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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 8, 2001

**MEMORANDUM**

TO: The Commission  
THROUGH: James A. Pehrkon *[Signature]*  
Staff Director  
FROM: Lois G. Lerner *[Signature]*  
Acting General Counsel

**AGENDA ITEM**  
For Meeting of: 2-15-01

N. Bradley Litchfield *NBL (RCS)*  
Associate General Counsel

Michael Marinelli *[Signature]*  
Staff Attorney

SUBJECT: Draft AO 2001-02

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for February 15, 2001.

Attachment

1 ADVISORY OPINION 2001-02

2  
3 Alexander D. Moorhead, Treasurer  
4 Green Party of Kentucky  
5 PO Box 1242  
6 Covington, KY 41012

**DRAFT**

7  
8  
9 Dear Mr. Moorhead:

10  
11 This refers to your letter dated January 14, 2001, requesting an advisory opinion  
12 concerning the status of the Green Party of Kentucky ("the Party") as a State committee  
13 of a political party under the Federal Election Campaign Act of 1971, as amended ("the  
14 Act"), and Commission regulations.

15 Your request includes the Party Bylaws (the "Bylaws"), and the Party Constitution  
16 (the "Constitution") is available through the Party's website.<sup>1</sup> These documents together  
17 detail various aspects of the organization of the Party such as the manner in which the  
18 Party, using several different subgroups including its State Executive Committee, engages  
19 in various activities (for example, helping to select Party officers). The Bylaws further  
20 detail the procedures for holding the Party's various meetings such as its annual meeting  
21 and endorsing convention. You state that the Party has successfully placed several  
22 candidates for Federal office on the ballot in the 2000 elections. Information provided by  
23 the State Board of Elections of Kentucky confirms that the Party had placed three  
24 candidates on the Federal ballot in 2000. These candidates were Ralph Nader for U.S.  
25 President, Winona LaDuke for Vice President, and Ken Sain for U.S. Representative  
26 from the 4th Congressional District.<sup>2</sup>

<sup>1</sup> The address for the web site is <http://www.kygreens.org/>.

<sup>2</sup> The Party also has a Federal committee, the Green Party of Kentucky PAC, which filed its statement of organization with the Commission on July 31, 2000. Your request does not mention affiliation with any

1 Under the Act and Commission regulations, the term "State committee" means the  
2 organization which, by virtue of the bylaws of a political party, is responsible for the day-  
3 to-day operation of such political party at the State level, as determined by the  
4 Commission. 2 U.S.C. §431(15); 11 CFR 100.14. The definition of State committee also  
5 requires the existence of a political party. The term "political party" is defined under 2  
6 U.S.C. §431(16) and 11 CFR 100.15 as an association, committee, or organization which  
7 nominates a candidate for election to any Federal office whose name appears on the  
8 election ballot as the candidate of such association, committee, or organization. An  
9 individual becomes a candidate for purposes of the Act if he or she receives contributions  
10 aggregating in excess of \$5,000, or makes expenditures in excess of \$5,000. 2 U.S.C.  
11 §431(2).<sup>3</sup>

12 As stated in the Act and Commission regulations, the first element of the  
13 requirements for State committee status is that the bylaws of a political party establish  
14 that the Green Party of Kentucky is responsible for the day-to-day operation of such  
15 political party at the State level.<sup>4</sup> As noted above, the Party's governing documents set

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national Green party organization. Neither of the two national Green party organizations, Greens/Green Party USA (<http://www.greens.org/gpusa/>) or the Association of State Green Parties (<http://www.green-party.org/>), list the Green Party of Kentucky as an affiliate on their respective web sites.

<sup>3</sup> Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate, and the committee also becomes subject to various registration, recordkeeping, and reporting requirements. 2 U.S.C. §§432(e)(1), 433, and 434(a); 11 CFR 101.1, 102.1, and 104.1.

<sup>4</sup> The Commission has considered either the bylaws of State party organizations or other governing documents in making these determinations. Advisory Opinions 2000-39, 2000-35, 2000-27, 2000-21, 2000-14 and 1999-26. In reviewing State party affiliates of entities that qualified as national committees of political parties under 2 U.S.C. §431(14), the Commission has looked to the existence of a State affiliate agreement which "delineates activities commensurate with the day-to-day operation of [a political party] on a State level," and then concluded that "[t]o the extent the relationship between [a political party] and an affiliate is based on this agreement and the affiliate displays evidence of activity by obtaining ballot access for both its Presidential and other Federal candidates, . . . [that] particular affiliate is a State Committee of the [political party]." Advisory Opinions 1999-26 and 1992-30. The Commission has also found State party committee status with respect to organizations affiliated with national political parties that had not achieved national committee status or organizations that had no affiliation with any national organization.

1 out an identifiable organizational structure for the Party with varying responsibilities. See  
2 Bylaws, articles IV and V, and Constitution articles V, VI, IX and X. As they delineate  
3 activity commensurate with the day-to-day functions and operations of a political party on  
4 a State level, the rules meet the requirements of 2 U.S.C. §431(15) and 11 CFR 100.14,  
5 and they are consistent with the State party rules reviewed in previous situations where  
6 the Commission has affirmed the State committee status of a political organization. See  
7 Advisory Opinions 2000-39, 2000-35, 2000-27, 2000-21, and 2000-14.<sup>5</sup> Therefore, the  
8 Commission concludes that the Party meets the first element.

9 The second element for qualifying as a State committee of a political party, and an  
10 essential element for qualifying as a political party, is that the party organization actually  
11 obtains ballot access for one or more Federal candidates, as defined in the Act. Of the  
12 Federal candidates identified in your request, Mr. Nader and Mr. Ken Sain, according to  
13 disclosure reports filed with the Commission, received or expended in excess of \$5,000 in  
14 their 2000 campaigns. Accordingly, both these candidates satisfy the Act's definition of  
15 candidate. 2 U.S.C. §431(2). Since both these candidates appeared on the 2000 ballot in  
16 Kentucky as candidates of the Green Party of Kentucky, the Commission concludes that  
17 the Party satisfies the definition of "political party" under the Act. It thus meets the  
18 second element for establishing State committee status.<sup>6</sup>

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State committee status in these opinions was based on the existence of State bylaws detailing activities commensurate with the day-to-day operation of a party on the State level, and the placement of at least one Federal candidate on the ballot. Advisory Opinions 2000-39, 2000-35, 2000-27 and 2000-21

<sup>5</sup> The fact that the Party is apparently not affiliated with a recognized national committee or a national party organization does not prevent its recognition as a State committee of a political party. See Advisory Opinions 2000-39, 2000-35, 2000-27, 2000-21, and 2000-14.

<sup>6</sup> As noted above, when determining State committee status, the Commission made clear that a State political party could qualify as a State committee without an affiliation with any national political party organization, and indicated that a State party's candidate must be a candidate under 2 U.S.C. §431(2) in order for that party to satisfy the second requirement. Advisory Opinions 2000-39, 2000-35, 2000-27 and



