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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 16-68-A
AGENDA ITEM
For meeting of December 8, 2016

November 30, 2016

MEMORANDUM

TO: The Commission

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

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Associate General Counsel

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Acting Assistant General Counsel

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Attorney

Subject: AO 2016-24 (Independence Party of Minnesota) 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 December 7, 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 2016-24

2

3 Phil Fuehrer
4 Independence Party of Minnesota
5 P.O. Box 40495
6 St. Paul, MN 55104

DRAFT A

7

8 Dear Mr. Fuehrer:

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

13 ***Background***¹

14 The IPM has been recognized under Minnesota law as either a “major party” or “minor
15 party” since 1995. *See* Advisory Opinion Request (“AOR”) at AOR001. It has nominated
16 candidates running under its name on Minnesota ballots “at all levels of government since its
17 inception in 1992,” including former Minnesota Governor Jesse Ventura. *Id.* The IPM is not
18 affiliated with a national political party.

19 The IPM currently qualifies under Minnesota law as a “minor political party.” *See*
20 AOR003-005 (notification from Minnesota Director of Elections dated June 13, 2016). In the
21 2016 general election, the IPM placed a number of candidates for federal and state office on the
22 Minnesota ballot, at least one of whom, Evan McMullin, received contributions or made
23 expenditures in excess of \$5,000 according to disclosure reports filed with the Commission.²
24 *See* AOR008.

¹ The facts presented in this advisory opinion are based on your advisory opinion request (“AOR”) received November 18, 2016, the IPM’s constitution and bylaws as incorporated by reference therein, and public filings with the Commission.

² *See* McMullin for President, Inc., FEC Report 3P at 2 (Nov. 7, 2016), available at

1 The requestor represents that the “IPM conducts activities commensurate with the ‘day-
2 to-day operation’ of the party on the state level including fundraising for state operations,
3 assisting candidates, nominating candidates and holding State Conventions and State Central
4 Committee Meetings.” AOR002. Pursuant to its constitution and bylaws, the IPM aims to
5 “function as a Minnesota state major political party,” advocate the enactment of public policy
6 and laws consistent with the IPM’s principles and platform, encourage citizen participation in the
7 public political process, endorse candidates for public office, and assist candidates in their
8 campaigns for public office. Independence Party of Minnesota State Party Constitution and
9 Bylaws (“Constitution”), Art. II. The IPM’s Constitution also sets forth procedures for the
10 election of officers and directors and their duties (Arts. V-VII; Art. XIV); holding an annual
11 party convention and nominating candidates for public office (Art. IV); the establishment and
12 governance of the State Central Committee, which has the power “appropriate and necessary to
13 carry on the affairs of the [IPM],” and subordinate district committees (Art. V; Arts. VIII-IX);
14 and adoption or amendment of the state party platform (Art. XV).

15 ***Question Presented***

16 *Does the IPM qualify as a state committee of a political party under the Act and*
17 *Commission regulations?*

18 ***Legal Analysis and Conclusion***

19 Yes, the IPM qualifies as a state committee of a political party under the Act and
20 Commission regulations.

1 A “state committee” is an organization that, “by virtue of the bylaws of a political party .
2 . . . is part of the official party structure and is responsible for the day-to-day operation of the
3 political party at the [s]tate level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a);
4 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization that
5 nominates a candidate for election to any federal office whose name appears on the election
6 ballot as the candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16);
7 11 C.F.R. § 100.15.

8 To qualify as a state committee of a political party, a state party organization not
9 affiliated with a national political party must (1) itself qualify as a “political party;” (2) possess
10 an official structure; and (3) be responsible for the day-to-day operation of a party at the state
11 level. *See, e.g.*, Advisory Opinion 2012-04 (Justice Party of Mississippi); Advisory Opinion
12 2008-12 (Independent Party of Oregon); Advisory Opinion 2007-23 (Independence Party of New
13 York).

14 *(1) Qualification as a Political Party*

15 To qualify as a political party, the IPM must nominate at least one candidate for federal
16 office whose name appears on the ballot as the candidate of the IPM. *See* 52 U.S.C.
17 § 30101(16); 11 C.F.R. § 100.15. An individual is a candidate if the individual or his or her
18 authorized committee has received contributions aggregating in excess of \$5,000 or made
19 expenditures aggregating in excess of \$5,000. *See* 52 U.S.C. § 30101(2); 11 C.F.R.
20 § 100.3(a)(1).

21 The IPM has placed a number of individuals seeking federal office on Minnesota general
22 election ballots, including two such individuals in 2016. AOR001, AOR008. At least one of

1 those individuals, Evan McMullin, disclosed receiving more than \$5,000 in contributions and
2 thus was a candidate under the Act. *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). Because it
3 placed at least one federal candidate on the ballot, the IPM qualifies as a political party under the
4 Act and Commission regulations.

5 *(2) Official Party Structure*

6 The Commission has long explained that a state party organization not affiliated with a
7 national political party must possess an official party structure to obtain state party committee
8 status. *See, e.g.,* Advisory Opinion 2012-04 (Justice Party of Mississippi); Advisory Opinion
9 2008-12 (Independent Party of Oregon); Advisory Opinion 2000-21 (State Committee of the
10 New York State Conservative Party); Advisory Opinion 2000-14 (New York State Committee of
11 the Working Families Party). The IPM’s Constitution, discussed above, establishes such a
12 structure; the IPM is governed by a state executive committee and a number of related
13 subordinate committees. Further, Minnesota law recognizes the IPM as a minor political party,
14 meaning that the IPM has “adopted a state constitution, designated a state party chair, held a state
15 convention in the last two years,” and met certain other state-law requirements for such official
16 party status. AOR003. Accordingly, the IPM has the requisite official party structure to qualify
17 as a state committee of a political party.

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

19 Finally, to qualify as a state committee of a political party, the organization, by virtue of
20 its bylaws or by operation of state law, must be responsible for the day-to-day operation of a
21 political party at the state level. *See* 52 U.S.C. § 30101(15); 11 C.F.R. § 110.14(a); *see also*
22 Advisory Opinion 2012-04 (Justice Party of Mississippi); Advisory Opinion 2008-12

1 (Independent Party of Oregon); Advisory Opinion 2007-23 (Independence Party of New York).

2 The IPM's Constitution, as discussed above, establishes the IPM's organizational
3 structure from a statewide level down through various local levels, and the Constitution
4 empowers its officials to govern the day-to-day affairs of the party at the state level. The IPM's
5 responsibilities for the operation of the political party at the state level are consistent with those
6 previously recognized by the Commission in other state party committees that are unaffiliated
7 with national political parties. *See, e.g.*, Advisory Opinion 2012-04 (Justice Party of
8 Mississippi); Advisory Opinion 2008-12 (Independent Party of Oregon); Advisory Opinions
9 2007-23 (Independence Party of New York). Thus, the IPM is responsible for the day-to-day
10 operations of a political party at the state level.

11 In sum, because the IPM is a political party, possesses an official party structure, and is
12 responsible for the day-to-day operation of the political party at the state level, the Commission
13 determines that the IPM qualifies as a state committee of a political party under the Act and
14 Commission regulations.

15 This response constitutes an advisory opinion concerning the application of the Act and
16 Commission regulations to the specific transaction or activity set forth in your request. *See* 52
17 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
18 assumptions presented, and such facts or assumptions are material to a conclusion presented in
19 this advisory opinion, then the requestor may not rely on that conclusion as support for its
20 proposed activity. Any person involved in any specific transaction or activity which is
21 indistinguishable in all its material aspects from the transaction or activity with respect to which
22 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.

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

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On behalf of the Commission,

Matthew S. Petersen
Chairman