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September 28, 2023

Lisa J. Stevenson
Acting General Counsel
Office of General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Ms. Stevenson,

On behalf of the Upshur County Republican Executive Committee (“Upshur County”), we seek an advisory opinion to confirm Upshur County’s independence from the West Virginia Republican Party (“State Party”) for purposes of aggregate contribution limits. 11 CFR § 110.3. Upshur County is both practically and legally independent from the State party, and we respectfully request that the Commission expeditiously affirm this fact.

I. Legal Background

Under the Federal Election Campaign Act of 1971, as amended (“the Act”), political committees “established or financed or maintained or controlled” by the same persons or group of persons are treated as a single political committee for the purposes of the contributions they make or receive.” 52 U.S.C. § 30125(e)(1)(A).

While Congress specifically carved out exceptions giving separate political committee status to the national parties and a single committee established, financed, maintained, or controlled by a State committee, the Act is silent regarding the relationship of the county parties and state parties.

Despite the Act’s silence, legislative history illustrates that Congressional intent was to prevent persons or entities from evading the contribution limits by setting up multiple political committees.¹ For example, the House Report states, “all political committees set up by a State

¹ House Report No. 94-917, 94th Cong., 2d Sess. 6, (1976)

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political party or by county or city parties would be treated as a single political committee for the purposes of [contribution limitations].”²

In an attempt to reconcile the Act and the apparent ambiguity of the legislative history, the Commission promulgated rules creating a presumption of affiliation between the political committees of a state party and those of subordinate state party committees:

All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee.

11 CFR § 110.3(b)(3).

The regulations go on to state that the presumption shall not apply if:

- (i) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and
- (ii) The political committee of the party unit in question does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.

11 CFR § 110.3(b)(3).

The Commission’s inclusion of the reputable presumption demonstrates an acknowledgment that state and county parties are naturally intertwined and necessarily have some form of a relationship as it relates to grassroots organizing and building collations of voters in a state. However, despite this inherent relationship, so long as each committee retains control of its own funds, a county party committee has the ability to be deemed independent as it relates to aggregate contribution limits.

II. Question Presented

Is Upshur County independent from the State Party for purposes of aggregate contribution limits?

² Id.

III. Analysis

Upshur County is the newly registered federal account of the Upshur County Republican Executive Committee.

Upshur County, like all county parties in West Virginia, is a creation of state statute. In practice, Upshur County operates independently from the State Party, especially in the context of decisions related to the use of federal account funds and contributions to federal candidates. The State Party does not dictate or control how Upshur County makes policy decisions or uses its funds. Upshur County has complete control of any decisions related to Upshur County's finances and contributions to federal candidates. Decisions on these matters are determined by a majority vote of the members at a formal meeting. Likewise, the State Party does not dictate or control the leadership of Upshur County. The members of Upshur County are elected, according to state statute, by the voters of the county. Based on these facts, Upshur County is both practically and legally independent from the State party for purposes of aggregate contribution limits.

In previous Advisory Opinions, the Commission has evaluated similar county parties and found the presumption of affiliation did not apply. In AO 1978-9 (Republican State Central Committee of Iowa), the Commission concluded that the presumption of affiliation was overcome solely by the absence of the activities described in sections (i) and (ii) of 11 CFR § 110.3(b)(3). In making this determination, the Commission relied on factors demonstrating the State party did not have substantial control of the decisions of the county party.

A. Upshur has not received funds from a Committee established, financed, maintained, or controlled by any party unit

Upshur County has not received funds from the West Virginia Republican Party or any other Committee established, financed, or maintained by the State Party. Upshur County does not participate in joint fundraising efforts with the State Party. Further, it is our understanding that Upshur County has not provided or arranged for funds to the West Virginia Republican Party and leadership of Upshur County has no plans to do so in the future.

B. Upshur County Executive Committee does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party units

In prior Advisory Opinions, the Commission has evaluated similar county parties to determine if the presumption applied. AO 1978-9 (Republican State Central Committee of Iowa); *see also* AO 1999-4 (Republican Party of Minnesota). In evaluating section (ii) of 11 CFR § 110.3(b)(3), the Commission has looked at factors such as: (1) the statutory authority creating

the county party in the state; (2) the control the State party has on county officials' elections; (3) the control the State party has on the bylaws adopted by the county party; (4) the amount of control or influence the State party has on expenditures of the county party funds; and (5) if contributions from to the county party are made in cooperation, consultation with, or at the request of the State party. *Id.*

Applying these factors to Upshur County, the presumption should not apply: (1) county parties in the State of West Virginia are created by state statute³; (2) the State Party does not have control of the Upshur County's officer elections⁴; (3) Upshur County adopts its own bylaws; (4) Upshur County has full control over its use of funds; and (5) contributions from Upshur County are not made in cooperation, consultation with, or at the request of the State Party.

In sum, Upshur County independently controls the use of its funds and does not make its contributions in cooperation, consultation, or concert with, or at the request or suggestion of the State Party.

Additionally, the Commission has promulgated rules regarding Affiliated Committees that list circumstantial factors the Commission may examine to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained, or controlled by another committee or sponsoring organization. 11 CFR § 100.5(g). To the extent the Commission believes these factors are applicable to the determination of county party affiliation, the application of these factors further demonstrates that Upshur County is not established, financed, maintained, or controlled by the West Virginia Republican Party.

The 11 CFR § 100.5(g) circumstantial factors weigh in favor of a determination of non-affiliation because:

(A) No organization owns a controlling interest in the voting stock or securities of Upshur County; (B) The West Virginia Republican Party has nothing more than hypothetical authority or ability to direct or participate in the governance of Upshur County through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures; (C) The West Virginia Republican Party does not dictate leadership of Upshur County and does not control decision-making employees or members of Upshur County; (D) Any overlap in membership between the Upshur County and the West Virginia Republican party is incidental and not an indicator of a formal or ongoing relationship; (E) Upshur Country

³ W. Va. Code, § 3-1-9.

⁴ The State Party does have the ability to fill vacancies if the county is unable to fill the position or in the event of a tie vote. This is similar to the county party in AO 1978-9, where the Commission found the presumption did not exist, noting "the primary mechanism" for removing officers was through the action of the county committee itself. Advisory Opinion 1978-9 (Republican State Central Committee of Iowa).

does not have a common or overlapping officers or employees with another sponsoring organization or committee which indicates a formal or ongoing relationship between the sponsoring organizations or committees; (F) There are no overlapping officers or employees of Upshur County and there are no former officers or employees of State Party or Upshur County; (G) Upshur County has not in recent history received funds from the West Virginia Republican Party or any other Committee established, financed, or maintained by the State Party; (H) The West Virginia Republican party does not causes or arranges for funds on an ongoing basis to be provided to Upshur County and the current leadership of Upshur County has no plans to provided or arranged for funds to the West Virginia Republican; (I) The West Virginia Republican Party or its agents had no role in the formation of Upshur County. Likewise, Upshur County had no role in the formation of the West Virginia Republican Party.; and (J) Upshur County does not have a similar pattern of contributions or contributors that indicate a formal or ongoing relationship with the State Party.

To clarify, there are provisions in the Bylaws of the Republican State Executive Committee of West Virginia (“State Party Bylaws”) that could be relevant to these facts. The State Party Bylaws should be read in the context of the natural relationship of a state and a county party relating to their grassroots and building coalitions of voters purposes. They should not be viewed as evidence the State Party has control of Upshur County’s financial decisions because, in practice, these provisions do not supersede the reality that Upshur County is entirely independent of the State Party regarding decision-making and control of Upshur County’s federal account. Further, despite any technical provisions and hypothetical scenarios, in reality, decisions related to Upshur County’s finances and policies are decided by a vote of the members of Upshur County at a formal meeting without cooperation, consultation, suggestion, or direction from the State Party.

For example, the State Party Bylaws state that the Executive Committee shall consist of “State Chairman, State Co-Chairman, State Secretary, State Treasurer, Republican National Committeeman, Republican National Committeewoman, Thirty-four (34) State Senatorial District Committeemen, Thirty-four (34) State Senatorial District Committeewomen, the County Chair of each County Republican Executive Committee, the President or highest-ranking officer of the West Virginia Federation of Republican Women, the Chairman or highest-ranking officer of the West Virginia Federation of Young Republicans, one At-Large member from each Congressional District corresponding to the number of Congressional Districts and Three (3) Members State-At-Large.”⁵

Upshur County has three members, including the Chairman of Upshur County, who are members of the Executive Committee. This is the extent of overlap between Upshur County and the State Party. These members’ limited participation on the Executive Committee does not indicate a significant level of control, or in practice, any level of control of the State Party. The

⁵ Article II, Bylaws of Republican State Executive Committee of West Virginia

Executive Committee has a massive membership of well over a hundred members. The three votes from the members of Upshur County are severely diluted by the rest of the membership of the Executive Committee. As a result, with only three votes, Upshur County does not have the ability to control the decisions of the State Party.

There are additional provisions of the West Virginia Republican Party Bylaws that give the State Party, in rare circumstances, the authority to appoint and remove county party officials, including removal of officers with a 2/3 vote of the Executive Committee and the ability to fill vacancies when their county party is unable to, or there is a tie vote.⁶ These are extraordinary and rare remedies. In practice, as a creature of statute, the primary mechanism that county executive board members are elected is through an election of Republican voters of Upshur County, in accordance with the provisions of West Virginia law.⁷ The Officers are voted on by the members of Upshur County or, in the event of a vacancy, appointed by the Chairman of Upshur County.⁸ The existence of these provisions in the State Party Bylaws does not indicate the State Party in practice determines who controls Upshur County. Likewise, based on Commission precedent, it is not dispositive in demonstrating that Upshur County and the State Party are not independent. In AO 1978-9 (Republican State Central Committee of Iowa), the Commission concluded the State party and county committee are separate political committees for purposes of aggregate contribution limits despite the fact that “under certain circumstances, the State Committee plays a role in the removal of a county committee Chairman or Co-Chairman for failure to fulfill the duties of the office, the primary mechanism for removal of county officers is through the action of the county committee itself.”⁹ As a result, the Commission should rely on the “primary mechanism” and how in practice leadership is elected for Upshur County, and not how they could hypothetically appointed or removed.

The State Party Bylaws also provide that county parties “may adopt rules or bylaws which may not conflict with these Bylaws in matters relating to the election and removal of officers and members of the County Executive Committee.”¹⁰ This provision does not demonstrate that the State Party has any influence on decision making on how funds are raised and spent. It also does not demonstrate any significant level of control because the provision just provides a limited restriction on the framework for election and removal of officers and members.

The State Party Bylaws also provide the option that in “the interest of effective organization and party harmony,” the State Executive Committee and its Chairman ““have the ability to exert control regarding “any other matter of the business of any such committee which

⁶ Article XI, XIII, Bylaws of Republican State Executive Committee of West Virginia

⁷ W. Va. Code, § 3-1-9.

⁸ Upshur County Republican Executive Committee By-Laws

⁹ AO 1978-9 (Republican State Central Committee of Iowa).

¹⁰ Article XV, Sec. 8, Bylaws of Republican State Executive Committee of West Virginia.

in the opinion of the State Executive Committee or the State Chairman shall be of sufficient importance to the Republican party to require removal from local consideration and action by the State Executive Committee.”¹¹ To implement this procedure, the State Party Bylaws list a lengthy multi-step process. This process is rarely utilized and does not in practice reflect a mechanism by which Upshur County makes decisions, especially decisions related to the use of Upshur County’s funds. Moreover, this provision should be viewed in the context of the state and county parties’ grassroots function. The existence of this provision does not diminish in any way the reality that Upshur County has full control of any decision related to Upshur County’s finances or policies.

In further support of Upshur County’s independence, we understand that the current State Party leadership does not support Upshur County’s independence. This, of course, only further supports Upshur County’s contention that it is independent in practice, and is not established, maintained, financed, or controlled by the State Party.

IV. Conclusion

We respectfully request that the Commission affirms Upshur County’s independence from the West Virginia Republican Party for purposes of aggregate contribution limits. 11 CFR § 110.3.

Respectfully submitted,



Charlie Spies
Benjamin Mehr
*Counsel for Upshur County Republican
Executive Committee*

¹¹ Article XIII, Bylaws of Republican State Executive Committee of West Virginia.

**UPSHUR COUNTY
REPUBLICAN EXECUTIVE COMMITTEE
BY-LAWS**

ARTICLE I - NAME

The name of the organization shall be the:

UPSHUR COUNTY REPUBLICAN EXECUTIVE COMMITTEE

ARTICLE II - ELECTION OF MEMBERS

The membership of this organization shall consist of those persons elected in the Primary elections, every four years, in accordance with the provisions of the West Virginia Code.

ARTICLE III - TERM OF OFFICE

Section 1: The term of office of all members of the County Executive Committee so elected, shall begin on the first day of July following the Primary Elections and shall continue for four years thereafter and until their successors are elected and qualify.

Section 2: If any member shall fail to attend three consecutive meetings without reasonable or just cause, or without being represented by proxy, the chairman of the committee is empowered to remove that member so that the committee shall be assured of the fullest possible attendance at each meeting.

SECTION 3: Vacancies in the County Executive Committee shall be filled by declaration of the County Chairman for the unexpired term.

ARTICLE IV - OFFICERS

Section 1: The officers of this organization shall consist of a Chairman, Vice Chairman, Secretary and Treasurer.

Section 2: The terms of all officers shall begin on the date of their election to such office and shall continue until their successors are elected and qualify.

Section 3: Vacancies in any of the positions as officers of the Committee, other than chairman, shall be filled by Chairman until the next scheduled meeting is held at which time the vacancy shall be filled by a majority vote of members present or represented by proxy.

Section 4: Any vacancy in the office of Chairman of the Committee shall be filled by the Vice Chairman until the next meeting is held, at which time the vacancy shall be filled by a majority vote of the members present or represented by proxy.

ARTICLE V - CHAIRMAN

- Section 1:** The Chairman shall be the Chief Executive of the Committee and shall be responsible for the management and administration of its affairs, subject only to these by-laws and instruction for the Committee.
- Section 2:** The Chairman shall preside at all meetings of the Committee. In case of absence of the Chairman, the Vice Chairman shall preside.
- Section 3:** The Chairman shall have no vote at any meeting of the Committee except when the Chairman is an elected member of the Committee.

ARTICLE VI - VICE CHAIRMAN

The Vice Chairman shall perform the duties of the Chairman when the Chairman is absent or unable to serve, and shall perform such other duties as may be assigned by the Committee or by the Chairman.

ARTICLE VII-SECRETARY

- Section 1:** The Secretary of the Committee shall keep an accurate minute journal of all the meetings of the Committee and shall make such other reports as the Committee or the Chairman may require.
- Section 2:** The Secretary shall have charge of the necessary correspondence of the Committee and shall perform such other duties as may be assigned by the committee or the Chairman.

ARTICLE VIII - TREASURER

- Section 1:** The Treasurer shall receive and have charge of all the funds of the Committee. The Treasurer shall deposit such funds in a separate account in the name of the Executive Committee. The bank where such an account shall be made will be designated by the Committee.
- Section 2:** All expenditures of the funds of the Committee shall be made by check.
- Section 3:** The Treasurer shall file financial reports on a regular schedule as set out by law.

ARTICLE IX – REMOVAL OF OFFICERS

An officer of the Executive Committee may be removed from office by a majority of members present, or represented by proxy, at any meeting of the Committee, provided the officer to be removed has been given written notice by certified mail, of such removal and the reason for the removal. The letter must be signed by a majority of the Committee members and must be mailed by at least ten (10) days prior to the date of the meeting.

ARTICLE X – MEETINGS

Section 1: As soon as practicable, after the first day of July, but not later than the first day of August, following the election of a new Executive Committee, members of the new Committee shall be convened at a time and place to be designated, on the call of the retiring Chairman, and shall thereupon proceed to elect officers. At such organizational meeting, the Committee shall transact any other business that it shall deem proper.

Section 2: The Committee shall hold at least two (2) meetings per year. The Chairman shall issue the call for the meetings.

Section 3: A meeting of the Committee may also be called upon the request of one-third of the members of the Committee.

Section 4: An absent member of the Committee may be represented at a meeting by another person duly authorized, in writing, by the absent member.

Section 5: A majority of the members of the Committee shall constitute a quorum for the transaction of the business of the Committee.

Section 6: *Robert's Rules of Order* shall govern the conduct of the meetings of the Committee except as otherwise provided by these By-Laws.

ARTICLE XI – DUTIES OF COMMITTEE

Section 1: It shall be the duty of the Committee to appoint officials for the Primary and General Elections. Each Committee member shall be responsible for selecting the officials for his/her particular district or assigned precincts.

Section 2: The Committee shall be responsible for appointing and training all precinct Captains.

Section 3: It shall be the duty of the Committee to hold an annual Lincoln Day Dinner.

Section 4: It shall be the duty of the Committee to promote the general welfare of the Republican Party.

Note: These By-Laws were read three times and adopted, by members of the Upshur County Republican Executive Committee at their regular monthly meeting June 18, 2002.