

FEDERAL ELECTION  
COMMISSION  
SECRETARIAT



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2008 APR -8 A 8:18

**AGENDA ITEM**  
For Meeting of: 04-17-08

April 8, 2008

**MEMORANDUM**

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*  
General Counsel

Rosemary C. Smith *PCS*  
Associate General Counsel

Ron Katwan *RK/C*  
Assistant General Counsel

Anthony Buckley *AB*  
Attorney

Subject: Draft AO 2008-01

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for April 17, 2008.

Attachment

1 ADVISORY OPINION 2008-01

2 Diane Sipe, Treasurer  
3 Butler County Democrats for Change  
4 P.O. Box 2208  
5 Butler, PA 16003-2208

**DRAFT**

6 Dear Ms. Sipe:

7 We are responding to your advisory opinion request on behalf of Butler County  
8 Democrats for Change (“DPAC”) concerning the application of the Federal Election  
9 Campaign Act of 1971, as amended (the “Act”), and Commission regulations to DPAC’s  
10 relationship with the Butler County Democratic Party (“County Party Committee”). The  
11 Commission concludes that DPAC and the County Party Committee are not currently  
12 affiliated.

13 ***Background***

14 The facts presented in this advisory opinion are based on your letters received on  
15 November 26, 2007, February 25, 2008, and March 4, 2008, as well as several telephone  
16 conversations.

17 DPAC was formed in January 2005 to help elect “progressive” Democratic  
18 candidates to office, regardless of whether they received the party’s endorsement. *See*  
19 DPAC Constitution, Article II, Section 2.2. In August 2007, DPAC created a Federal  
20 account. DPAC registered with the Commission on September 4, 2007 as a  
21 nonconnected political committee. DPAC has 38 “members.” These members are  
22 registered Democrats who pay annual dues of \$25.

23 The County Party Committee is a local party committee and an affiliate of the  
24 Pennsylvania State Democratic Committee. It has operated under its current constitution  
25 since 1978. The County Party Committee does not have a Federal account and has not

1 registered with the Commission as a political committee under the Act. The County  
2 Party Committee has 87 members, who are either elected by the Democratic voters of  
3 their precinct or appointed by the County Party Committee Chair.

4       You informed us that the 2004 general elections generated enthusiasm among  
5 Democrats in Butler County, and that enthusiasm had two significant consequences. The  
6 first consequence was the revitalization of the County Party Committee, which had not  
7 been very active. The second consequence was the formation of DPAC. Many  
8 Democrats who became politically active during that time were attracted to both  
9 organizations.

10       DPAC made sporadic donations to the County Party Committee from 2005 to  
11 2007, and the two organizations have had overlapping members and officers. By mid-  
12 2007, however, any goodwill that existed between the two organizations had largely  
13 ceased to exist. At this point, financial support and overlapping personnel and supporters  
14 have declined, and looking forward, no further financial support, joint activities, or  
15 overlap in key persons is expected.

16 ***Question Presented***

17       *Are DPAC and the County Party Committee currently affiliated with each other?*

18 ***Legal Analysis and Conclusions***

19       No, DPAC and the County Party Committee are not currently affiliated with each  
20 other because neither organization is established, financed, maintained, or controlled by  
21 the other. Nor is DPAC affiliated with the Pennsylvania State Party Committee.

1           *a.     The Applicable Law*

2           The Act and Commission regulations provide that political committees that are  
3 established, financed, maintained, or controlled by the same person or group of persons,  
4 including any parent, subsidiary, branch, division, department, or local unit thereof, are  
5 affiliated. Contributions made to or by such political committees are to be considered to  
6 have been made to or by a single political committee. 2 U.S.C. 441a(a)(5); 11 CFR  
7 100.5(g)(2) and 110.3(a)(1). In addition, a political committee that is established,  
8 financed, maintained, or controlled by a State party committee or a subordinate State  
9 party committee is also affiliated with the State party committee itself. These affiliated  
10 committees must also aggregate contributions made and received. *See* 11 CFR  
11 110.3(b)(3); *see also* Advisory Opinions 2005-02, 1999-04, 1997-18, and 1978-9.

12           *b.     Per Se Affiliation*

13  
14           Commission regulations denote categories of organizations and committees that are  
15 *per se* affiliated. 11 CFR 100.5(g)(3) and 11 CFR 110.3(a)(2). These categories include  
16 organizations that are established, financed, maintained or controlled by the same person or  
17 group of persons. 11 CFR 100.5(g)(3)(v) and 110.3(a)(2)(v). Where such organizations do  
18 not readily fit into one of the *per se* affiliation categories, affiliation factors as described  
19 below are applied. *See* Advisory Opinion 2000-36 (ACPAC). Here, different persons  
20 belong to, and have authority over, the two organizations. Hence, the Commission concludes  
21 that DPAC and the County Party Committee are not *per se* affiliated.

22           *c.     Affiliation Factors*

23           In the absence of *per se* affiliation, Commission regulations provide for an  
24 examination of various factors in the context of the overall relationship to determine

1 whether one committee or organization has established, financed, maintained, or  
2 controlled the other committee or organization and, hence, whether, the committees are  
3 affiliated with each other. 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and  
4 (ii)(A)-(J). These ten circumstantial factors do not constitute an exhaustive list and other  
5 factors may be considered. *See* Advisory Opinion 2007-12 (Tyco). Nine of these factors  
6 are relevant to this request and are discussed below.

7 *(B) Whether a sponsoring organization or committee has the authority or ability*  
8 *to direct or participate in the governance of another sponsoring organization or*  
9 *committee through provisions of constitutions, bylaws, contracts or other rules, or*  
10 *through formal or informal practices or procedures. 11 CFR 100.5(g)(4)(ii)(B);*  
11 *110.3(a)(3)(ii)(B).*

12  
13 *(C) Whether a sponsoring organization or committee has the authority or ability*  
14 *to hire, appoint, demote or otherwise control the officers, or other decisionmaking*  
15 *employees of another sponsoring organization or committee. 11 CFR*  
16 *100.5(g)(4)(ii)(C); 110.3(a)(3)(ii)(C).*

17  
18 Factors (B) and (C) pertain to the power and ability of one committee to direct or  
19 participate in the governance of the other committee. DPAC's constitution does not grant  
20 authority to the County Party Committee or any other organization over the operations of  
21 DPAC. Further, there are no formal or informal practices or procedures in place that  
22 grant such authority to the County Party Committee or any other organization.

23 Additionally, DPAC's constitution does not grant any authority to the County Party  
24 Committee or any other organization over DPAC's officers.

25 Similarly, the bylaws of the County Party Committee do not allow anyone outside  
26 of that organization, other than the State Party Committee, to exercise control over it.

27 Thus, DPAC has no explicit authority over the operations of the County Party

1 Committee. Nor are there formal or informal practices or procedures in place that grant  
2 such authority to DPAC.

3 DPAC's officers and its Executive Committee (which consists of its officers, at-  
4 large members, and subcommittee chairs), are determined solely by the election of  
5 DPAC's membership. DPAC's members may be any registered Democrat who desires to  
6 join the group and pay its annual membership dues. The County Party Committee  
7 members are elected by the Democratic registered voters of the precincts they represent  
8 or are appointed by the County Party Committee chair. County Party Committee officers  
9 are elected by the County Party Committee membership or appointed by the County  
10 Party Committee chair. The County Party Committee's Executive Board is comprised of  
11 its officers, persons appointed by the Chair, and elected Democratic officeholders. Thus,  
12 the methods for choosing officers and executive committee members for each  
13 organization are independent of each other and do not provide a way for one organization  
14 to control or direct or participate in the governance of the other.

15 The facts that neither the County Party Committee nor DPAC has authority over  
16 the other's operations and does not control those who run the other, support the  
17 conclusion that DPAC and the County Party Committee are not affiliated.

18 *(D) Whether a sponsoring organization or committee has common or overlapping*  
19 *membership with another sponsoring organization or committee which indicates*  
20 *a formal or ongoing relationship between the organizations or committees. 11*  
21 *CFR 100.5(g)(4)(ii)(D); 110.3(a)(3)(ii)(D).*  
22

23 *(E) Whether a sponsoring organization or committee has common or overlapping*  
24 *officers or employees with another sponsoring organization or committee which*  
25 *indicates a formal or ongoing relationship between the organizations or*  
26 *committees. 11 CFR 100.5(g)(4)(ii)(E); 110.3(a)(3)(ii)(E).*  
27

1           (F) Whether a sponsoring organization or committee has any members, officers,  
2           or employees who were members, officers, or employees of another sponsoring  
3           organization or committee which indicates a formal or ongoing relationship or  
4           the creation of a successor entity. 11 CFR 100.5(g)(4)(ii)(F); 110.3(a)(3)(ii)(F).  
5

6           Factors (D), (E) and (F) pertain to overlaps that indicate a formal or ongoing  
7           relationship between the organizations or the creation of a successor entity. When DPAC  
8           was first formed, many of its members also belonged to the County Party Committee.  
9           Some individuals were officers of one or both organizations. However, the number of  
10          individuals who are officers or general members of both organizations has been declining  
11          gradually. Currently, twelve members of DPAC are also members of the 87-member  
12          County Party Committee. Two of these twelve common members are on DPAC's  
13          Executive Committee, which currently consists of nine members.<sup>1</sup> Three of these twelve  
14          common members are on the 22-member County Party Committee Executive Committee.  
15          Two of these three are County Party Committee officers and one is a County Party  
16          Committee representative on the State Party Committee. None of the twelve common  
17          members are officers or other executive committee members of both DPAC and the  
18          County Party Committee.<sup>2</sup> Thus, unlike in past years, no individual currently is in a  
19          position to have significant influence over the actions of both organizations at the same  
20          time.

21          Furthermore, there appears to be strong efforts by the organizations to disengage  
22          from each other. DPAC held meetings at the County Party Committee's headquarters in

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<sup>1</sup> DPAC's Constitution appears to provide for at least 17 members of its Executive Committee. See DPAC Constitution, Article IV, Section 4.1; Article V, Section 5.1; and Article VII.

<sup>2</sup> The last two persons to serve as members of the executive boards of both organizations resigned from their County Party Committee positions as of December 31, 2007.

1 late 2006 and for the first few months of 2007 but has not done so since. Also, DPAC  
2 noted that the Pennsylvania State Democratic Committee has recently instructed the  
3 County Party Committee to see that its members choose between the County Party  
4 Committee and other political organizations by resigning from either the other political  
5 committees, which would include DPAC, or from the County Party Committee. This  
6 indicates that the decline in overlap is expected to continue. Additionally, discussion of  
7 County Party Committee concerns or activities is actively discouraged during DPAC  
8 meetings; DPAC concerns and activities are not discussed in County Party Committee  
9 meetings.

10 Hence, the overlap is not evidence of any ongoing relationship. Moreover, the  
11 overlap is not evidence of a formal relationship, but appears to have resulted from the  
12 propensity for Democratic activists to become involved in both organizations that were  
13 dedicated to electing Democratic candidates. In the circumstances presented, the current  
14 overlap is not sufficient evidence, by itself, to establish affiliation.

15 *(G) Whether a sponsoring organization or committee provides funds or goods in a*  
16 *significant amount or on an ongoing basis to another sponsoring organization or*  
17 *committee. 11 CFR 100.5(g)(4)(ii)(G); 110.3(a)(3)(ii)(G).*

18  
19 *(H) Whether a sponsoring organization or committee causes or arranges for*  
20 *funds in a significant amount or on an ongoing basis to be provided to another*  
21 *sponsoring organization or committee. 11 CFR 100.5(g)(4)(ii)(H);*  
22 *110.3(a)(3)(ii)(H).*

23  
24 With respect to funding of one committee by another, DPAC has made donations  
25 to the County Party Committee on several occasions. During the 2006 election cycle and  
26 up to March 12, 2007, DPAC donated \$1,820 to the County Party Committee to defray  
27 the expenses of a temporary Butler County Democratic Headquarters. In addition, DPAC



1 made cash donations of \$100 and \$350 to the County Party Committee during the 2006  
2 election cycle. DPAC held meetings at the County Party Committee's headquarters in  
3 late 2006 and for the first few months of 2007.

4 In addition, DPAC purchased advertisements in the County Party Committee's  
5 2006 and 2007 Spring Dinner programs, at \$100 per advertisement. DPAC's last such  
6 purchase was in April 2007. DPAC also made an in-kind donation of two gift baskets  
7 valued at \$80 for a County Party Committee-sponsored auction in September 2007.

8 DPAC has not caused any other funds or things of value to be provided to the County  
9 Party Committee. The County Party Committee has not provided any funds to DPAC.  
10 DPAC does not intend to make future donations to the County Party Committee.<sup>3</sup>

11 DPAC's provision of funds to the County Party Committee was sporadic and in  
12 small amounts, and it intends to make no further payments in the future. Nor is there any  
13 indication that the County Party Committee has provided or will provide funds to DPAC.  
14 This supports a conclusion that the two organizations are not affiliated.

15 *(I) Whether a sponsoring organization or committee had an active or significant*  
16 *role in the formation of another sponsoring organization or committee. 11 CFR*  
17 *100.5(g)(4)(ii)(I); 110.3(a)(3)(ii)(I).*

18  
19 DPAC was formed at a time when Democratic activists were enthusiastic but the  
20 County Party Committee had not been very active. Some of the activists who formed  
21 DPAC also became involved in the County Party Committee. Although the County Party  
22 Committee's previous low level of activity may have created an incentive for the

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<sup>3</sup> The County Party Committee received donations totaling \$8,334 in 2005, \$23,417 in 2006, and \$29,873 in 2007. DPAC reported disbursements totaling \$2,967 in 2005, \$6,197 in 2006, and \$5,215 in 2007. As indicated by the figures discussed above, DPAC's donations constituted small fractions of the total donations received by the County Party Committee and the amounts disbursed by DPAC.

1 formation of DPAC, it does not appear that the County Party Committee itself had any  
2 role in DPAC's formation.

3 *(J) Whether the sponsoring organizations or committees have similar patterns of*  
4 *contributions or contributors which indicates a formal or ongoing relationship*  
5 *between the sponsoring organizations or committees. 11 CFR 100.5(g)(4)(ii)(J);*  
6 *110.3(a)(3)(ii)(J).*

7  
8 Both organizations' 2006 Cycle 7 disclosure reports, filed with the Pennsylvania  
9 Department of State,<sup>4</sup> list some common donors and recipients.<sup>5</sup> The County Party  
10 Committee itemized 31 donors. DPAC itemized thirteen donors. Of these thirteen, four  
11 also made donations to the County Party Committee. In 2007, the County Party  
12 Committee itemized 84 donors, and DPAC itemized three donors. Only one of these  
13 three donated to both the County Party Committee and DPAC.

14 In 2006, both organizations made contributions to Porter for Congress and  
15 Citizens for Altmire, and donations to William Neel. The contributions to Porter for  
16 Congress occurred on the same day for the same amount.<sup>6</sup> Donations to Citizens for  
17 Altmire and William Neel occurred eleven days apart, and were for different amounts. In  
18 addition, the County Party Committee made a donation to John Olesnevich, and a  
19 contribution to the Bob Casey for Pennsylvania Committee. DPAC made a donation to  
20 Friends of J. Gibbon, and the previously discussed donations to the County Party  
21 Committee.

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<sup>4</sup> The County Party Committee's report can be found here:  
<http://www.campaignfinance.state.pa.us/CFReport.aspx?CFReportID=50352&Section=Cover>  
DPAC's report can be found here:  
<http://www.campaignfinance.state.pa.us/CFReport.aspx?CFReportID=50867&Section=Cover>  
Both reports were last accessed on March 18, 2008.

<sup>5</sup> The Cycle 7 report is an annual report that includes all information for the calendar year.

<sup>6</sup> The County Party Committee made two contributions to Porter for Congress, only one of which was contemporaneous with the contribution by DPAC.

1           While there were some similarities in patterns of donations or contributions to  
2 prominent Democratic nominees who were running for office in Butler County or state-  
3 wide, these patterns do not, by themselves, demonstrate a formal or ongoing relationship  
4 between the two Democratic-oriented organizations.<sup>7</sup>

5           *c. Conclusion*

6           The application of the factors in the context of the overall relationship between  
7 DPAC and the County Party Committee leads the Commission to conclude, on balance,  
8 that DPAC and the County Party Committee are not affiliated.

9           Several factors weigh against affiliation. First, neither organization had an active  
10 or significant role in the formation of the other. Second, the County Party Committee has  
11 no ability to exercise authority over DPAC, and DPAC has no ability to exercise  
12 authority over the County Party Committee. Third, neither organization provided  
13 significant funds to the other. Moreover, the small donations DPAC made to the County  
14 Party Committee were sporadic and have now ceased. Fourth, there are no similar  
15 patterns of donations to or from the two organizations that suggest a formal or ongoing  
16 relationship between the two organizations.

17           Currently, there is a small overlap between the memberships and a small presence  
18 of general members from each organization on the other organization's executive  
19 committee. At present the two organizations do not have any common officers or  
20 executive committee members, given that the organizations have been disengaging from  
21 one another.

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<sup>7</sup> Neither organization donated to any candidate in 2005. DPAC donated to five candidates in 2007, while the County Party Committee donated to none.

1           For these reasons, the Commission concludes that DPAC and the County Party  
2 Committee are not currently affiliated.

3           This response constitutes an advisory opinion concerning the application of the  
4 Act and Commission regulations to the specific transaction or activity set forth in your  
5 request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any  
6 of the facts or assumptions presented and such facts or assumptions are material to a  
7 conclusion presented in this advisory opinion, then the requester may not rely on that  
8 conclusion as support for its proposed activity. The cited advisory opinions are available  
9 on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

10

Sincerely,

11

David M. Mason  
Chairman

12