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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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February 28, 2007

MEMORANDUM

AGENDA ITEM
For Meeting of: 03-08-07

TO: The Commission

FROM: Thomasenia P. Duncan *JPD*
Acting General Counsel

Rosemary C. Smith *RS*
Associate General Counsel

J. Duane Pugh *JDP*
Acting Assistant General Counsel

Anthony T. Buckley *ATB km JTB*
Attorney

Subject: Draft AO 2007-02

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 8, 2007.

Attachment

1 ADVISORY OPINION 2007-2

2

3 Warren Severin

DRAFT

4 Treasurer

5 Arizona Libertarian Party, Inc.

6 15031 S. 21st Place

7 Phoenix, AZ 85048

8

9 Dear Mr. Severin:

10

11 We are responding to your inquiry regarding the status of the Arizona Libertarian
12 Party, Inc. (the "State Party"), as a State party committee of a political party under the
13 Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission
14 regulations. The Commission concludes that the State Party qualifies as a State party
15 committee because: (1) the Libertarian Party qualifies as a political party; (2) the State
16 Party is part of the official Libertarian Party structure; and (3) the State Party is
17 responsible for the day-to-day operation of the Libertarian Party at the State level.

18 ***Background***

19 The facts presented in this advisory opinion are based on your letter received on
20 January 9, 2007.

21 The State Party's articles of incorporation and constitution ("State Party
22 Constitution") and the State Party's bylaws (the "State Party Bylaws") detail various
23 aspects of the organization of the State Party. They illustrate how the State Party engages
24 in various activities in Arizona, including: ensuring the State Party has continuing
25 countywide and statewide ballot status, recruiting Libertarians wishing to seek elective
26 office, registering voters as members of the State Party, and educating the electorate on
27 the virtues of Libertarian principles.

1 The State Party placed two candidates for the House of Representatives on the
2 2006 Arizona general election ballot. These candidates were David Schlosser (1st
3 District) and David Nolan (8th District). These candidates were listed on the ballots as
4 candidates of the Libertarian Party.¹

5 Since 1975, the Commission has recognized the Libertarian National Committee
6 as the national committee of a political party.² See Advisory Opinions 2002-14
7 (Libertarian National Committee); 1978-58 (Pyramid Freedom Party); and 1975-129
8 (Libertarian National Committee). A letter from Mr. Robert S. Kraus, Director of
9 Operations of the Libertarian National Committee, confirms the status of the State Party
10 as the Libertarian National Committee's "sole affiliate" for the State of Arizona.

11 ***Question Presented***

12 *Does the State Party qualify as a State party committee within the meaning of the*
13 *Act and Commission regulations?*

14 ***Legal Analysis and Conclusions***

15 Yes, the State Party qualifies as a State committee of a political party within the
16 meaning of the Act and Commission regulations.

17 A "political party" is an "association, committee, or organization which
18 nominates a candidate for election to any Federal office whose name appears on the
19 election ballot as the candidate of such association, committee, or organization."
20 2 U.S.C. 431(16); 11 CFR 100.15. A "State committee" is an organization that, by virtue

¹ The listings for David Schlosser and David Nolan appear on the Arizona Secretary of State's website at: <http://www.azsos.gov/election/2006/general/fulllisting.htm> (last visited Feb. 26, 2007).

² The Libertarian National Committee is the governing body of the Libertarian Party at the national level when the national convention is not in session. See <http://www.lp.org/organization/bylaws.shtml> (last visited Feb. 26, 2007).

1 of the bylaws of a political party, is part of the official party structure and is responsible
2 for the day-to-day operation of such political party at the State level, as determined by the
3 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).

4 The first question in determining whether a political committee is a State
5 committee of a political party is whether the party itself qualifies as a “political party”
6 under the Act and Commission regulations. *See, e.g.*, Advisory Opinions 2004-40
7 (Libertarian Party of Maryland) and 2004-34 (Libertarian Party of Virginia). As noted
8 above, the Commission has previously determined that the Libertarian Party qualifies as a
9 political party and that the Libertarian National Committee qualifies as the national
10 committee of the Libertarian Party. *See* Advisory Opinions 2002-14 (Libertarian
11 National Committee); 1978-58 (Pyramid Freedom Party); and 1975-129 (Libertarian
12 National Committee). The Commission is aware of no factual changes that would alter
13 those conclusions.

14 The second question in determining whether a political committee is a State
15 committee of a political party is whether the requesting committee satisfies the remaining
16 elements of the definition of a “State committee” of a political party. *See* Advisory
17 Opinions 2004-40 (Libertarian Party of Maryland) and 2004-34 (Libertarian Party of
18 Virginia). This determination consists of two inquiries: (1) whether the organization is
19 part of the official party structure; and (2) whether the organization is responsible for the
20 day-to-day operations of the political party at the State level, as determined by the
21 Commission. *See* 2 U.S.C. 431(15) and 11 CFR 100.14.

22 In previous advisory opinions, the Commission has addressed the first inquiry by
23 requiring supporting documentation from the national party indicating that the State party

1 is part of the official party structure. *See, e.g.*, Advisory Opinions 2004-40 (Libertarian
2 Party of Maryland) and 2004-34 (Libertarian Party of Virginia). Here, a letter from
3 Mr. Robert S. Kraus, Director of Operations of the Libertarian National Committee,
4 confirms the status of the State Party as the Libertarian National Committee's "sole
5 affiliate" for the State of Arizona.³

6 With respect to the second inquiry, the Commission determines whether an
7 organization is responsible for the day-to-day functions and operations of a political party
8 at the State level by considering: (1) whether the organization has placed a Federal
9 candidate on the ballot (thereby qualifying as a "political party"); and (2) the bylaws or
10 other governing documents of the State party organization.⁴ *See* Advisory
11 Opinions 2004-40 (Libertarian Party of Maryland) and 2004-34 (Libertarian Party of
12 Virginia).

13 A successful ballot access effort on behalf of a Federal candidate is required
14 because the requesting organization's existence as a "political party" is necessary for
15 State committee status. A State party organization must actually obtain ballot access for
16 one or more Federal candidates, as defined in the Act. *See* 2 USC 431(2) and 431(16),
17 Advisory Opinions 2004-40 (Libertarian Party of Maryland), 2004-34 (Libertarian Party
18 of Virginia) and 2003-27 (Missouri Green Party).

19 Two individuals identified in your request, Mr. David Schlosser and Mr. David
20 Nolan, received or expended funds in excess of \$5,000 in their 2006 campaigns,
21 according to disclosure reports filed with the Commission, and therefore, both satisfy the

³ This document is included in the Advisory Opinion Request, which is available at <http://www.fec.gov/aos/2007/aor2007-02.pdf> (last visited Feb. 26, 2007).

⁴ Where appropriate, the Commission may also consider the operation of State law in making these determinations. *See* 11 CFR 100.14(a).

1 Act's definition of a Federal "candidate."⁵ See 2 U.S.C. 431(2) and 11 CFR 100.3. The
2 names of Mr. Schlosser and Mr. Nolan appeared on 2006 ballots in Arizona as House
3 candidates of the State Party. Accordingly, the State Party qualifies as a "political party"
4 under the Act.

5 As noted above, the State Party Constitution and State Party Bylaws detail the
6 organizational structure for the State Party and establish specific responsibilities for State
7 Party officials. See State Party Constitution, articles III, VI and IX; State Party Bylaws,
8 paragraphs 1 through 6.⁶ The Party Constitution and Party Bylaws delineate activity
9 commensurate with the day-to-day functions and operations of a political party on a State
10 level, are consistent with the State party rules reviewed in previous situations where the
11 Commission has recognized the State committee status of a political organization, and
12 therefore satisfy the requirements of 2 U.S.C. 431(15) and 11 CFR 100.14. See Advisory
13 Opinions 2004-40 (Libertarian Party of Maryland) and 2004-34 (Libertarian Party of
14 Virginia).

15 Because all elements of the definition of "State committee" have been satisfied,
16 the Commission determines that the Arizona Libertarian Party qualifies as a State
17 committee of a political party under the Act and Commission regulations.

18 This response constitutes an advisory opinion concerning the application of the
19 Act and Commission regulations to the specific transaction or activity set forth in your
20 request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any

⁵ Disclosure reports for Mr. Schlosser and Mr. Nolan appear on the Commission's website at <http://images.nictusa.com/cgi-bin/fecimg/?C00424911> and <http://images.nictusa.com/cgi-bin/fecimg/?C00426734> (last visited Feb. 26, 2007), respectively.

⁶ These documents are included in the Advisory Opinion Request, which is available at <http://www.fec.gov/aos/2007/aor2007-02.pdf> (last visited Feb. 26, 2007).

1 of the facts or assumptions presented and such facts or assumptions are material to a
2 conclusion presented in this advisory opinion, then the requester may not rely on that
3 conclusion as support for its proposed activity. Most of the cited advisory opinions are
4 available on the Commission's website at www.fec.gov.

5 Sincerely,

6

7 Robert D. Lenhard
8 Chairman