



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

February 2, 1984

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1983-47

John C. Armor, Esq.  
401 A Street N.E.  
Washington, D.C. 20002

Dear Mr. Armor:

This refers to your letter, with enclosures, dated December 16, 1983, which requests an advisory opinion on behalf of Sonia Johnson concerning her eligibility for matching funds under the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), 26 U.S.C. 9031--9042.

Your letter explains that on October 24, 1983, Sonia Johnson declared herself to be a presidential candidate of the Citizens Party for the 1984 election cycle. She aspires to conduct a national campaign and to receive the Citizens Party presidential nomination at its national nominating convention scheduled for June 1-3, 1984. Ms. Johnson's campaign is currently engaged in various fundraising efforts in several states. She plans to submit contributions to the Commission and claim matching funds in the near future. You have asked for an advisory opinion affirming that Sonia Johnson is entitled to and will, in fact, receive matching funds if she (a) seeks the presidential nomination of the Citizens Party pursuant to its requirements and election statutes of various states, (b) receives \$100,000 of matchable contributions from residents of at least 20 states in amounts of at least \$5,000 per state, and (c) otherwise meets the eligibility requirements of 26 U.S.C. 9033 and Commission regulations at 11 CFR Part 9033.

As your inquiry recognizes, the principal issue presented in this request is whether Ms. Johnson satisfies the statutory requirement that a presidential candidate must be "seeking nomination by a political party" for election to the Office of President. 26 U.S.C. 9033(b)(2). Your request explains that the Citizens Party will hold a national convention June 1-3, 1984, to nominate its presidential candidate for the 1984 general election. You have submitted a delegate selection plan (Exhibit I) for the election of delegates to this convention. This plan entails a process by

which state and local caucuses may choose delegates to the 1984 national convention of the Citizens Party. The plan also provides for a system of determining the number of convention delegates and voting procedures.

The Citizens Party also has an historical record of political activity beginning with the 1980 election cycle and involving general election candidacies in several states for a wide variety of elective offices. Official election results from the 1980 presidential election indicate that Barry Commoner, the presidential candidate nominated by the Citizens Party, was on the ballot in 31 states and received over 230,000 votes. In addition, Citizens Party candidates in 1980 Senate and House races were on the ballot and received over 56,000 general election votes in seven states. In 1982, Citizens Party candidates in Federal elections were on the ballot in thirteen races in seven states. Your request (Exhibit D) further states that Citizens Party candidates have entered a total of 169 election races in 24 states since 1980.

This historical record, as well as your statement that the Citizens Party will nominate a presidential candidate at a national convention in June 1984, pursuant to a prescribed delegate selection plan and process, establish that the Citizens Party is a political party for purposes of the Matching Payment Act. Previous Commission advisory opinions issued to the Citizens Party also suggest and support this conclusion. In Advisory Opinion 1980-3 (copy enclosed) the Commission held that the Citizens Party would be viewed as a political party for purposes of 2 U.S.C. 431(16) once a Citizens Party candidate for Federal office satisfied ballot access requirements in any state.<sup>1</sup> Also, in Advisory Opinion 1980-56 (copy enclosed) the Commission noted Barry Commoner's registration as the Citizens Party presidential candidate for 1980, and stated that he could qualify for post general election funding under 26 U.S.C. 9004(a)(3) if the total of all popular votes he received in the general election was at least 5% of all such votes cast for the Office of President. That opinion, in effect, recognized that Mr. Commoner was the candidate of a political party in 1980 for purposes of 26 U.S.C. 9002(2) and 11 CFR 9002.15. The specific issue raised in this opinion, however, was not resolved by either of the cited 1980 opinions.

The Matching Payment Act by its terms does not address the political party affiliations of candidates who seek to establish eligibility thereunder.<sup>2</sup> In contrast to the general election funding provisions, it does not specify or define any categories of political parties; such as major party, minor party, new party. See 26 U.S.C. 9002(6), (7), (8). The absence of statutory

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<sup>1</sup> The Commission in a subsequent opinion to the John Anderson presidential campaign, Advisory Opinion 1980-96 (copy enclosed), noted that Citizens Party candidates for Federal office in Kentucky had met ballot access requirements in that state as candidates of a political party. See footnote 8 and the accompanying text in Advisory Opinion 1980-96.

<sup>2</sup> The United States Court of Appeals, in reviewing the Matching Payment Act to decide if it unconstitutionally discriminated against third parties, noted that it does not "discriminate between candidates of major, minor, and new [political] parties; once the threshold level is achieved, contributions to a candidate who seeks the nomination of a small party will be matched on exactly the same ratio as that available to major party candidates...". Buckley v. Valeo, 519 F.2d 821,884 (D.C. Cir. 1975), aff'd in part, rev'd in part, 424 U.S. 1 (1976). The Supreme Court affirmed the constitutionality of the Matching Payment Act.

references to separate categories of political parties indicates an apparent legislative intent to treat candidates of all political parties in the same fashion.<sup>3</sup> Moreover, the application of the Matching Payment Act to candidates of non-major parties seems contemplated by the definition of "matching payment period" in 26 U.S.C. 9032(b). This definition limits the time period during which matchable contributions may be received by an eligible candidate and provides for the special case of a political party that does not make its nomination by a national convention.

The definition of "candidate" includes no reference to political party affiliation and states that a candidate is an individual "who seeks nomination for election to be President of the United States." 26 U.S.C. 9032(2). The eligibility requirements further provide that to become eligible for matching payments a candidate must certify that he or she is "seeking nomination by a political party for election" to the Presidency. 26 U.S.C. 9033(b)(2). To implement the cited 9033(b), Commission regulations provide, in part, that a candidate will be deemed to seek nomination by a political party if that "political party" has a procedure for holding a "primary election," 11 CFR 9033.2(b)(1). For purposes of 9033.2(b)(1), "political party" means an association or organization that nominates a candidate for President. The term "primary election" is defined in this context to include an election held by a political party for expression of a preference for nomination of a presidential candidate. It is also defined to include a nominating convention or caucus held to nominate such a candidate. 11 CFR 9032.7(a).

As discussed above, the stated intent of Sonia Johnson to seek the presidential nomination of the Citizens Party for 1984, which, you state, will nominate (pursuant to delegate procedures) such a candidate by national convention in June 1984, coupled with the described record of political

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<sup>3</sup> Although sparse on this issue, the legislative history of the Matching Payment Act indicates that Congress viewed the \$100,000 (\$5000 per state in 20 states) threshold provisions as a significant limitation on the category of candidates who could obtain Federal funding. See H.R. Rep. No. 1239, 93d Cong., 2d Sess. 13 (1974); S. Rep. No. 689, 93d Cong., 2d Sess. 6 (1974). The most specific reference to participation of non-major party candidates in the matching funds system occurred during Senate floor debate on the conference bill. It is a brief colloquy between Senator Buckley and Senator Cannon, chairman of the Senate Rules Committee, which reported the original Senate bill, and its principal sponsor in conference with the House:

MR. BUCKLEY. Do the sponsors believe that the bill will reduce the chances for third party candidates to make effective races for the Presidency?

MR. CANNON. No. The intent precisely was to insure that this would not reduce the effectiveness of third-party candidates, that they should have a proper opportunity.

Now, all candidates, major and minor, independent or other, are treated alike with respect to matching grants for the primaries. Each must raise his threshold of \$100,000 in each of 20 states, with only the first \$250 of any contribution eligible for matching grants.

party recognition for other related purposes under Federal election statutes, indicate that Ms. Johnson may establish eligibility for matching Federal payments under the Matching Payment Act. Of course, to establish eligibility for matching funds and entitlement to such funds, Ms. Johnson must satisfy all other requirements of the Matching Payment Act and Commission regulations thereunder. See, 26 U.S.C. 9032, 9033 and 11 CFR Parts 9032 and 9033. One of the requirements is that in order to attain and maintain eligibility for matching payments, Ms. Johnson must be able to demonstrate that she is actively conducting campaigns in more than one state. 26 U.S.C. 9032(2), 9033(c)(1)(A); 11 CFR 9033.5, 9033.6.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Lee Ann Elliott  
Chairman for the Federal Election Commission

Enclosures (AO 1980-96, 1980-56 and 1980-3)