

AGENDA DOCUMENT #97-2



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM
For Meeting of: January 9, 1997

December 23, 1996

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina *John C. Surina*
Staff Director

FROM: Lawrence M. Noble *Lawrence M. Noble*
General Counsel

N. Bradley Litchfield *N. Bradley Litchfield*
Associate General Counsel

Rita Reimer *Rita Reimer*
Staff Attorney

SUBJECT: Draft AO 1996-51

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 9, 1997.

Attachment

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1
2 **ADVISORY OPINION 1996-51**

3
4 **Gwynn J. Kansfield, Treasurer**
5 **Reform Party of Arkansas**
6 **P.O. Box 6**
7 **Norman, AR 71960**

8
9 **Dear Ms. Kansfield:**

10
11 **This refers to your letters dated November 24 and October 24, 1996, which request**
12 **advice concerning application of the Federal Election Campaign Act of 1971, as amended**
13 **("the Act"), to the possible status of the operations of the Reform Party of Arkansas (the**
14 **"State Party") as a State party committee for purposes of the Act.**

15 **You state that the Reform Party of Arkansas is a State affiliate of the National**
16 **Reform Party.¹ You have submitted a copy of the State Party's bylaws, and a decision**
17 **from the United States District Court for the Eastern District of Arkansas, *Citizens to***
18 ***Establish a Reform Party in Arkansas v. Priest*, No. LR-C-96-185 (E.D. Ark. July 31,**
19 **1996), which required the Arkansas Secretary of State to officially recognize the**
20 **formation of the State Party for purposes of Arkansas law. You further state that the State**
21 **Party was successful in obtaining ballot access for individuals who received the Party's**
22 **nomination in 1996 for Federal office.² This statement is substantiated by publicly**

¹ This advisory opinion concerns only issues relating to the State Party and its political party and State committee status. A committee that claims to represent the National Reform Party has submitted a separate advisory opinion request to the Commission concerning its possible status as a national committee of a political party. See Advisory Opinion Request 1996-47.

² The Reform Party candidates in Arkansas were Keith Carlee for U.S. House of Representatives in the 1st Congressional District, and Tony J. Huffman for U.S. House of Representatives in the 3d Congressional District.

1 available sources. Also, the State Party placed on the 1996 ballot two candidates for state
2 office and five candidates for local offices.

3 Under the Act and Commission regulations, the term "State committee" means
4 the organization, which, by virtue of the bylaws of a political party, is responsible for the
5 day-to-day operation of such political party at the State level, as determined by the
6 Commission. See 2 U.S.C. §431(15) and 11 CFR 100.14. The definition of State
7 committee also requires the existence of a political party. Political party is defined under
8 2 U.S.C. §431(16) as an association, committee, or organization which nominates a
9 candidate for election to any Federal office whose name appears on the election ballot as
10 the candidate of such association, committee, or organization.

11 In Advisory Opinion 1992-30, the Commission determined the elements
12 necessary to qualify an organization as a State committee. The first requirement was the
13 existence of a State affiliate agreement which "delineates activities commensurate with
14 the day-to-day operation of [a political party] on a State level." Advisory Opinion 1992-
15 30; see also Advisory Opinions 1996-43, 1996-27, and 1995-49. The Commission then
16 concluded that "[t]o the extent the relationship between [a political party] and an affiliate
17 is based on this agreement and the affiliate displays evidence of activity by obtaining
18 ballot access for both its Presidential and other Federal candidates..., [that] particular
19 affiliate is a State Committee of the [political party]." *Id.*³

³ The Commission notes that this language is from prior opinions (Advisory Opinions 1996-27, 1995-49 and 1992-30) which considered State committees that were linked to national political parties. Therefore, the facts in those opinions concerned State committees that secured ballot access for Presidential and Vice-Presidential candidates as well as other Federal candidates. However, neither the Act nor Commission regulations require that ballot access be for a specific Federal office or a specific number of Federal candidates before an entity can qualify as a political party or a State committee of a political party. See 2 U.S.C. §§431(15), (16) and 11 CFR 100.14 and 100.15. See also the discussion below.

1 The Commission notes that these prior opinions are relevant to your situation
2 even though they concerned a State party affiliate also claiming a relationship with a
3 national party that had achieved national committee status. The entity known as the
4 National Reform Party has not received this status. However, the definitions in the Act
5 and Commission regulations for State committee and political party do not require that a
6 national committee or national party be established before a State entity can be
7 recognized as the State committee of a political party.

8 In Advisory Opinion 1996-43, the Commission addressed the situation where a
9 State party affiliate of a national political party that had not yet achieved the status of a
10 national party committee nevertheless sought State party status. The Commission found
11 that the same criteria applied to that situation, which, it noted, was very similar to
12 Advisory Opinion 1976-95, the first opinion that examined State committee status. In
13 that opinion the Campaign Committee of the Liberal Party of New York sought
14 designation as a national committee of a political party. The Commission noted that the
15 activity of the requester (including its successful ballot activity) was limited only to New
16 York State. The Commission concluded that the requester was not a national committee,
17 but was instead “a subordinate [State] committee of a political party.” See Advisory
18 Opinion 1976-95.

1 According to the Bylaws submitted with your request, the purpose of the State
2 Party is to “nominate and endorse candidates for public office, and to engage in other
3 political and information activities in the State of Arkansas.” Bylaws, Art. 1, §1. The
4 Bylaws also list the responsibility of the party organization to hold State conventions and
5 to insure that the Reform Party candidates for President and Vice President selected at the
6 Reform Party’s national nominating convention appear on the general election ballot in
7 Arkansas. Bylaws, Art. V, §1. The Bylaws set criteria for party membership and
8 establish a State Executive Committee and Party Officers. Bylaws, Art. I, §§2, 6; Art. II;
9 Art. III. These provisions are consistent with the State party rules reviewed in Advisory
10 Opinions 1996-43, 1996-27, 1995-49 and 1992-30 as they delineate activity
11 commensurate with the day-to-day functions and operations of a political party on a State
12 level.

13 The second element for qualifying as a political party is that the party
14 organization actually obtains ballot access for its Federal candidates. In Advisory
15 Opinion 1996-35, the Commission denied national committee status to a political party
16 committee that it determined had not demonstrated sufficient activity on a national level
17 to attain this status. See also Advisory Opinions 1995-16, 1992-44, and the advisory
18 opinions cited therein. A significant aspect of the Commission’s determination was the

1 fact that the party's Presidential candidate purposely limited his spending to a level that
2 would avoid his qualifying as a candidate under the Act.⁴ Since the party had no
3 Presidential candidate as defined in the Act, it had no Presidential candidate for purposes
4 of 2 U.S.C. §§431(16) and 431(14) (definition of "national committee").

5 The status of the State Party's 1996 Congressional candidates is similar to the
6 situation presented in Advisory Opinion 1996-35, but the status of its recent Presidential
7 candidate differs substantially from that presented in the cited opinion. Keith Carlee and
8 Tony Huffman were listed on the 1996 general election ballot as the candidates of the
9 Reform Party for the U.S. House of Representatives in the Arkansas 1st and 3d
10 Congressional districts, respectively. However, neither of them filed with the
11 Commission as Congressional candidates for purposes of the Act.⁵ In contrast, the
12 Reform Party's Presidential and Vice Presidential candidates, Mr. Ross Perot and Dr. Pat
13 Choate, did file as candidates with the Commission. They also appeared on the Arkansas
14 ballot as the Reform Party's candidates for those offices pursuant to State Party bylaws
15 requiring the State Party to insure that the party's national convention nominees for
16 President and Vice President be placed on the Arkansas general election ballot. Given
17 these circumstances, the Commission concludes that the State Party meets the second and
18 last element to qualify as a State committee of a political party. It also qualifies the

⁴ An individual becomes a candidate for purposes of the Act if he or she receives contributions aggregating in excess of \$5,000 or makes expenditures aggregating in excess of \$5,000. 2 U.S.C. §431(2). Federal candidates must designate a principal campaign committee within 15 days after qualifying as a candidate and also become subject to various registration, recordkeeping and reporting requirements. 2 U.S.C. §§ 432(e)(1), 433, 434(a)(1) and (2); 11 CFR 101.1(a), 102.1(a) and 104.1.

⁵ There is no document on file at the Commission indicating that either Mr. Carlee or Mr. Huffman ever designated a principal campaign committee or took any other action required of Federal candidates under the Act. See footnote 4.

1 Reform Party of Arkansas as a political party. Therefore, the Commission further
2 concludes that the operations of the Reform Party of Arkansas would constitute it as the
3 State committee of a political party.⁶

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

7 Sincerely,

8
9
10 John Warren McGarry
11 Chairman
12

13
14 Enclosures (AOs 1996-43, 1996-35, 1996-27, 1995-49, 1995-16, 1992-44, 1992-30 and
15 1976-95)

⁶ The Commission notes that any person involved in a specific activity indistinguishable in all its material aspects from the activity described in an advisory opinion issued to another person may rely on its conclusions. 11 CFR 112.5(a). Therefore, any other Reform Party entity that operates at the State level with party rules similar to those of the Reform Party of Arkansas, and that secured Federal candidate ballot access for the 1996 election cycle (or a past election cycle) for at least one of its Federal candidates who also qualified as a candidate under the Act, may rely on the conclusions reached in this opinion.