



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2007 APR 25 A 10:15

April 25, 2007

AGENDA ITEM

For Meeting of: 05-03-07

MEMORANDUM

TO: The Commission

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

Rosemary C. Smith *RCS*
Associate General Counsel

Ron B. Katwan *RBK*
Assistant General Counsel

Albert J. Kiss *ASK*
Attorney

Subject: Draft AO 2007-06

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for May 3, 2007.

Attachment



2007 APR 25 A 10:15

1 ADVISORY OPINION 2007-06
2
3 Mr. Todd Singer
4 Treasurer
5 Libertarian Party of Indiana
6 156 E. Market Street
7 Suite #405
8 Indianapolis, IN 46204
9

DRAFT

10 Dear Mr. Singer:
11

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

19 ***Background***

20 The facts presented in this advisory opinion are based on your letter received on
21 March 21, 2007.

22 The Bylaws of the LPIN ("Bylaws") detail various aspects of the functions,
23 organization and operation of the LPIN. They provide that the primary functions of the
24 LPIN are to "(a) nominate and run candidates for statewide, state legislative and U.S.
25 Congressional offices in the state of Indiana, (b) serve as an affiliate organization of the
26 national Libertarian Party, and (c) charter and serve the needs of affiliated County
27 Organizations throughout the state of Indiana." Bylaws, art. I, sec. 4. The LPIN is
28 controlled and managed by the State Central Committee between State Conventions,
29 which are held during the second quarter of each calendar year and which include the

1 Annual Business Meeting. Bylaws, art. V, sec. 2; art. VI, sec. 1 and 2. In even-
2 numbered years, potential Libertarian candidates for statewide races, state legislative
3 races, and U.S. Congressional races are nominated at the Annual Business Meeting.
4 Bylaws, art. VI, sec. 11. Delegates to Libertarian Party national conventions and national
5 committees and subcommittees are also selected at the Annual Business Meeting.
6 Bylaws, art. VI, sec. 12 and 13.

7 The LPIN placed a candidate for U.S. Representative for Indiana's Ninth
8 Congressional District on the 2006 Indiana general election ballot, and placed a candidate
9 for President of the United States on the 2004 Indiana general election ballot.¹ These
10 candidates were Mr. David Eric Schansberg and Mr. Michael Badnarik, respectively.
11 Both candidates were listed on State ballots as candidates of the Libertarian Party.²

12 Since 1975, the Commission has recognized the Libertarian National Committee
13 as the national committee of a political party. *See* Advisory Opinions 2002-14
14 (Libertarian National Committee) and 1975-129 (Libertarian National Committee). A
15 letter from Mr. Robert S. Kraus, Director of Operations of the Libertarian National
16 Committee, Inc., ("LNC") confirms the status of the LPIN as the LNC's sole affiliate for
17 the State of Indiana.

18

¹ These persons are "candidates" because they sought election to Federal office and either received contributions aggregating in excess of \$5,000, or made expenditures aggregating in excess of \$5,000. 2 U.S.C. 431(2) and 11 CFR 100.3(a).

² The ballot listing for Mr. David Eric Schansberg appears on the Indiana Secretary of State's website at <http://www.in.gov/apps/sos/election/general/general2006> (last visited Mar. 29, 2007), and the ballot listing for Mr. Michael Badnarik appears on the Indiana Secretary of State's website at <http://www.in.gov/apps/sos/election/general/general2004> (last visited Mar. 29, 2007).

1 ***Question Presented***

2 *Does the LPIN qualify as a State party committee within the meaning of the Act*
3 *and Commission regulations?*

4 ***Legal Analysis and Conclusion***

5 Yes, the LPIN qualifies as a State committee of a political party within the
6 meaning of the Act and Commission regulations.

7 A “political party” is an “association, committee, or organization which
8 nominates a candidate for election to any Federal office whose name appears on the
9 election ballot as the candidate of such association, committee, or organization.”

10 2 U.S.C. 431(16); 11 CFR 100.15. A “State committee” is an organization that, by virtue
11 of the bylaws of a political party, is part of the official party structure and is responsible
12 for the day-to-day operation of such political party at the State level, as determined by the
13 Commission. 2 U.S.C. 431(15); 11 CFR 100.14(a).

14 The first question in determining whether a political committee is a State
15 committee of a political party is whether the party itself qualifies as a “political party”
16 under the Act and Commission regulations. *See, e.g.*, Advisory Opinion 2007-02
17 (Arizona Libertarian Party). As noted above, the Commission has previously determined
18 that the Libertarian Party qualifies as a political party, and that the LNC qualifies as the
19 national committee of the Libertarian Party. *See* Advisory Opinions 2002-14 (Libertarian
20 National Committee) and 1975-129 (Libertarian National Committee). The Commission
21 is aware of no factual changes that would alter those conclusions.

22 The second question in determining whether a political committee is a State
23 committee of a political party is whether the requesting committee satisfies the remaining

1 elements of the definition of a “State committee” of a political party. *See, e.g.*, Advisory
2 Opinion 2007-02 (Arizona Libertarian Party). This determination consists of two
3 inquiries: (1) whether the organization is part of the official party structure; and (2)
4 whether the organization is responsible for the day-to-day operations of the political party
5 at the State level, as determined by the Commission. *See* 2 U.S.C. 431(15) and 11 CFR
6 100.14.

7 In previous advisory opinions, the Commission has addressed the first inquiry by
8 requiring supporting documentation from the national party indicating that the State party
9 is part of the official party structure. *See, e.g.*, Advisory Opinion 2007-02 (Arizona
10 Libertarian Party). Here, a letter from Mr. Robert S. Kraus, Director of Operations of the
11 LNC, confirms the status of the LPIN as part of the LNC’s official party structure.³

12 With respect to the second inquiry, the Commission determines whether an
13 organization is responsible for the day-to-day functions and operations of a political party
14 at the State level by considering: (1) whether the organization has placed a “candidate”
15 on the ballot (thereby qualifying as a “political party”); and (2) the bylaws or other
16 governing documents of the State party organization.⁴ *See, e.g.*, Advisory Opinion
17 2007-02 (Arizona Libertarian Party).

18 A successful ballot access effort on behalf of a “candidate” is required because
19 the requesting organization’s existence as a “political party” is necessary for State
20 committee status. A State party organization must actually obtain ballot access for one or
21 more “candidates,” as defined in the Act. *See* 2 U.S.C. 431(2), 431(15) and 431(16);

³ This document is included in the Advisory Opinion Request, which is available at <http://saos.nictusa.com/saos/searchao> (last visited Mar. 29, 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 11 CFR 100.3(a), 100.14(a) and 100.15; *see also* Advisory Opinions 2007-02 (Arizona
2 Libertarian Party), 2004-40 (Libertarian Party of Maryland), 2004-34 (Libertarian Party
3 of Virginia), and 2003-27 (Missouri Green Party).

4 Two individuals identified in your request, Mr. David Eric Schansberg and Mr.
5 Michael Badnarik, received contributions or made expenditures in excess of \$5,000 in
6 their campaigns, according to disclosure reports filed with the Commission, and,
7 therefore, both satisfy the Act's definition of a "candidate."⁵ *See* 2 U.S.C. 431(2) and
8 11 CFR 100.3(a). Mr. Schansberg appeared on the 2006 Indiana ballot as the LPIN's
9 candidate for the U.S. House of Representatives, and Mr. Badnarik appeared on the 2004
10 Indiana ballot as the LPIN's candidate for U.S. President. Accordingly, the LPIN
11 qualifies as a "political party" under the Act.

12 As noted above, the Bylaws detail the organizational structure for the LPIN and
13 establish specific responsibilities for LPIN officials. *See* Bylaws, art. I, sec. 1 through 4;
14 art. V, sec. 1 through 7; art. VI, sec. 1 through 13.⁶ The Bylaws delineate activity
15 commensurate with the day-to-day functions and operations of a political party on a State
16 level, and are consistent with the State party rules reviewed in previous situations where
17 the Commission has recognized the State committee status of a political organization.
18 Therefore, the Bylaws satisfy the requirements of 2 U.S.C. 431(15) and
19 11 CFR 100.14(a).

⁵ Disclosure reports for Messrs. Schansberg and Badnarik appear on the Commission's website at <http://images.nictusa.com/cgi-bin/fecimg/?C00426692> and <http://images.nictusa.com/cgi-bin/fecimg/?C00384966> (last visited Mar. 29, 2007), respectively.

⁶ This document is included in the Advisory Opinion Request, which is available at <http://saos.nictusa.com/saos/searchao> (last visited Mar. 29, 2007).

