

PUBLIC COMMENTS ON DRAFT ADVISORY OPINIONS

Members of the public may submit written comments on draft advisory opinions.

DRAFT ADVISORY OPINION 2012-04 is now available for comment. It was requested by James C. Farrar, Jr., on behalf of Justice Party of Mississippi, and is scheduled to be considered by the Commission at its public meeting on February 16, 2012.

If you wish to comment on DRAFT ADVISORY OPINION 2012-04, please note the following requirements:

- 1) Comments must be in writing, and they must be both legible and complete.
- 2) Comments must be submitted to the Office of the Commission Secretary by hand delivery or fax ((202) 208-3333), with a duplicate copy submitted to the Office of General Counsel by hand delivery or fax ((202) 219-3923).
- 3) Comments must be received by noon (Eastern Time) on February 15, 2012.
- 4) The Commission will generally not accept comments received after the deadline. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.
- 5) All timely received comments will be made available to the public at the Commission's Public Records Office and will be posted on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

REQUESTOR APPEARANCES BEFORE THE COMMISSION

The Commission has implemented a pilot program to allow advisory opinion requestors, or their counsel, to appear before the Commission to answer questions at the open meeting at which the Commission considers the draft advisory opinion. This program took effect on July 7, 2009.

Under the program:

- 1) A requestor has an automatic right to appear before the Commission if any public draft of the advisory opinion is made available to the requestor or requestor's counsel less than one week before the public meeting at which the advisory opinion request will be considered. Under these circumstances, no advance written notice of intent to appear is required. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2).**
- 2) A requestor must provide written notice of intent to appear before the Commission if all public drafts of the advisory opinion are made available to requestor or requestor's counsel at least one week before the public meeting at which the Commission will consider the advisory opinion request. This one-week period is shortened to three days for advisory opinions under the expedited twenty-day procedure in 2 U.S.C. 437f(a)(2). The notice of intent to appear must be received by the Office of the Commission Secretary by hand delivery, email (Secretary@fec.gov), or fax ((202) 208-3333), no later than 48 hours before the scheduled public meeting. Requestors are responsible for ensuring that the Office of the Commission Secretary receives timely notice.**
- 3) Requestors or their counsel unable to appear physically at a public meeting may participate by telephone, subject to the Commission's technical capabilities.**
- 4) Requestors or their counsel who appear before the Commission may do so only for the limited purpose of addressing questions raised by the Commission at the public meeting. Their appearance does not guarantee that any questions will be asked.**

FOR FURTHER INFORMATION

Press inquiries: Judith Ingram
Press Officer
(202) 694-1220

Commission Secretary: Shawn Woodhead Werth
(202) 694-1040

Comment Submission Procedure: Kevin Deeley
Acting Associate General Counsel
(202) 694-1650

Other inquiries:

To obtain copies of documents related to Advisory Opinion 2012-04, contact the Public Records Office at (202) 694-1120 or (800) 424-9530, or visit the Commission's website at <http://saos.nictusa.com/saos/searchao>.

ADDRESSES

Office of the Commission Secretary
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Office of General Counsel
ATTN: Kevin Deeley, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

AGENDA DOCUMENT NO. 12-10



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2012 FEB -9 P 4:41

February 9, 2012

AGENDA ITEM

MEMORANDUM

TO: The Commission

For Meeting of 2-16-12

FROM:

Anthony Herman *AH*
General Counsel

Kevin Deeley *KS*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joanna Waldstreicher *JSW by RMK*
Attorney

Subject: Draft AO 2012-04 (Justice Party of Mississippi)

Attached is a proposed draft of the subject advisory opinion. We have been asked to have this draft placed on the Open Session agenda for February 16, 2012.

Attachment

1 ADVISORY OPINION 2012-04

2

3 James C. Farrar, Jr.
4 Justice Party of Mississippi
5 850 North Jefferson Street A4
6 Jackson, MS 39202

DRAFT

7

8 Dear Mr. Farrar:

9 We are responding to your advisory opinion request concerning the application of
10 the Federal Election Campaign Act (the "Act") and Commission regulations to the status
11 of the Justice Party of Mississippi (JPMS) as a State party committee.

12 JPMS (1) will qualify as a political party; (2) possesses an official party structure;
13 and (3) is responsible for the day-to-day operation of a political party at the State level.

14 Accordingly, the Commission concludes that JPMS will qualify as a State committee of a
15 political party when a JPMS nominee for Federal office whose name appears on the
16 election ballot qualifies as a "candidate" under the Act and Commission regulations.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 January 9, your email received on January 18, 2012, and public disclosure reports filed
20 with the Commission.

21 JPMS is a political committee that is registered with both the Commission and the
22 Mississippi Secretary of State. JPMS's purpose is "to work for Economic and Jobs
23 Justice, Electoral Justice, U.S. & Global Health Justice, and Environmental Justice."
24 JPMS Bylaws, Art. 1, Sec. 2. JPMS is associated with Justice Party USA, a national
25 organization that has not sought the Commission's recognition as a national party
26 committee.

1 JPMS's responsibilities include raising contributions, assisting candidates'
2 fundraising efforts, conducting voter registration drives, holding a State nominating
3 convention, and nominating candidates for State and Federal office. JPMS's Bylaws set
4 forth the organization's structure, procedures, and governance.

5 JPMS's organizational structure consists of a State executive committee and an
6 executive committee from each county, Congressional district and some municipalities in
7 Mississippi. JPMS Bylaws, Art. 2. The State executive committee is authorized "to
8 conduct and certify primary elections and canvass returns as provided by law, certify
9 party primary candidates, establish federal election committees, and do all other duties
10 conferred upon it by state or federal law." JPMS Bylaws, Art. 4, Sec. 2. The State
11 executive committee prescribes and enforces party rules, regulations, and penalties.
12 JPMS Bylaws, Art. 4, Sec. 3. The State Executive Committee also establishes standing
13 committees to carry out the business of JPMS, including an Elections Committee, a
14 Budget and Finance Committee, a Party Development and Education Committee, a
15 Campaign Committee, and a Platform Committee. JPMS Bylaws, Art. 5, Sec. 1.

16 The State of Mississippi has recognized JPMS as a political party, which will
17 entitle JPMS's nominee for President or any other elected office to appear on the
18 Mississippi 2012 election ballot as a candidate of JPMS. JPMS will hold a state
19 convention in June 2012 to adopt a platform, select presidential electors, and nominate
20 candidates. JPMS Bylaws, Art. 2, Sec. 4. Ross C. "Rocky" Anderson has announced his
21 candidacy for President as a JPMS candidate and has filed a Statement of Candidacy with
22 the Commission. His principal campaign committee, Rocky Anderson Our President

1 2012 Inc., has filed a Statement of Organization with the Commission, but has not yet
2 filed any financial reports.

3 ***Question Presented***

4 *Does JPMS qualify as a State committee of a political party under the Act and*
5 *Commission regulations?*

6 ***Legal Analysis and Conclusions***

7 JPMS will qualify as a State committee of a political party, when at least one
8 candidate nominated by JPMS for Federal office whose name appears on the election
9 ballot satisfies the definition of a “candidate” under the Act and Commission regulations.

10 A “political party” is an association, committee, or organization that nominates a
11 candidate for election to any Federal office whose name appears on the election ballot as
12 the candidate of the association, committee, or organization. 2 U.S.C. 431(16); 11 CFR
13 100.15. A “State committee” of a political party is an organization that, by virtue of the
14 bylaws of a political party, is part of the official party structure and is responsible for the
15 day-to-day operation of such political party at the State level, as determined by the
16 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).

17 A State party organization not affiliated with a national political party qualifies as
18 a State committee of a political party if three criteria are met: (1) the State party
19 organization must itself qualify as a “political party”; (2) the State party organization
20 must itself possess an official party structure; and (3) the State party organization must be
21 responsible for the day-to-day operation of the party at the State level. *See, e.g.,*

1 Advisory Opinions 2008-12 (Independent Party of Oregon) and 2007-23 (Independence
2 Party of New York).

3 *(1) Qualification as a Political Party*

4 To qualify as a political party, JPMS must have at least one candidate for Federal
5 office whose name appears on the ballot as a candidate of JPMS. An individual will be
6 considered a candidate if the individual, the individual's authorized committee, or other
7 persons authorized by the individual have received contributions aggregating in excess of
8 \$5,000 or have made expenditures aggregating in excess of \$5,000. See 2 U.S.C. 431(2);
9 11 CFR 100.3(a)(1).

10 Although JPMS has been recognized as a political party by the State of
11 Mississippi, and is therefore entitled to have its nominees for office appear on the 2012
12 ballot, no candidates have yet been nominated by JPMS. Rocky Anderson has filed a
13 Statement of Candidacy with the Commission indicating that he is seeking to run for
14 President as a candidate of the Justice Party. However, JPMS has not yet nominated Mr.
15 Anderson as its candidate, and therefore at this time it is uncertain whether he or someone
16 else ultimately will be the JPMS nominee for President and appear on the Mississippi
17 ballot.¹

18 Nonetheless, as a result of its recognition as a political party by the State of
19 Mississippi, JPMS has obtained the promise of ballot access for whomever it chooses as
20 its nominees for office. So long as at least one individual who ultimately is chosen as a
21 JPMS nominee for Federal office qualifies as a "candidate" under the Act and

¹ The Commission is not aware of any other individuals currently seeking JPMS nomination for Federal office.

1 Commission regulations, JPMS will have succeeded in obtaining ballot access for at least
2 one candidate for Federal office, satisfying the first requirement for recognition as a State
3 committee of a political party.²

4 *(2) Official Party Structure*

5 JPMS is associated with Justice Party USA, a national organization that has not
6 yet sought the Commission's recognition as a national party. However, affiliation with a
7 recognized national political party is not necessary to obtain State party committee status.
8 *See, e.g.,* Advisory Opinions 2008-12 (Independent Party of Oregon), 2000-21 (State
9 Committee of the New York State Conservative Party), and 2000-14 (New York State
10 Committee of the Working Families Party). In cases where a State party organization is
11 not affiliated with a recognized national political party, the State party organization must
12 itself possess an official party structure.

13 The Commission concludes that JPMS possesses an official party structure.
14 JPMS's bylaws provide for such a structure, establishing a State executive committee and
15 district, county, and municipal committees, as well as standing committees of the State
16 executive committee, and it will operate consistent with its bylaws.

17 *(3) Responsibility for Day-to-Day Operation of a Political Party*

18 The third element in determining whether a State party organization is a State
19 committee of a political party is whether the organization, by virtue of its bylaws or by

² In Advisory Opinion 1995-49 (Natural Law Party of Texas), the Commission concluded the Natural Law Party of Texas was not yet a State party committee of a national party because, under Texas law, the Texas Party still had to complete petition drives in order to have its eventual nominees placed on the ballot. However, the Commission concluded that once the Texas Party did place Federal candidates on the ballot, it would become a State party committee of a national party. Similarly, here, under Mississippi law, JPMS represents that whomever it chooses as its nominees for office will have ballot access.

1 operation of State law, is responsible for the day-to-day operation of a political party at
2 the State level. *See* 2 U.S.C. 431(15); 11 CFR 110.14(a); *see also* Advisory Opinions
3 2008-12 (Independent Party of Oregon) and 2007-23 (Independence Party of New York).

4 JPMS has an agreement with Justice Party USA under which JPMS performs the
5 activities necessary for the day-to-day operations of the party at the State level. JPMS's
6 Bylaws set forth the organizational structure and responsibilities of JPMS and its
7 officials, as noted above. *See* JPMS Bylaws, Art. 2-5. The Bylaws identify JPMS's
8 responsibilities for day-to-day functions and operations, including responsibility for the
9 State party's budget, fundraising activities, membership and voter registration, public
10 education, assisting party candidates and their campaign committees, complying with
11 campaign finance laws, developing a platform, and working with the national party.
12 JPMS's responsibilities are consistent with those of other State party committees that the
13 Commission has previously recognized. *See, e.g.,* Advisory Opinions 2008-12
14 (Independent Party of Oregon) and 2007-23 (Independence Party of New York). Thus,
15 JPMS is responsible for the day-to-day operations of a political party at the State level.

16 In sum, JPMS will satisfy all three parts of the definition of a State committee
17 when at least one individual who ultimately is chosen as a JPMS nominee for Federal
18 office appears on the election ballot and meets the definition of a "candidate" within the
19 meaning of the Act and Commission regulations. The Commission therefore concludes

1 that JPMS will qualify as a State committee of a political party under the Act and
2 Commission regulations when that condition is met.³

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 requestor may not rely on that
8 conclusion as support for its proposed activity. Any person involved in any specific
9 transaction or activity which is indistinguishable in all its material aspects from the
10 transaction or activity with respect to which this advisory opinion is rendered may rely on
11 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
12 conclusions in this advisory opinion may be affected by subsequent developments in the
13 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
14 The cited advisory opinions are available on the Commission's website, or directly from
15 the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

16 On behalf of the Commission,

17
18
19 Caroline C. Hunter
20 Chair

³ JPMS need not reapply to the Commission for recognition of State committee status when this condition is met. *See* Advisory Opinion 1995-49 n. 3 (noting that, once the Texas Party obtained ballot access for its Federal candidates, it need not reapply for recognition of state committee status). In the interim, since JPMS is currently registered as a State party committee but does not yet qualify as such, it should update its Form 1 to indicate that it is a nonconnected political committee. Once JPMS succeeds in obtaining ballot access for at least one candidate for Federal office, it may update its Form 1 to register as a State party committee. At that time, JPMS should include a Form 99 indicating that, pursuant to this advisory opinion, it has met the outstanding condition by placing a candidate on the ballot.