



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 9, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2009-24

Mr. John Ailey, Treasurer
Illinois Green Party
PO Box 471278
Chicago, IL 60647

Dear Mr. Ailey:

We are responding to your inquiry regarding the status of the Illinois Green Party (the "ILGP") as a State party committee of a political party under the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations. The Commission concludes that the ILGP qualifies as a State party committee because: (1) the Green Party of the United States (the "GPUS") qualifies as a political party; (2) the ILGP is part of the official GPUS structure; and (3) the ILGP is responsible for the day-to-day operations of the GPUS at the State level.

Background

The facts presented in this advisory opinion are based on your letter received on August 19, 2009, reports filed with the Commission, and information on the Illinois State Board of Elections website.

The ILGP's Bylaws (the "Bylaws") detail various aspects of the functions, organization, and operation of the ILGP. As articulated in the Bylaws, the ILGP seeks to "to advance the green movement/party in Illinois based on the Ten Key Values through political and non-political means and support formation of Green Party locals." Bylaws, art. 1-B.

The Bylaws establish a Coordinating Committee, which is the primary policy-setting body of the ILGP. The Coordinating Committee is charged with approval of an annual party budget, internal procedures, and position statements which are consistent with the platform and Bylaws. Bylaws, art. 5-A.

The Bylaws also create an Executive Committee consisting of a Chairperson, Vice Chairperson, Secretary, Treasurer, and Membership Steward, and which is the primary body carrying out the day-to-day administrative functions of the ILGP. Bylaws, arts. 6-A and B. The Executive Committee is accountable to the Membership of the ILGP and to the Coordinating Committee upon request. The Executive Committee authorizes expenditures consistent with the party's budget and fiscal policy; may authorize statements on behalf of the party; and proposes the agenda for the Coordinating Committee meetings. Bylaws, art. 6-K.

Further, the Chairperson of the Executive Committee is the primary spokesperson for the ILGP, and is responsible for convening meetings of the Coordinating and Executive committees. Bylaws, art. 6-L-1. The Bylaws also describe specific responsibilities of the Vice Chairperson, Secretary, and Treasurer. *See* Bylaws, arts. 6-M, N, and O.

The ILGP has several standing committees including those responsible for the Bylaws, the platform, party finances, elections, and fundraising. Bylaws, art. 8. Additionally, the ILGP holds annual Membership Meetings¹ for the purpose of conducting official business of the ILGP and for other possible uses such as presentations, workshops, and fundraising. At these Membership Meetings, the functions delineated to any party committee is subject to review by the Membership. Bylaws, art. 4-A.

The ILGP placed a candidate for President of the United States, former Representative Cynthia McKinney, on the 2008 Illinois general election ballot. The request also lists several other individuals that the ILGP also succeeded in placing on the 2008 general election ballot as candidates for the U.S. House of Representatives in five Ohio congressional districts. Those named include: Jerome Pohlen (3rd District), Jason Michael Wallace² (11th District), Rodger W. Jennings (12th District), Scott Summers (16th District), and Sheldon Schafer (18th District).³

The Commission has recognized the GPUS as a "political party" since 2001. *See* Advisory Opinion 2001-13 (Green Party of the United States). A letter from Mr. Brent McMillan, Executive Director of the GPUS, confirms the status of the ILGP as the State affiliate of the GPUS in Illinois.

Question Presented

Does the ILGP qualify as a State committee of a political party within the meaning of the Act and Commission regulations?

¹ The Coordinating Committee may call additional meetings in a given year. Bylaws, art. 4-A.

² The request refers to this candidate as Jason Mitchell Wallace. Reports filed with the Commission were for Jason Michael Wallace.

³ Election results that list former Representative McKinney and these other individuals as Green candidates appear on the Illinois State Board of Elections website at <http://www.elections.state.il.us/ElectionInformation/GetVoteTotals.aspx> (last visited September 10, 2009).

Legal Analysis and Conclusion

Yes, the ILGP qualifies as a State committee 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 operations of the political party at the State level, as determined by the Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a). A “political party” is an “association, committee, or organization that nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.” 2 U.S.C. 431(16); 11 CFR 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 operations of the national party at the State level. *See, e.g.*, Advisory Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party of Colorado), and 2008-13 (Pacific Green Party of Oregon). The Commission therefore addresses each of these three elements in turn.

(1) Qualification of GPUS as a Political Party

First, the Commission must assess whether the national party qualifies as a “political party” under the Act and Commission regulations. 2 U.S.C. 431(15) and (16); 11 CFR 100.14 and 100.15; *see* Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2008-13 (Pacific Green Party of Oregon), and 2007-06 (Libertarian Party of Indiana). As noted above, the Commission has determined in a previous advisory opinion that the GPUS qualifies as a political party. *See* Advisory Opinion 2001-13 (Green Party of the United States). The Commission is aware of no factual changes that would alter that conclusion.

(2) Status of ILGP as Part of Official GPUS Structure

Second, the ILGP must qualify as part of the official party structure of the national party, pursuant to 11 CFR 100.14. In numerous advisory opinions, the Commission has looked to supporting documentation indicating the State party was part of the official party structure. *See, e.g.*, Advisory Opinions 2008-16 (Libertarian Party of Colorado), 2008-13 (Pacific Green Party of Oregon), 2007-06 (Libertarian Party of Indiana), and 2007-02 (Arizona Libertarian Party). Here, the letter from Mr. Brent McMillan, Executive Director for the GPUS, suffices to establish the ILGP as part of the GPUS’s official party structure.

(3) Responsibility of ILGC for Day-to-Day Operations of GPUS in Illinois

Third, the ILGP must maintain responsibility for the day-to-day operations of the GPUS at the State level. 2 U.S.C. 431(15); 11 CFR 100.14. In previous advisory opinions, the Commission has evaluated this third element by considering: (a) whether the organization has

placed a “candidate” on the ballot (thereby qualifying as a “political party”); 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.⁴ *See* Advisory Opinions 2009-16 (Libertarian Party of Ohio), 2008-16 (Libertarian Party of Colorado), and 2008-13 (Pacific Green Party of Oregon).

Ballot placement on behalf of a “candidate” is required because the requesting organization’s existence as a “political party” is necessary for State committee status. A State party organization must actually obtain ballot access for one or more “candidates,” as defined in the Act. *See* 2 U.S.C. 431(2), (15), and (16); 11 CFR 100.3(a), 100.14(a), and 100.15; *see also*, Advisory Opinions 2009-16 (Libertarian Party of Ohio) and 2008-16 (Libertarian Party of Colorado).

Former Representative Cynthia McKinney, who was identified in the request, has received contributions or made expenditures in excess of \$5,000 according to disclosure reports filed with the Commission, and therefore satisfies the Act’s definition of “candidate.” *See* 2 U.S.C. 431(2); 11 CFR 100.3(a). Former Representative McKinney’s name was listed on the 2008 Illinois ballot as the GPUS’s candidate for President. Further, the ILGP also listed several other candidates for U.S. House on the 2008 ballot, each of whom also received contributions or made expenditures in excess of \$5,000 according to disclosure reports filed with the Commission. These candidates were: Jerome Pohlen (3rd District), Jason Michael Wallace (11th District), Rodger W. Jennings (12th District), Scott Summers (16th District), and Sheldon Schafer (18th District).⁵ Accordingly, the ILGP qualifies as a “political party” under the Act.

As discussed above, the Bylaws establish the organizational structure of the ILGC and detail specific responsibilities of party officers. *See* Bylaws, art. 6-L, M, N, and O. The Bylaws delineate activity commensurate with the day-to-day functions and operations of a political party on a State level. For example, the Bylaws establish an Executive Committee charged with the day-to-day administrative functions of the ILGP, and create several standing committees charged with functions such as the Bylaws, the platform, party finances, elections, and fundraising. Bylaws, arts. 6 and 8.

The Bylaws are consistent with the State party rules reviewed in previous situations where the Commission has recognized the State committee status of a political organization. *See, e.g.*, Advisory Opinion 2008-16 (Libertarian Party of Colorado) (finding that the Constitution and Bylaws of the Libertarian Party of Colorado sufficiently established the performance of day-to-day operations because the documents articulated a clear purpose, operating structure, and duties for officers). Therefore, the Bylaws satisfy the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14(a).

⁴ Under Illinois State law, the ILGP has qualified as a “political party.” *See* 10 ILCS 5/7-2 and <http://www.elections.state.il.us/VotingInformation/PartyOfficials.aspx> (last visited September 10, 2009).

⁵ Disclosure reports for former Representative McKinney and these other individuals can be found at http://www.fec.gov/finance/disclosure/imaging_info.shtml.

Accordingly, because all three elements of the definition of “State committee” are satisfied, the Commission determines that the ILGP qualifies as a State committee of a political party under the Act and Commission regulations.

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* 2 U.S.C. 437f. 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 requester may not rely on that conclusion as support for its 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* 2 U.S.C. 437f(c)(1)(B). Please note 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. All cited advisory opinions are available on the Commission’s website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)
Steven T. Walther
Chairman