
21 **Executive Committee, engages in various activities (for example, helping to select Party**
22 **officers). The Bylaws further detail the procedures for holding the Party Convention.**
23 **You state that the Party has successfully placed several candidates for Federal office on**
24 **the ballot in the 2000 elections. Information provided by the State Election Commission**
25 **of South Carolina confirms that the Party had placed four candidates on the Federal ballot**
26 **in 2000. These candidates were Ralph Nader for U.S. President, Winona LaDuke for**
27 **Vice President, George L. Brightharp for U.S. Representative from the 3rd Congressional**

1 District and Peter J. Ashy for U.S. Representative from the 4th Congressional District.¹

2 You explain that while the Party has fielded candidates in South Carolina for Federal
3 office since 1972, it is not formally affiliated with any national political party.²

4 Under the Act and Commission regulations, the term "State committee" means the
5 organization which, by virtue of the bylaws of a political party, is responsible for the day-
6 to-day operation of such political party at the State level, as determined by the
7 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee also
8 requires the existence of a political party. The term "political party" is defined under 2
9 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization which
10 nominates a candidate for election to any Federal office whose name appears on the
11 election ballot as the candidate of such association, committee, or organization. An
12 individual becomes a candidate for purposes of the Act if he or she receives contributions
13 aggregating in excess of \$5,000, or makes expenditures in excess of \$5,000. 2 U.S.C.
14 §431(2).³

15 As stated in the Act and Commission regulations, the first element of the
16 requirements for State committee status is that the bylaws of a political party establish
17 that the United Citizens Party of South Carolina is responsible for the day-to-day

¹ Mr. Brightharp and Mr. Ashy, while holding Federal ballot lines specifically for the United Citizens Party, also held additional separate ballot lines for other parties in their Congressional campaigns. Mr. Ashy was a candidate for the Reform Party, and Mr. Brightharp was a candidate for the Democratic Party. In past opinions, the Commission has concluded that "fusion" candidates may be considered when reviewing a party's qualification for State committee status. See Advisory Opinions 2000-21 and 2000-14.

² In Advisory Opinion 2000-18, Mr. Nader, though the Presidential nominee of the Green Party, had stated his intention to seek the nomination of the United Citizens Party of South Carolina. Mr. Nader did not obtain the Presidential nomination of any other State party in South Carolina, and there does not appear to be a Green Party affiliate in that State.

³ Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to various registration, recordkeeping, and reporting requirements. 2 U.S.C. §§432(e)(1), 433, and 434(a); 11 CFR 101.1, 102.1, and 104.1.

1 operation of such political party at the State level.⁴ As noted above, the Party's rules set
2 out an identifiable organizational structure for the Party with varying responsibilities.
3 Bylaws, pp. 5 to 8. As they delineate activity commensurate with the day-to-day
4 functions and operations of a political party on a State level, the rules meet the
5 requirements of 2 U.S.C. §431(15) and 11 CFR 100.14, and they are consistent with the
6 State party rules reviewed in previous situations where the Commission has affirmed the
7 State committee status of a political organization. *See* Advisory Opinions 2000-39, 2000-
8 35, 2000-21, 2000-14, and 1999-26.⁵ Therefore, the Commission concludes that the
9 Party meets the first element.

10 The second element for qualifying as a State committee of a political party, and an
11 essential element for qualifying as a political party, is that the party organization actually
12 obtains ballot access for one or more Federal candidates, as defined in the Act. Of the
13 Federal candidates identified in your request, Mr. Nader and Mr. Brightharp, according
14 to disclosure reports filed with the Commission, received or expended in excess of \$5,000

⁴ The Commission has considered either the bylaws of State party organizations or other governing documents in making these determinations. Advisory Opinions 2000-39, 2000-35, 2000-21, 2000-14 and 1999-26. In reviewing State party affiliates of entities that qualified as national committees of political parties under 2 U.S.C. §431(14), the Commission has looked to the existence of a State affiliate agreement which "delineates activities commensurate with the day-to-day operation of [a political party] on a State level," and then concluded that "[t]o the extent the relationship between [a political party] and an affiliate is based on this agreement and the affiliate displays evidence of activity by obtaining ballot access for both its Presidential and other Federal candidates, . . . [that] particular affiliate is a State Committee of the [political party]." Advisory Opinions 1999-26 and 1992-30. The Commission has also found State party committee status with respect to organizations affiliated with national political parties that had not achieved national committee status or organizations that had no affiliation with any national organization. State committee status in these opinions was based on the existence of State bylaws detailing activities commensurate with the day-to-day operation of a party on the State level, and the placement of at least one Federal candidate on the ballot. Advisory Opinions 2000-39, 2000-35, 2000-21 and 2000-14.

⁵ The fact that the Party is not affiliated with a recognized national committee does not prevent its recognition as a State committee of a political party. *See* Advisory Opinions 2000-39, 2000-35, 2000-21, and 2000-14. As noted above, the Commission has recognized the State committee status of other party committees that were not affiliated with any national political organizations. A very recent example is the granting of State committee status to the Conservative Party of New York State in Advisory Opinion 2000-21.

1 in their 2000 campaigns. Accordingly, both these candidates satisfy the Act's definition
2 of candidate, 2 U.S.C. §431(2). Since both these candidates appeared on the 2000 ballot
3 in South Carolina as candidates of the United Citizens Party, the Commission concludes
4 that the Party satisfies the definition of "political party" under the Act. It thus meets the
5 second element for establishing State committee status.⁶

6 In view of the fact that both elements discussed in this opinion have been
7 satisfied, the Commission concludes that the State Committee of the United Citizens
8 Party of South Carolina qualifies as the State committee of a political party under the Act
9 and Commission regulations.

10 This response constitutes an advisory opinion concerning the application of the
11 Act, or regulations prescribed by the Commission, to the specific transaction or activity
12 set forth in your request. *See* 2 U.S.C. §437f.

13 Sincerely,

14
15 Danny L. McDonald
16 Chairman

17
18 Enclosures (AOs 2000-39, 2000-35, 2000-21, 2000-18, 2000-14, 1999-26, 1997-3, and
19 and 1992-30).
20
21

⁶ As noted above, when determining State committee status, the Commission made clear that a State political party could qualify as a State committee without an affiliation with any national political party organization, and indicated that a State party's candidate must be a candidate under 2 U.S.C. §431(2) in order for that party to satisfy the second requirement. Advisory Opinions 2000-39, 2000-35, and 2000-14. The Commission has also granted State committee status to a State affiliate of a qualified national party committee where its only Federal candidates, as defined under the Act, were the Presidential and Vice Presidential candidates of the national party. Advisory Opinions 2000-39, 1999-26 and 1997-3. Although the United Citizens Party is not affiliated with any national organization, this does not change the fact that Mr. Nader's name appeared on the 2000 ballot in the State of South Carolina as the Presidential candidate of the United Citizens Party and that he had qualified as a candidate for purposes of the Act.