



FEDERAL ELECTION COMMISSION
Washington, DC 20463

September 14, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2017-09

Dr. Susan M. M. Ruiz
Libertarian Association of Massachusetts
P.O. Box 787
Framingham, MA 01701

Dear Dr. Ruiz:

We are responding to your request on behalf of the Libertarian Association of Massachusetts (“Committee”) regarding its status as the state committee of a political party under the Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations. The Commission concludes that the Committee qualifies as a state committee of a political party.

Background

The facts presented in this advisory opinion are based on your advisory opinion request (“AOR”) received on July 28, 2017, and public disclosure reports filed with the Commission.

In 1976, the Commission determined that the Libertarian National Party (“LNP”) qualified as a political party. Advisory Opinion 1975-129 (National Committee of the Libertarian Party). The LNP’s national committee is the Libertarian National Committee, Inc. (“LNC”). The LNC’s Director of Operations, Mr. Robert S. Kraus, has confirmed by letter that the Committee is the LNC’s “sole affiliate for the State of Massachusetts.” AOR022.

The Committee placed the LNP’s presidential nominees on the general election ballot in Massachusetts in 2000, 2004, 2008, 2012, and 2016.¹ See AOR002, AOR026-027. Each of

¹ The Committee placed the following LNP presidential candidates on the general election ballot in Massachusetts: Harry Browne (2000), Michael Badnarik (2004), Bob Barr (2008), and Gary Johnson (2012 and 2016).

those nominees' campaign committees reported receiving contributions or making expenditures in excess of \$5,000 during the relevant presidential election cycle.²

The Committee also placed United States Senate candidates on the general election ballot in Massachusetts in 2000 and 2002, and candidates for the United States House of Representatives on the general election ballot in Massachusetts in 1998, 2000, 2002, 2012, and 2016.³ AOR003. Each of those candidates also received contributions or made expenditures in excess of \$5,000.⁴ See AOR003, AOR029, AOR031-032.

Pursuant to its constitution and its bylaws, the Committee engages in various political party activities in Massachusetts. See generally AOR034-051. These activities include promoting libertarian principles, endorsing candidates for public office, conducting voter identification and get-out-the-vote campaigns, sending delegates to the LNP's national convention, and chartering district and local party committees. See AOR003, AOR034.

The Committee's constitution and bylaws provide for the election of members of its "State Committee" at an annual convention. See AOR035, AOR049-051. In addition to governing the affairs of the party, the State Committee supervises and manages the Committee's

² See, e.g., Harry Browne for President Inc., *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00357582/?cycle=2000> (reflecting the candidate's receipt and spending of over \$2 million during 2000 election cycle); Badnarik/Campagna 2004, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00384966/?cycle=2004> (reflecting the candidate's receipt and spending of over \$1 million during 2004 election cycle); Barr 2008 Presidential Committee, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00450841/?cycle=2008> (reflecting the candidate's receipt and spending of over \$1.4 million during 2008 election cycle); Gary Johnson 2012 Inc., *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00495622/?cycle=2012> (reflecting the candidate's receipt and spending of over \$2.7 million during 2012 election cycle); Gary Johnson 2016, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00605568/?cycle=2016> (reflecting the candidate's receipt and spending of over \$11.7 million during 2016 election cycle).

³ Carla Howell and Michael Cloud were the LNP's Senate candidates on the general election ballot in Massachusetts in 2000 and 2002, respectively. The LNP candidates for the United States House of Representatives on the general election ballot in Massachusetts between 1998 and 2016 were: George Phillies (1998), David Euchner (2000), Ilana Freedman (2002), Daniel Fishman (2012), and Thomas Simmons (2016).

⁴ See, e.g., Carla Howell for U.S. Senate, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00347070/?cycle=2000> (reflecting the candidate's receipt and spending of over \$850,000 during 2000 election cycle); Michael Cloud for U.S. Senate, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00367763/?cycle=2002> (reflecting the candidate's receipt and spending of over \$200,000 during 2002 election cycle); Phillies for Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00332056/?cycle=1998> (reflecting the candidate's receipt and spending of over \$8,900 during 1998 election cycle); David Euchner for Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00358655/?cycle=2000> (reflecting the candidate's receipt and spending of over \$8,600 during 2000 election cycle); Freedman Committee 2002, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00366765/?cycle=2002> (reflecting the candidate's receipt and spending of over \$162,000 during 2002 election cycle); Committee to Election Dan Fishman, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00524298/?cycle=2012> (reflecting the candidate's receipt of over \$8,200 and spending of over \$6,600 during 2012 election cycle); Simmons4Congress, *FEC Financial Summary of Reported Activity* at <https://www.fec.gov/data/committee/C00619338/?cycle=2016> (reflecting the candidate's receipt and spending of over \$17,800 during 2016 election cycle).

annual convention, at which candidates for office may be endorsed. *See* AOR035. The State Committee consists of various working groups, each responsible for specific areas of the Committee's party activities such as: (1) encouraging and supporting local libertarian organizations; (2) recruiting, training, and assisting candidates and volunteers with publications, fundraising, and get-out-the-vote drives; (3) supporting substantive political activities not related to candidates, such as referenda, ballot measures, and letter-writing campaigns; (4) publishing a Committee newsletter; (5) operating the Committee's website; (6) engaging in public relations activities; (7) recruiting new members; (8) conducting Committee fundraising drives; (9) organizing and overseeing the Committee's annual convention; (10) establishing and managing the Committee's annual budget; and (11) maintaining and auditing the Committee's financial records. AOR0046-047.

Question Presented

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

Legal Analysis and Conclusion

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

A "[s]tate 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); *see* 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 of whether a state party organization qualifies as a state committee of a national political party turns on three elements: (1) the national organization with which the state party organization is affiliated 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 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.). The Commission addresses each of these elements in turn.

(1) Qualification of the LNP as Political Party

The national party, the LNP, must qualify as a "political party" under the Act and Commission regulations, and the Commission has previously determined that it does. *See* Advisory Opinion 1975-129 (National Committee of the Libertarian Party); Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.). The Commission is not aware of any factual changes that would alter that determination.

(2) *Status of the Committee 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 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.). The letter from Mr. Robert S. Kraus, Director of Operations of the LNC (*see* AOR022), confirms that the Committee is part of the official structure of the LNP.

(3) *Responsibility of the Committee for Day-to-Day Operation 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 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 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.).

(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, an organization must obtain ballot access for a federal candidate to qualify as a “state committee” of a political party. *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a); Advisory Opinion 2016-14 (11 Libertarian State Committees); Advisory Opinion 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.); Advisory Opinion 2012-39 (Green Party of Virginia); Advisory Opinion 2012-36 (Green Party of Connecticut).

The Committee placed the LNP’s nominees for President on the general election ballot in Massachusetts in 2000, 2004, 2008, 2012, and 2016. *See* AOR002, AOR026-027. Each of these candidates received contributions or made expenditures in excess of \$5,000 according to public disclosure reports filed with the Commission, therefore satisfying the Act’s definition of a “candidate.” *See* 2 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). In addition, the Committee placed numerous LNP nominees for the United States Senate and/or House of Representatives on the general election ballot in Massachusetts in 1998, 2000, 2002, 2012, and 2016. *See* AOR003, AOR029, AOR031-032. Because each of those nominees received contributions or made expenditures in excess of \$5,000, all such nominees also satisfied the Act’s definition of a “candidate.”

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

In addition to gaining ballot access for a candidate for federal office, the Committee must 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 national political party at the state level.

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

These governing documents 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 2016-17 (Libertarian Party of Michigan Executive Committee, Inc.); 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). The Committee therefore satisfies the requirement of being responsible for the day-to-day operation of the LNP at the state level pursuant to 52 U.S.C. § 30101(15) and 11 C.F.R. § 100.14(a).

Conclusion

The Commission concludes that the Committee qualifies as the state committee of a political party under the Act and Commission regulations because: (1) the LNP qualifies as a political party; (2) the Committee is part of the official structure of the LNP; and (3) the Committee is responsible for the day-to-day operation 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 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* 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 black ink, appearing to read "Steven T. Walther". The signature is written in a cursive style with a large initial "S".

Steven T. Walther
Chairman