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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 13-17
AGENDA ITEM May 9, 2013
For meeting of [Month day, Year]
[SUBMITTED LATE]

May 3, 2013

MEMORANDUM

TO: The Commission

FROM: Anthony Herman
General Counsel

A/K

Adav Noti *AN*
Acting Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Anthony T. Buckley *ATB*
Attorney

Subject: Draft AO 2013-01 (1787 National Committee, Inc.)

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 noon (Eastern Time) on May 8, 2013.

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 <http://www.fec.gov/law/drafaos.shtml>.

Attachment

1 ADVISORY OPINION 2013-01
2

3 Emily Mathews, Chairman
4 1787 National Committee, Inc.
5 244 Madison Avenue
6 Suite 1787
7 New York, NY 10016
8

DRAFT

9 Dear Ms. Mathews:

10 This refers to your letter dated February 1, 2013, requesting an advisory opinion
11 regarding whether 1787 National Committee, Inc. (“1787”) is a “national committee” of a
12 political party for purposes of the Federal Election Campaign Act of 1971, as amended
13 (“the Act”), and Commission regulations. The Commission concludes that 1787 is not a
14 national committee of a political party.

15 ***Background***

16 The facts presented in this advisory opinion are based on your letter (“AOR”),
17 which attached 1787’s Bylaws.

18 1787 was incorporated on January 17, 2013, and registered with the Commission
19 as a nonconnected political committee on January 24, 2013. The purpose of 1787 is to
20 “plan the nominating convention, promote candidates, adopt the party platform and rules,
21 and fundraise for the 1787 Party.” Bylaws of the 1787 National Committee, Inc., Art. 1,
22 Sec. 1.1. The 1787 Party is “on track to achieve ballot access for at least twelve
23 congressional candidates in ten states for the 2014 election,” but the 1787 Party has not
24 yet placed any Federal candidates on any ballot. (See AOR at 3, 5.)

25 ***Question Presented***

26 *Is 1787 the national committee of a political party within the meaning of the Act
27 and Commission regulations?*

1 ***Legal Analysis and Conclusion***

2 No, 1787 is not the national committee of a political party within the meaning of
3 the Act and Commission regulations.

4 The Act defines a “national committee” as “the organization which, by virtue of
5 the bylaws of a political party, is responsible for the day-to-day operation of such
6 political party at the national level, as determined by the Commission.”¹ 2 U.S.C.
7 431(14); *see also* 11 C.F.R. 100.13. Thus, at the threshold, the Commission must first
8 determine whether the requestor is responsible for the operation of a “political party”
9 within the meaning of the Act. *See, e.g.*, Advisory Opinion 1995-16 (U.S. Taxpayers
10 Party) at 2; Advisory Opinion 1980-03 (Citizens Committee) at 2.

11 The Act defines a “political party” as an “organization which nominates a
12 candidate for election to any Federal office whose name appears on the election ballot as
13 the candidate of such . . . organization.” 2 U.S.C. 431(16). Accordingly, to qualify for
14 political party status, an organization must place a Federal candidate on the ballot under
15 the organization’s name.

16 The mere intention to place candidates on the ballot does not suffice. In Advisory
17 Opinion 1980-03 (Citizens Committee), the Citizens Party intended to nominate
18 candidates for Federal office, but “the nominating process [was] in the early stages of
19 planning and no individuals ha[d] been nominated as candidates of the Citizens Party in

¹ For the 2013-14 election cycle, a national committee of a political party may accept contributions of up to \$34,200 per year from individuals, whereas such contributions to a nonconnected committee are limited to \$5,000 per year. *See* 2 U.S.C. 441a(a)(1)(B)-(C), 441a(c)(1)(B); 11 C.F.R. 110.1(c)(1), (d); *see also* http://www.fec.gov/press/press2013/20133001_2013-14ContributionLimits.shtml

1 any forthcoming or previous Federal election.” Advisory Opinion 1980-03 (Citizens
2 Committee) at 2. The Commission determined that

3 [u]ntil such time as the [Citizens Party] has received
4 verification from any State election official that a Citizens
5 Party candidate for a Federal office has satisfied ballot
6 access requirements in that State and that the candidate’s
7 name will appear on the election ballot as the Citizens Party
8 candidate, the Citizens Party does not qualify as a “political
9 party” under the Act.

10
11 *Id.* The Commission has never recognized an organization as a political party without the
12 organization first placing identified Federal candidates on the ballot.²

13 An organization need only place a single Federal candidate on a ballot to qualify
14 as a political party, 2 U.S.C. 431(16), but the 1787 Party has not yet placed any
15 candidates for Federal office on any ballot. Thus, the 1787 Party does not qualify as a
16 “political party” under the Act and Commission regulations. Accordingly, 1787 is not
17 the national committee of a political party.³

² See, e.g., Advisory Opinion 1995-16 (U.S. Taxpayers Party) (organization qualified as political party after its presidential candidate had achieved ballot access in several states under designation of political parties affiliated with requestor); Advisory Opinion 1992-44 (U.S. Taxpayers Party) (same); Advisory Opinion 1992-30 (Natural Law Party) (organization qualified as political party after it had placed 31 congressional candidates on ballot in 14 states, and its designated presidential candidate had achieved ballot access in 13 states); Advisory Opinion 1988-45 (Populist Party) (organization qualified as political party after its presidential candidate appeared on nine states’ ballots under organization’s name); Advisory Opinion 1980-96 (Anderson) (State organizations qualified as political parties after they had obtained ballot positions for specific presidential candidate).

³ The Commission would reach the same conclusion if the 1787 Party had demonstrated that it is a “political party.” In Advisory Opinion 1992-44 n.7 (U.S. Taxpayers Party), the Commission noted that it determines national committee status based not on the party’s “planned” activities but on its ongoing or completed party building activities and successful ballot access efforts. Although 1787 describes many future party building activities it intends to undertake, its activities to date appear to have been limited to those steps necessary for its initial formation, such as adopting by-laws, recruiting members, and creating the shell of a website. Accordingly, 1787 has not at present “engaged in sufficient activity on a national level for the committee to qualify as a national committee.” Advisory Opinion 1988-45 (Populist Party); see also Advisory Opinion 1992-30 (Natural Law Party), Advisory Opinion 1992-44 (U.S. Taxpayers Party).

1 This response constitutes an advisory opinion concerning the application of the
2 Act and Commission regulations to the specific transaction or activity set forth in your
3 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
4 of the facts or assumptions presented, and such facts or assumptions are material to a
5 conclusion presented in this advisory opinion, then the requestor may not rely on that
6 conclusion as support for its proposed activity. Any person involved in any specific
7 transaction or activity which is indistinguishable in all its material aspects from the
8 transaction or activity with respect to which this advisory opinion is rendered may rely on
9 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or
10 conclusions in this advisory opinion may be affected by subsequent developments in the
11 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
12 The cited advisory opinions are available on the Commission’s website, or directly from
13 the Commission’s Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

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On behalf of the Commission,

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Ellen L. Weintraub Chair