



FEDERAL ELECTION COMMISSION
Washington, DC 20463

March 1, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2012-04

James C. Farrar, Jr.
Justice Party of Mississippi
850 North Jefferson Street A4
Jackson, MS 39202

Dear Mr. Farrar:

We are responding to your advisory opinion request concerning the application of the Federal Election Campaign Act (the "Act") and Commission regulations to the status of the Justice Party of Mississippi (JPMS) as a State party committee.

JPMS (1) will qualify as a political party; (2) possesses an official party structure; and (3) is responsible for the day-to-day operation of a political party at the State level. Accordingly, the Commission concludes that JPMS will qualify as a State committee of a political party when a JPMS nominee for Federal office whose name appears on the election ballot qualifies as a "candidate" under the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on January 9, your email received on January 18, 2012, and public disclosure reports filed with the Commission.

JPMS is a political committee that is registered with both the Commission and the Mississippi Secretary of State. JPMS's purpose is "to work for Economic and Jobs Justice, Electoral Justice, U.S. & Global Health Justice, and Environmental Justice." JPMS Bylaws, Art. 1, Sec. 2. JPMS is associated with Justice Party USA, a national organization that has not sought the Commission's recognition as a national party committee.

JPMS's responsibilities include raising contributions, assisting candidates' fundraising efforts, conducting voter registration drives, holding a State nominating convention, and nominating candidates for State and Federal office. JPMS's Bylaws set forth the organization's structure, procedures, and governance.

JPMS's organizational structure consists of a State executive committee and an executive committee from each county, Congressional district and some municipalities in Mississippi. JPMS Bylaws, Art. 2. The State executive committee is authorized "to conduct and certify primary elections and canvass returns as provided by law, certify party primary candidates, establish federal election committees, and do all other duties conferred upon it by state or federal law." JPMS Bylaws, Art. 4, Sec. 2. The State executive committee prescribes and enforces party rules, regulations, and penalties. JPMS Bylaws, Art. 4, Sec. 3. The State Executive Committee also establishes standing committees to carry out the business of JPMS, including an Elections Committee, a Budget and Finance Committee, a Party Development and Education Committee, a Campaign Committee, and a Platform Committee. JPMS Bylaws, Art. 5, Sec. 1.

The State of Mississippi has recognized JPMS as a political party, which will entitle JPMS's nominee for President or any other elected office to appear on the Mississippi 2012 election ballot as a candidate of JPMS. JPMS will hold a state convention in June 2012 to adopt a platform, select presidential electors, and nominate candidates. JPMS Bylaws, Art. 2, Sec. 4. Ross C. "Rocky" Anderson has announced his candidacy for President as a JPMS candidate and has filed a Statement of Candidacy with the Commission. His principal campaign committee, Rocky Anderson Our President 2012 Inc., has filed a Statement of Organization with the Commission, but has not yet filed any financial reports.

Question Presented

Does JPMS qualify as a State committee of a political party under the Act and Commission regulations?

Legal Analysis and Conclusions

JPMS will qualify as a State committee of a political party, when at least one candidate nominated by JPMS for Federal office whose name appears on the election ballot satisfies the definition of a "candidate" under the Act and Commission regulations.

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 the association, committee, or organization. 2 U.S.C. 431(16); 11 CFR 100.15. A "State committee" of a political party 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 such political party at the State level, as determined by the Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).

A State party organization not affiliated with a national political party qualifies as a State committee of a political party if three criteria are met: (1) the State party organization must itself qualify as a "political party"; (2) the State party organization must itself possess an official party structure; and (3) the State party organization must be

responsible for the day-to-day operation of the party at the State level. *See, e.g.*, Advisory Opinions 2008-12 (Independent Party of Oregon) and 2007-23 (Independence Party of New York).

(1) Qualification as a Political Party

To qualify as a political party, JPMS must have at least one candidate for Federal office whose name appears on the ballot as a candidate of JPMS. An individual will be considered a candidate if the individual, the individual's authorized committee, or other persons authorized by the individual have received contributions aggregating in excess of \$5,000 or have made expenditures aggregating in excess of \$5,000. *See* 2 U.S.C. 431(2); 11 CFR 100.3(a)(1).

Although JPMS has been recognized as a political party by the State of Mississippi, and is therefore entitled to have its nominees for office appear on the 2012 ballot, no candidates have yet been nominated by JPMS. Rocky Anderson has filed a Statement of Candidacy with the Commission indicating that he is seeking to run for President as a candidate of the Justice Party. However, JPMS has not yet nominated Mr. Anderson as its candidate, and therefore at this time it is uncertain whether he or someone else ultimately will be the JPMS nominee for President and appear on the Mississippi ballot.¹

Nonetheless, as a result of its recognition as a political party by the State of Mississippi, JPMS has obtained the promise of ballot access for whomever it chooses as its nominees for office. So long as at least one individual who ultimately is chosen as a JPMS nominee for Federal office qualifies as a "candidate" under the Act and Commission regulations, JPMS will have succeeded in obtaining ballot access for at least one candidate for Federal office, satisfying the first requirement for recognition as a State committee of a political party.²

(2) Official Party Structure

JPMS is associated with Justice Party USA, a national organization that has not yet sought the Commission's recognition as a national party. However, affiliation with a recognized national political party is not necessary to obtain State party committee status. *See, e.g.*, Advisory Opinions 2008-12 (Independent Party of Oregon), 2000-21 (State Committee of the New York State Conservative Party), and 2000-14 (New York State

¹ The Commission is not aware of any other individuals currently seeking JPMS nomination for Federal office.

² In Advisory Opinion 1995-49 (Natural Law Party of Texas), the Commission concluded the Natural Law Party of Texas was not yet a State party committee of a national party because, under Texas law, the Texas Party still had to complete petition drives in order to have its eventual nominees placed on the ballot. However, the Commission concluded that once the Texas Party did place Federal candidates on the ballot, it would become a State party committee of a national party. Similarly, here, under Mississippi law, JPMS represents that whomever it chooses as its nominees for office will have ballot access.

Committee of the Working Families Party). In cases where a State party organization is not affiliated with a recognized national political party, the State party organization must itself possess an official party structure.

The Commission concludes that JPMS possesses an official party structure. JPMS's bylaws provide for such a structure, establishing a State executive committee and district, county, and municipal committees, as well as standing committees of the State executive committee, and it will operate consistent with its bylaws.

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

The third element in determining whether a State party organization is a State committee of a political party is whether the organization, by virtue of its bylaws or by operation of State law, is responsible for the day-to-day operation of a political party at the State level. *See* 2 U.S.C. 431(15); 11 CFR 110.14(a); *see also* Advisory Opinions 2008-12 (Independent Party of Oregon) and 2007-23 (Independence Party of New York).

JPMS has an agreement with Justice Party USA under which JPMS performs the activities necessary for the day-to-day operations of the party at the State level. JPMS's Bylaws set forth the organizational structure and responsibilities of JPMS and its officials, as noted above. *See* JPMS Bylaws, Art. 2-5. The Bylaws identify JPMS's responsibilities for day-to-day functions and operations, including responsibility for the State party's budget, fundraising activities, membership and voter registration, public education, assisting party candidates and their campaign committees, complying with campaign finance laws, developing a platform, and working with the national party. JPMS's responsibilities are consistent with those of other State party committees that the Commission has previously recognized. *See, e.g.,* Advisory Opinions 2008-12 (Independent Party of Oregon) and 2007-23 (Independence Party of New York). Thus, JPMS is responsible for the day-to-day operations of a political party at the State level.

In sum, JPMS will satisfy all three parts of the definition of a State committee when at least one individual who ultimately is chosen as a JPMS nominee for Federal office appears on the election ballot and meets the definition of a "candidate" within the meaning of the Act and Commission regulations. The Commission therefore concludes that JPMS will qualify as a State committee of a political party under the Act and Commission regulations when that condition is met.³

³ JPMS need not reapply to the Commission for recognition of State committee status when this condition is met. *See* Advisory Opinion 1995-49 n. 3 (noting that, once the Texas Party obtained ballot access for its Federal candidates, it need not reapply for recognition of state committee status). In the interim, since JPMS is currently registered as a State party committee but does not yet qualify as such, it should update its Form 1 to indicate that it is a nonconnected political committee. Once JPMS succeeds in obtaining ballot access for at least one candidate for Federal office, it may update its Form 1 to register as a State party committee. At that time, JPMS should include a Form 99 indicating that, pursuant to this advisory opinion, it has met the outstanding condition by placing a candidate on the ballot.

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 requestor 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 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. The cited advisory opinions are available on the Commission's website, or directly from the Commission's Advisory Opinion searchable database at <http://www.fec.gov/searchao>.

On behalf of the Commission,

(signed)
Caroline C. Hunter
Chair