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By Office of the Commission Secretary at 2:07 pm, Nov 10, 2016



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 16-59-A
AGENDA ITEM
For meeting of November 17, 2016

November 10, 2016

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Adav Noti *AN*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joseph P. Wenzinger *JPW*
Attorney

Subject: AO 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.) Draft A

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 12:00 pm (Eastern Time) on November 16, 2016.

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/draftaos.shtml>.

Attachment

1 ADVISORY OPINION 2016-17

2

3 William W. Hall, Esq.

4 Warner Norcross & Judd LLP

5 900 Fifth Third Center

6 111 Lyon Street, N.W.

7 Grand Rapids, Michigan 49503-2487

8

9 Dear Mr. Hall:

DRAFT A

10 We are responding to your request on behalf of the Libertarian Party of Michigan
11 Executive Committee, Inc. (the “Committee”) regarding its status as the state committee of a
12 political party under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-46 (the “Act”), and
13 Commission regulations. The Commission concludes that the Committee qualifies as a state
14 committee of a national political party.

15 ***Background***

16 The facts presented in this advisory opinion are based on your advisory opinion request
17 (“AOR”) received on September 28, 2016, the Committee’s articles of incorporation and bylaws
18 attached thereto, public filings with the Commission, and public filings with the Michigan
19 Secretary of State.

20 In 1975, the Commission determined that the Libertarian National Party (“LNP”) was a
21 national political party. Advisory Opinion 1975-129 (National Committee of the Libertarian
22 Party). The Libertarian National Committee, Inc. (“LNC”) is the national party committee of the
23 LNP. The LNC’s Executive Director, Mr. Wes Benedict, has confirmed by letter that the
24 Committee is a “chartered state-level affiliate part[y]” of the LNC. AOR003.

25 The Committee “assisted in placing” Gary Johnson, a candidate for President, on the
26 2016 general election ballot in Michigan. AOR001. Mr. Johnson was listed on that general

1 election ballot in Michigan as a candidate of the Libertarian Party.¹ Mr. Johnson received
2 contributions or made expenditures in excess of \$5,000 according to disclosure reports filed with
3 the Commission.²

4 Pursuant to its articles of incorporation and bylaws, the Committee engages in various
5 political party activities in Michigan. *See generally* AOR005-014. These activities include:
6 serving as “the governing body and operational arm of the Libertarian Party of Michigan . . . , the
7 political party designated by the Libertarian National Committee as the affiliate of the
8 Libertarian Party in the State of Michigan,” AOR006; furthering the “principles of individual
9 liberty as expressed in the Statement of Principles of the National Libertarian Party by
10 nominating and working to elect candidates for political office and by entering into political
11 information activities,” AOR012; contributing funds to political committees, AOR006; and
12 making independent or coordinated expenditures in support of or in opposition to candidates or
13 other political activities. *Id.*

14 The articles of incorporation and bylaws also provide for an Executive Committee, the
15 members of which are elected by delegates at an annual convention. AOR012-013; *see also*
16 AOR006. In addition to governing the affairs of the party, the Executive Committee supervises
17 and manages conventions, at which nominations of candidates for public office are made.
18 AOR013-014.

¹ Michigan Secretary of State, 2016 Michigan Candidate Listing, Oct. 17, 2016, http://miboecfr.nictusa.com/election/candlist/2016GEN_CANDLIST.html.

² *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).

1 ***Question Presented***

2 *Does the Committee qualify as a state committee of a political party within the meaning*
3 *of the Act and Commission regulations?*

4 ***Legal Analysis and Conclusion***

5 Yes, the Committee qualifies as the state committee of a political party within the
6 meaning of the Act and Commission regulations.

7 A “state committee” is an organization that, “by virtue of the bylaws of a political party . . . is
8 part of the official party structure and is responsible for the day-to-day operation of the political party
9 at the [s]tate level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a); 52 U.S.C.
10 § 30101(15). 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 the
12 candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16); 11 C.F.R.
13 § 100.15.

14 The determination as to whether a state party organization qualifies as a state committee of a
15 national political party turns on three elements: (1) the national party with which the state party
16 organization is affiliated must itself be a “political party;” (2) the state party organization must be
17 part of the official structure of the national party; and (3) the state party organization must be
18 responsible for the day-to-day operation of the national party at the state level. *See, e.g.*, Advisory
19 Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01 (Green-Rainbow
20 Party); Advisory Opinion 2012-39 (Green Party of Virginia). The Commission therefore addresses
21 each of these three elements in turn.

1 (1) *Qualification of the LNP as Political Party*

2 The national party, the LNP, must qualify as a “political party” under the Act and
3 Commission regulations. The Commission has previously determined that the LNP qualifies as a
4 political party. *See* Advisory Opinion 1975-129 (National Committee of the Libertarian Party).
5 The Commission is aware of no factual changes that would alter that conclusion.

6 (2) *Status of the Committee as Part of the Official Structure of the Libertarian*
7 *National Party*

8 To determine whether a state party organization is part of the official structure of a
9 national party, the Commission evaluates documentation from the national party.
10 *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2015-01
11 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia). The letter from
12 Mr. Wes Benedict, Executive Director of the LNC (AOR003), confirms that the Committee is
13 part of the official party structure of the LNP.

14 (3) *Responsibility of the Committee for Day-to-Day Operation of the LNP at the State*
15 *Level*

16 To determine whether a state party organization is responsible for the day-to-day
17 operations of a national party at the state level, the Commission considers: (a) whether the state
18 organization has placed a federal candidate on the ballot (thereby qualifying as a “political party”
19 under 52 U.S.C. § 30101(16)); and (b) whether the bylaws or other governing documents of the
20 state party organization indicate activity commensurate with the day-to-day functions and
21 operations of a political party at the state level. *See, e.g.*, Advisory Opinion 2016-14 (11
22 Libertarian State Committees); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory
23 Opinion 2012-36 (Green Party of Connecticut).

1 (a) *Candidate on the Ballot*

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

8 The Committee assisted in placing the LNP’s nominee for President, Gary Johnson, on
9 the 2016 general election ballot in Michigan. AOR001. Mr. Johnson received contributions or
10 made expenditures in excess of \$5,000 according to disclosure reports filed with the
11 Commission. Mr. Johnson therefore satisfies the Act’s definition of a “candidate.” *See* 2 U.S.C.
12 § 30101(2); 11 C.F.R. § 100.3(a).

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

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

17 Here, the articles of incorporation and bylaws establish the organizational structure of the
18 Committee and describe the election process for, and responsibility of, party officers. They also
19 set forth the Committee’s responsibilities with respect to its role as the operational arm of the
20 LNP, membership, fundraising, communications, and other party-related tasks.

21 These governing documents indicate activity commensurate with the day-to-day
22 functions and operations of a political party at the state level and are similar to other state party
23 rules that the Commission has found sufficient to qualify an organization for state-committee

1 status. *See, e.g.*, Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion
2 2015-01 (Green-Rainbow Party); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory
3 Opinion 2012-36 (Green Party of Connecticut); Advisory Opinion 2010-22 (Working Families
4 Party of Connecticut). Therefore, the Committee satisfies the requirement of being responsible
5 for the day-to-day operation of the LNP at the state level pursuant to 52 U.S.C. § 30101(15) and
6 11 C.F.R. § 100.14(a).

7 *Conclusion*

8 The Commission determines that the Committee qualifies as the state committee of a
9 national political party under the Act and Commission regulations because: (1) The LNP
10 qualifies as a political party; (2) the Committee is part of the official structure of the LNP; and
11 (3) the Committee is responsible for the day-to-day operation of the LNP at the state level.

12 This response constitutes an advisory opinion concerning the application of the Act and
13 Commission regulations to the specific transaction or activity set forth in your request.

14 *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts
15 or assumptions presented, and such facts or assumptions are material to a conclusion presented in
16 this advisory opinion, then the requestor may not rely on that conclusion as support for their
17 proposed activity. Any person involved in any specific transaction or activity which is
18 indistinguishable in all its material aspects from the transaction or activity with respect to which
19 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.

20 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
21 affected by subsequent developments in the law including, but not limited to, statutes,
22 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
23 on the Commission's website.

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On behalf of the Commission,

Matthew S. Petersen
Chairman