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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 18-37-A
AGENDA ITEM
For meeting of August 02, 2018

July 26, 2018

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
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Subject: AO 2018-10 (United Utah Party) Draft A

Attached is a proposed draft of the subject advisory opinion.

Members of the public may submit written comments on the draft advisory opinion. We are making this draft available for comment until 12:00 pm (Eastern Time) on August 1, 2018.

Members of the public may also attend the Commission meeting at which the draft will be considered. The advisory opinion requestor may appear before the Commission at this meeting to answer questions.

For more information about how to submit comments or attend the Commission meeting, go to <https://www.fec.gov/legal-resources/advisory-opinions-process/>

Attachment

1 ADVISORY OPINION 2018-10

2

3 David Bateman
4 United Utah Party Candidate Committee
5 1172 W 700 N, Suite 300
6 Lindon, UT 84042

DRAFT A

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8 Dear Mr. Bateman:

9 We are responding to your request on behalf of the United Utah Party Candidate
10 Committee (“UUP”) regarding its status as a state committee of a political party under the
11 Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission
12 regulations. The Commission concludes that UUP qualifies as a state committee of a political
13 party.

14 ***Background***

15 The facts presented in this advisory opinion are based on your letter received June 22,
16 2018 and public disclosure reports filed with the Commission.

17 Utah law has recognized UUP as a “Qualified Political Party” since 2017. *See* Advisory
18 Opinion Request (“AOR”) at AOR001, AOR004. UUP nominated and placed a federal
19 candidate on the ballot under its name in the 2017 special election for the 3rd Congressional
20 District of Utah. *See* AOR001. The candidate, Jim Bennett, received and spent over \$5,000
21 according to disclosure reports filed with the Commission.¹ UUP also has endorsed several
22 candidates running for congressional, state, and county offices in the current election cycle. *See*
23 AOR001. UUP is not affiliated with a national party. *Id.*

24 UUP’s Constitution outlines the party structure by providing procedures for the election
25 of officers and their duties (UUP Const. arts. III-IV at AOR020-026); holding an annual party

¹ Jim Bennett for Congress, October Quarterly Report, FEC Form 3 at 2 (Oct. 15, 2017),
<http://docquery.fec.gov/pdf/502/201710159075676502/201710159075676502.pdf>.

1 convention and publishing an official party platform (UUP Const. art. III at AOR020-024); and
2 establishing an executive committee responsible for governing the direction of the party (UUP
3 Const. art. III at AOR020-024). The executive committee consists of a chairperson, vice
4 chairperson, treasurer, and secretary. UUP Const. art. III at AOR020. The executive committee
5 determines the rules of its own proceedings, sets policy for the orderly conduct of party business,
6 authorizes expenditures in the interests of the party, adopts resolutions and takes positions on
7 issues of concern, and determines membership classification. *Id.* at AOR021. At the local level,
8 UUP is organized by county with each county unit governed by its own chairperson, vice
9 chairperson, secretary, and treasurer. UUP Const. art. IV at AOR025. UUP’s Constitution sets
10 forth responsibilities for each county organization to develop the “fullest membership in the
11 county, hold regularly scheduled meetings, encourage candidates for elective office, to form and
12 maintain an effective campaign organization, and to promote the general interests of the party.”
13 UUP Const. art. IV at AOR025-026. UUP’s Bylaws provide procedures for nominating
14 candidates for public office and for conducting state conventions. UUP Bylaws, art. IV at
15 AOR032-034.

16 ***Question Presented***

17 *Does UUP qualify as a state committee of a political party under the Act and*
18 *Commission regulations?*

19 ***Legal Analysis and Conclusion***

20 Yes, UUP qualifies as a state committee of a political party under the Act and
21 Commission regulations.

1 A “state committee” is an organization that, “by virtue of the bylaws of a political party .
2 . . . is part of the official party structure and is responsible for the day-to-day operation of the
3 political party at the [s]tate level, . . . as determined by the Commission.” 11 C.F.R. § 100.14(a);
4 52 U.S.C. § 30101(15). A “political party” is an “association, committee, or organization that
5 nominates a candidate for election to any federal office whose name appears on the election
6 ballot as the candidate of such association, committee, or organization.” 52 U.S.C. § 30101(16);
7 11 C.F.R. § 100.15.

8 To qualify as a state committee of a political party, a state party organization not
9 affiliated with a national political party must (1) itself qualify as a “political party”; (2) possess
10 an official structure; and (3) be responsible for the day-to-day operation of a party at the state
11 level. *See, e.g.*, Advisory Opinion 2016-24 (Independence Party of Minnesota); Advisory
12 Opinion 2012-04 (Justice Party of Mississippi); Advisory Opinion 2008-12 (Independent Party
13 of Oregon); Advisory Opinion 2007-23 (Independence Party of New York).

14 *(1) Qualification as a Political Party*

15 To qualify as a political party, UUP must nominate at least one candidate for federal
16 office whose name appears on the ballot as the candidate of the UUP. *See* 52 U.S.C.
17 § 30101(16); 11 C.F.R. § 100.15. An individual is a candidate if the individual or his or her
18 authorized committee has received contributions aggregating in excess of \$5,000 or made
19 expenditures aggregating in excess of \$5,000. *See* 52 U.S.C. § 30101(2); 11 C.F.R.
20 § 100.3(a)(1).

21 UUP is recognized under Utah law as a “Qualified Political Party” and has placed one
22 individual seeking federal office on a special election ballot in Utah’s 3rd congressional district.

1 AOR001. That individual disclosed receiving more than \$5,000 in contributions and thus was a
2 candidate under the Act. *See* 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). Because it placed at
3 least one federal candidate on the ballot, UUP qualifies as a political party under the Act and
4 Commission regulations.

5 *(2) Official Party Structure*

6 The Commission has long explained that a state party organization not affiliated with a
7 national political party must possess an official party structure to obtain state party committee
8 status. *See, e.g.*, Advisory Opinion 2016-24 (Independence Party of Minnesota); Advisory
9 Opinion 2012-04 (Justice Party of Mississippi); Advisory Opinion 2008-12 (Independent Party
10 of Oregon); Advisory Opinion 2000-21 (State Committee of the New York State Conservative
11 Party); Advisory Opinion 2000-14 (New York State Committee of the Working Families Party).
12 UUP's Constitution and Bylaws, as discussed above, establish UUP's organizational structure
13 from a statewide level down through various local levels, and empower party officials to govern
14 the day-to-day affairs of the party. *See* AOR 001. Notably, UUP's Constitution and Bylaws
15 outline the party convention format and the nominating process for candidates. UUP Const., art.
16 III at AOR021-024; UUP Bylaws, art. IV at AOR032-034. Accordingly, UUP has the requisite
17 official party structure to qualify as a state committee of a political party.

18 *(3) Responsibility for Day-to-Day Operation of a Political Party*

19 Finally, to qualify as a state committee of a political party, the organization, by virtue of
20 its bylaws or by operation of state law, must be responsible for the day-to-day operation of a
21 political party at the state level. *See* 52 U.S.C. § 30101(15); 11 C.F.R. § 110.14(a); *see also*
22 Advisory Opinion 2016-24 (Independence Party of Minnesota); Advisory Opinion 2012-04

1 (Justice Party of Mississippi); Advisory Opinion 2008-12 (Independent Party of Oregon);
2 Advisory Opinion 2007-23 (Independence Party of New York).

3 In addition to holding an annual convention, publishing a party platform, and establishing
4 an executive committee (UUP Const. art. III at AOR020-024), UUP also establishes county
5 organizations, which are responsible for developing county membership, holding regular
6 meetings, recruiting candidates, campaigning, and promoting the general interests of the party
7 (UUP Const. art. IV at AOR024-026). These activities are consistent with the “day-to-day”
8 operations previously recognized by the Commission for other state party committees that are
9 unaffiliated with national political parties. *See, e.g.*, Advisory Opinion 2018-10 (Independence
10 Party of Minnesota); Advisory Opinion 2012-04 (Justice Party of Mississippi); Advisory
11 Opinion 2008-12 (Independent Party of Oregon); Advisory Opinions 2007-23 (Independence
12 Party of New York). Thus, UUP is responsible for the day-to-day operations of a political party
13 at the state level.

14 In sum, because UUP is a political party, possesses an official party structure, and is
15 responsible for the day-to-day operation of the political party at the state level, the Commission
16 determines that UUP qualifies as a state committee of a political party under the Act and
17 Commission regulations.

18 This response constitutes an advisory opinion concerning the application of the Act and
19 Commission regulations to the specific transaction or activity set forth in your request. *See* 52
20 U.S.C. § 30108. The Commission emphasizes that, if there is a change in any of the facts or
21 assumptions presented, and such facts or assumptions are material to a conclusion presented in
22 this advisory opinion, then the requestor may not rely on that conclusion as support for its

1 proposed activity. Any person involved in any specific transaction or activity which is
2 indistinguishable in all its material aspects from the transaction or activity with respect to which
3 this advisory opinion is rendered may rely on this advisory opinion. *See* 52 U.S.C.
4 § 30108(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be
5 affected by subsequent developments in the law including, but not limited to, statutes,
6 regulations, advisory opinions, and case law. Any advisory opinions cited herein are available
7 on the Commission's website.

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On behalf of the Commission,

Caroline C. Hunter
Chair