



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 8, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2016-22

Christina Sirois, Esq.
DB Capitol Strategies PLLC
203 South Union Street
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Alexandria, VA 22314

Dear Ms. Sirois:

We are responding to your request on behalf of the Libertarian Party of Georgia, Inc. and the Libertarian Party of Tennessee (the “Committees”) regarding their status as state committees of a political party under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and Commission regulations. The Commission concludes that the Committees qualify as state committees of a national political party.

Background

The facts presented in this advisory opinion are based on your advisory opinion request (“AOR”) submissions dated August 31 and November 1, 2016; public filings with the Commission; and public filings with the applicable Secretaries of State and State Boards of Elections.

In 1975, the Commission determined that the Libertarian National Party (“LNP”) is a national political party. Advisory Opinion 1975-129 (National Committee of the Libertarian Party). The Libertarian National Committee, Inc. (“LNC”) is the national party committee of the LNP. The LNC’s Executive Director, Mr. Wes Benedict, has confirmed by letter that the Committees are “chartered state-level affiliate parties” of the LNC. AOR082-083. As discussed below, the governing documents of the Committees (*e.g.*, bylaws, constitutions) show their organizational structure and activities as Libertarian committees.

Question Presented

Do the Committees qualify as state committees of a political party within the meaning of the Act and Commission regulations?

Legal Analysis and Conclusion

Yes, the Committees qualify as state committees of a political party within the meaning of the Act and Commission regulations.

A “state committee” is an organization that, “by virtue of the bylaws of a political party . . . is part of the official party structure and is responsible for the day-to-day operation of the political party at the [s]tate level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a); 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization that nominates a candidate for election to any [f]ederal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15. The determination as to whether a state party organization qualifies as a state committee of a national political party turns on three elements: (1) the national party of which the state party organization is a part must itself be a “political party;” (2) the state party organization must be part of the official structure of the national party; and (3) the state party organization must be responsible for the day-to-day operation of the national party at the state level. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The Commission addresses each of these three elements in turn.

(1) Qualification of the LNP as Political Party

The Commission has previously determined that the LNP qualifies as a political party. *See* Advisory Opinion 1975-129 (National Committee of the Libertarian Party). The Commission is aware of no factual changes that would alter that conclusion.

(2) Status of the Committees as Part of the Official Structure of the LNP

To determine whether a state party organization is part of the official structure of a national party, the Commission evaluates documentation from the national party. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The letter from Mr. Wes Benedict, Executive Director of the LNC, confirms that the Committees are part of the official party structure of the LNP.

(3) Responsibility of the Committees for Day-to-Day Functions and Operations of the LNP at the State Level

To determine whether a state party organization is responsible for the day-to-day operations of a national party at the state level, the Commission considers: (a) whether the state organization has placed a federal candidate on the ballot (thereby itself qualifying as a “political

party” under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents of the state party organization indicate activity commensurate with the day-to-day functions and operations of a political party at the state level. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut).

(a) *Candidate on the Ballot*

Because an organization must place a federal candidate on the ballot to qualify as a “political party,” *see* 52 U.S.C. § 30101(16); 11 C.F.R. § 100.15, the organization responsible for the operation of a political party at the state level must obtain ballot access for a federal candidate to qualify as a “state committee.” *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); *see e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut).

Each of the Committees “assisted in placing” the LNP’s nominee for President, Gary Johnson, on the 2016 general election ballot in its state. AOR015, 065. Further, Mr. Johnson received contributions or made expenditures in excess of \$5,000 according to disclosure reports filed with the Commission.¹ Mr. Johnson therefore satisfies the Act’s definition of a “candidate.” *See* 2 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a).

(b) *Day-To-Day Functions and Operations*

In addition to gaining ballot access for a candidate for federal office, each of the Committees must also show, in its bylaws, constitution, or other governing documents, that it is responsible for activity commensurate with the day-to-day functions and operations of a political party at the state level.

For the reasons explained below, the governing documents of the two Libertarian committees that are parties to this request indicate activity commensurate with the day-to-day functions and operations of a political party at the state level and are similar to other state party rules that the Commission has found sufficient to qualify an organization for state committee status. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2010-22 (Working Families Party of Connecticut). Therefore, the Committees satisfy the requirement of being responsible for the day-to-day functions and operations of the LNP at the state level pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

The activity of each of the Committees is discussed in turn.

¹ *See, e.g.*, Gary Johnson 2016, FEC Report 3P at 2 (Sep. 20, 2016), http://docquery.fec.gov/cgi-in/fecimg?_201609209032026391+0 (showing net election cycle contributions totaling more than \$7,921,000).

(I) *Georgia*

The first purpose stated for the Libertarian Party of Georgia, Inc. in its articles of incorporation is “[n]ominating and endorsing political candidates for both national and state offices.” AOR017. The party’s bylaws provide for the selection of candidates for political office at an annual convention, AOR028, and for the election of delegates to the LNP convention, AOR030.

The party’s bylaws also provide for the election of its officers. AOR022. These officers compose the Executive Committee, which serves as “the Board of Directors and ‘State Committee’ as provided under the election laws of the State of Georgia.” *Id.* The Executive Committee’s organizational and political responsibilities include: (1) chartering state district organizations and county parties; (2) appointing state officials; (3) approving applications for membership in the Libertarian Party of Georgia, Inc.; (4) calling special conventions; (5) selecting convention sites and dates; and (6) selecting the electors to be listed on the ballot for presidential elections. AOR023.

(II) *Tennessee*

The bylaws of the Libertarian Party of Tennessee provide for the election of its officers and set out their duties, which generally involve oversight of the functioning of the party on a day-to-day basis. The officers “find, develop, and assist coordinators, county chairs, and/or regional chairs;” represent the Libertarian Party of Tennessee as spokespeople to the LNP, the media, and the state; account for and disburse funds; maintain membership rolls; and file required documents with the Commission and the IRS. *See* AOR066-067. The party holds an annual convention. AOR067. In years without statewide elections, conventions are held for the purpose of electing officers. *Id.* In years with statewide elections, conventions are held for the purpose of nominating candidates for elective office. *Id.* The Libertarian Party of Tennessee elects delegates to the LNP national convention and selects presidential electors in years in which a presidential election is held. *See* AOR068.

Conclusion

The Commission determines that the Committees qualify as state committees of a national political party under the Act and Commission regulations because: (1) The LNP qualifies as a political party; (2) the Committees are part of the official structure of the LNP; and (3) the Committees are responsible for the day-to-day functions and operations of the LNP at the state level.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestors may not rely on that conclusion as support for their proposed activity. Any person involved in any specific transaction or activity which is

indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C. § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions, and case law. Any advisory opinions cited herein are available on the Commission's website.

On behalf of the Commission,

A handwritten signature in blue ink, appearing to read "Matthew S. Petersen", with a horizontal line extending to the right.

Matthew S. Petersen
Chairman