



FEDERAL ELECTION COMMISSION
Washington, DC 20463

August 11, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2000-18

Michael B. Trister
Lichtman, Trister, Singer & Ross
1666 Connecticut Avenue, NW
Suite 500
Washington, D.C 20009

Dear Mr. Trister:

This refers to your letters dated July 31 and June 16, 2000, requesting an advisory opinion concerning the application of the Presidential Primary Matching Payment Account Act ("the Matching Act") and Commission regulations to a determination of the matching payment period for the presidential primary campaign of Mr. Ralph Nader.

FACTS

You state that you represent the Nader 2000 Primary Committee, Inc. ("Committee"), which is the principal campaign committee of Mr. Nader for his candidacy for the office of President of the United States. The Committee seeks a determination that the matching payment period under the Matching Act for Mr. Nader's candidacy will extend until August 17, 2000, the last day of the Democratic National Convention.

You explain that on February 18, 2000, Mr. Nader filed a statement of candidacy (FEC Form 2) designating the Committee as his principal campaign committee for his Presidential campaign. On February 23, 2000, the Committee filed a statement of organization (FEC Form 1). You state that the Committee has filed periodic reports detailing its contributions and expenditures in accordance with applicable requirements. On June 7, 2000, Mr. Nader submitted a letter to the Commission seeking to become eligible to receive Presidential primary matching fund payments. The letter contained

the agreements specified in 11 CFR 9033.1 and the certifications specified in 11 CFR 9033.2. On the same date, the Committee submitted a threshold submission for matching fund payments as specified in 11 CFR 9036.1.¹

You further explain that, in an effort to appear on the general ballot in all or substantially all of the States, Mr. Nader is seeking the nomination of the Green Party to appear as its candidate for President in those States where the Party or its State affiliates have attained ballot access on the basis of their prior election activities. There are 14 such States. Mr. Nader is also working with State affiliates of the Green Party in 18 States where the Party does not have ballot access and where the Party must petition to have its candidate for President appear on the ballot. In 18 additional States, Mr. Nader is seeking to have his name appear on the ballot as an independent candidate through the State's petition process since this is less onerous than seeking to qualify the Green Party for the general election ballot.² Mr. Nader is also seeking the nomination of the United Citizens Party ("UCP") as its candidate for President. UCP has ballot access for its candidates in the State of South Carolina and will select its Presidential candidate at a party meeting scheduled for August 12, 2000.

You explain the process through which Mr. Nader will receive the nomination of the Green Party. On June 23--25, 2000, the Association of State Green Parties ("ASGP") held a convention in Denver, Colorado, for the purpose of nominating candidates for President and Vice-President.³ Delegations from at least 42 States were expected to attend and participate in the convention.⁴ Under the rules of the convention and in order to participate, a State delegation must pledge to support the nominees chosen by the convention. State Green Parties that do not participate in the convention, however, are free to select their own nominees.

In those States where Green Parties affiliated with ASGP have attained ballot access for their candidates, nomination at the ASGP convention is effectively the last step in the nomination process, except for certain formalities mandated by State laws, as it is for candidates of the major parties. In the States where ASGP affiliates have not attained ballot access, however, the nomination process also requires the submission of petitions seeking ballot access, either on behalf of the State Green Party or Mr. Nader. The petition process in at least 30 of these States will not be completed under State law until after the ASGP convention; in six of the States, the deadline for submitting petitions

¹ On June 30, 2000, the Commission certified Mr. Nader eligible for Federal matching funds and also certified payment of \$100,000 for his 2000 campaign for the nomination of the Green Party. On July 31, the Commission certified an additional amount of \$178,628 in matching funds for Mr. Nader.

² In a number of the States where Mr. Nader is seeking to petition onto the ballot as an independent candidate, he may still, however, be identified with a Green Party label.

³ Your June 16 letter was received just prior to the beginning of the ASGP Denver convention. According to news reports on June 25, Mr. Nader received the nomination of the ASGP at the Denver convention.

⁴ Although the Commission has granted State committee status to several Green Party affiliates, the Commission denied national committee status to the national Green Party in Advisory Opinion 1996-35. *See also* Advisory Opinions 1996-43 (New York State Green Party), 1997-29 (New Mexico Green Party), 1998-23 (Maine Green Party), and 1998-27 (Hawaii Green Party).

is not until after the date of the Democratic National Convention. Your request includes a list of these States and the deadline for submitting these petitions.

Your request asserts that, in light of the above facts, Mr. Nader's date of ineligibility to receive Federal funds under the Matching Act should be the last day of the Democratic National Convention because the deadline for filing party/candidate petitions for him to appear on the general election ballot is after that date in a number of States.

You also offer a second proposal. If the Commission does not determine that Mr. Nader's date of ineligibility is the last day of the Democratic National Convention (by reason of the later deadlines for him to submit party and candidate petitions in a number of States), then his date of ineligibility should be, under 11 CFR 9032.6(b), the date of the UCP convention, or the last day of the Democratic convention, whichever is earlier.

MATCHING ACT AND COMMISSION REGULATIONS

Under the Matching Act and Commission regulations, the term "matching payment period" means the period beginning with the beginning of the calendar year in which a general election for the office of President of the United States will be held and ending on the date on which the national convention of the party, whose nomination a candidate seeks, nominates its presidential candidate, or, in the case of a party which does not make such nomination by national convention, ending on the earlier of the date such party nominates its presidential candidate, or the last day of the last national convention held by a major party during such calendar year. 26 U.S.C. §9032(6), *see also* 11 CFR 9032.6. In the current Federal election cycle, the last national convention of a major party is being held by the Democratic Party on August 14 through 17.

APPLICATION TO PROPOSAL

The Commission has examined the application of the 26 U.S.C. §9032(6) to situations where candidates sought the nomination of several minor political parties.⁵ The Commission reviewed the matching fund status of an individual seeking the Presidential nomination of several minor parties that were active in separate States. *See* Advisory Opinion 1984-11. It has also considered a candidate who was seeking the Presidential nomination, first of the Citizen's Party (a minor party which had a recognized national committee and a national nominating convention), and then concurrently, the nomination of several minor parties at the State level that did not have national conventions. *See* Advisory Opinion 1984-25. In both circumstances the candidates asked whether their matching payment periods would extend to the date of the candidates' nominations by the last State party to make its nomination, or the last date of the last major party Presidential nomination convention, whichever was earlier.

⁵ Use of the phrase "minor political party or parties" is intended to distinguish them from the two major political parties. *See* 26 U.S.C. §9002(6)[defining "major party"]. It does not mean that any so called "minor" party has qualified as a "minor party" under 26 U.S.C. §9002(7).

The Commission concluded in both cases that neither the Matching Act, nor Commission regulations, required that the matching payment period for one non-major party Presidential candidate be shorter than that of another such candidate solely for the reason that one was seeking a national party nomination by national convention, and the other candidate was seeking nomination by several State political parties. The Commission stated: "Both candidates should, in the Commission's view, have the same range of alternatives for the determination of their matching payment periods." Advisory Opinion 1984-25.

These past interpretations of the regulations indicate that the close of Mr. Nader's matching payment period would be the date he receives the nomination of the South Carolina United Citizens Party, or the last date of the last major party nominating convention, whichever is earlier. On this basis, the Commission determines that Mr. Nader's matching payment period would end on August 12, 2000, the date he is expected to receive the UCP nomination. Having made this determination, the Commission need not decide whether the June 25, Green Party convention was a national convention or whether the procedure used to nominate Mr. Nader at that convention represented the culmination of the Green Party's nomination process.⁶

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

Sincerely,

(signed)

Darryl R. Wold
Chairman

Enclosures (AOs 1998-27, 1998-23, 1997-29, 1996-43, 1996-35, 1984-25 and 1984-11)

⁶ In Advisory Opinion 1984-11, the Commission noted that none of the political parties, whose nomination the candidate was seeking, had been recognized as having national committee status and it assumed, for purposes of the opinion, that none of conventions of those organizations would be national conventions. The Commission does not make the same assumption in this opinion. Instead, it does not reach the question.