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For meeting of August 22, 2019
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August 21, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by NFS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Esther D. Gyory Acting *EDG*
Assistant General Counsel

Joanna S. Waldstreicher *JSW by NFS*
Attorney

Cheryl Hemsley *cafh*
Attorney

Subject: AO 2019-14 (AZLP) Revised Draft A

Attached is a proposed revised 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 9:00 am (Eastern Time) on August 22, 2019.

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 2019-14

2

3 Jeff Daniels
4 Secretary
5 Arizona Libertarian Party
6 1000 N. Beeline Highway #139
7 Payson, AZ 85541

REVISED DRAFT A

8

9 Dear Mr. Daniels:

10 We are responding to your advisory opinion request on behalf of the Arizona
11 Libertarian Party (“AZLP”), regarding the application of the Federal Election Campaign
12 Act, 52 U.S.C. §§ 30101-45 (the “Act”), and Commission regulations to the Committee’s
13 proposal to transfer \$2,000 to the Libertarian National Party (“LNP”) to help cover
14 LNP’s cost of implementing the “state Customer Relationship Management System.”
15 The Commission concludes that the proposed transfer is permissible, but would cause
16 AZLP to exceed the monetary threshold requiring registration as a political committee.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 April 5, 2019 and your email received on June 18, as well as AZLP’s and LNP’s publicly
20 available websites.

21 The LNP is registered with the Commission, and in 1975, the Commission
22 determined that the LNP is a national party committee. Advisory Opinion 1975-129
23 (National Committee of the Libertarian Party). The AZLP is the LNP’s state affiliate for
24 Arizona, *see* Advisory Opinion Request at AOR001, and is not currently registered with
25 the Commission as a federal political committee. In 2007 and 2016, the AZLP requested
26 advisory opinions seeking Commission approval that AZLP qualified as a state

1 committee of a national political party — the LNP. In each instance the Commission
2 granted the request, finding that the AZLP was part of the official LNP structure and
3 carried out the day-to-day activities of the LNP in Arizona. *See* Advisory Opinion 2016-
4 14 (11 Libertarian State Committees); Advisory Opinion 2007-02 (Arizona Libertarian
5 Party). Each time the AZLP’s status as a federal political committee was later
6 terminated.¹ Examination of the AZLP’s Bylaws on its
7 website, <https://www.azlp.org/bylaws>, shows the same structure, operations, and duties as
8 were present when the Commission determined it was a state committee of a national
9 political party.

10 The LNP is offering its state affiliates the use of its Customer Relationship
11 Management System (“CRM”) free of charge; “there is no actual ‘fee’ to be onboarded to
12 the CRM.” AOR010. The CRM is a database in which state libertarian parties “store
13 critical information; contact information on members, current and potential supporters,
14 donors and candidates.” AOR002. Onboarding a state affiliate to the CRM system
15 involves “preparing their data set(s), web and CRM configuration, importing data and
16 training.” *See* LNP website: <https://my.lp.org/state-crm-project/>.

17 The LNP only adds a state affiliate to its CRM when the LNP has sufficient funds
18 to cover the costs it incurs to do so, approximately \$2,000 for each state affiliate.
19 AOR002. The LNP is actively soliciting funds on its public website for the purpose of

¹ In late 2016, the AZLP filed a termination report with the Commission in accordance with 11 C.F.R. § 102.4(a)(1). *See* Termination Report, <https://docquery.fec.gov/pdf/736/201701179041409736/201701179041409736.pdf>; the report was later accepted by the Commission and the AZLP was terminated as a registered political committee. *See* Termination Approval, <https://docquery.fec.gov/pdf/274/201701260300076274/201701260300076274.pdf>. *See also* Advisory Opinion 2016-14 (11 Libertarian State Committees) at n.2.

1 onboarding more state affiliates. *Id.* The AZLP proposes transferring \$2,000 to the LNP
2 to aid the LNP with the “cost of the overall CRM.” AOR010. The AZLP has sufficient
3 identifiable federally permissible funds to make the payment. AOR002. The AZLP
4 represents that without the proposed transaction, it has not made sufficient contributions
5 or expenditures to exceed the threshold requiring registration as a political committee.

6 *Id.*

7 ***Question Presented***

8 *May the AZLP transfer \$2,000 to the LNP without registering with the*
9 *Commission as a political committee?*

10 ***Legal Analysis and Conclusion***

11 The AZLP may transfer the funds to the LNP as proposed, but the transfer would
12 require the AZLP to register as a political committee and file regular campaign finance
13 reports with the Commission because the proposed sum would exceed the \$1,000
14 statutory threshold.

15 A “state committee” is an organization that, “by virtue of the bylaws of a political
16 party . . . is part of the official party structure and is responsible for the day-to-day
17 operation of the political party at the State level, . . . as determined by the Commission.”
18 11 C.F.R. § 100.14(a); *see also* 52 U.S.C. § 30101(15). A state committee must register
19 and report with the Commission if it receives contributions or makes expenditures
20 aggregating in excess of \$1,000 during a calendar year. 52 U.S.C. § 30101(4)(A), (8)(A),
21 (9)(A); 11 C.F.R. § 100.5(a). A state committee that surpasses this threshold must (1)
22 register with the Commission by filing a Statement of Organization within 10 days of

1 becoming a political committee and (2) begin filing periodic disclosure reports with the
2 Commission. 11 C.F.R. §§ 102.1(d), 104.1(a).

3 As noted above, the Commission previously determined, on two separate
4 occasions, that AZLP is a state committee of the LNP. *See* Advisory Opinion 2016-14
5 (11 Libertarian State Committees); Advisory Opinion 2007-02 (Arizona Libertarian
6 Party). The Commission is aware of no factual changes that would alter its conclusions
7 that the AZLP is the Arizona state committee of the LNP. However, because AZLP's
8 political committee status had terminated when it ceased receiving contributions or
9 making expenditures after the 2016 elections, the Commission must determine whether
10 the proposed transfer of \$2,000 to the LNP requires AZLP to re-register as a political
11 committee. The Commission concludes that it does.

12 Transfers of funds may be made in unlimited amount between a state party
13 committee and a national party committee “whether or not they are political committees
14 under 11 C.F.R. [§] 100.5 and whether or not such committees are affiliated.” 11 C.F.R.
15 § 102.6(a)(1)(ii); *see also* 52 U.S.C. § 30116(a)(4). The funds comprising such a transfer
16 are subject to the amount limitations, source prohibitions, and reporting requirements of
17 the Act. 11 C.F.R. § 102.6(a)(1)(iv); *see* 52 U.S.C. § 30125, 11 C.F.R. § 300.10(a).
18 State and national party committees that transfer funds under 11 C.F.R. § 102.6(a)(1)
19 “shall count such transfers against the reporting thresholds of the Act for determining
20 whether an organization or committee is a political committee under 11 CFR [§] 100.5.”
21 11 C.F.R. § 102.6(a)(2).

22 In this case, because the LNP and AZLP are, respectively, national and state party
23 committees of the same party, the AZLP may transfer \$2,000 to the LNP using federally

1 permissible funds as proposed, pursuant to 11 C.F.R. § 102.6(a)(1). However, under
2 section 102.6(a)(2), that amount transferred must be counted against the reporting
3 threshold for purposes of determining whether the AZLP is a political committee under
4 section 100.5. Here, the proposed transfer on its own exceeds the \$1,000 threshold for
5 attaining political committee status, and therefore would cause the AZLP to meet the
6 statutory and regulatory definition of a political committee.²

7 Accordingly, the Commission concludes that the AZLP may transfer federal
8 funds to the LNP, but because the amount of the proposed transfer exceeds the yearly
9 \$1,000 reporting threshold, the AZLP must register as a political committee and file
10 periodic disclosure reports with the Commission.³

11 This response constitutes an advisory opinion concerning the application of the
12 Act and Commission regulations to the specific transaction or activity set forth in your
13 request. *See* 52 U.S.C. § 30108. The Commission emphasizes that, if there is a change

² The proposed transaction is a transfer between party committees rather than a payment for services at the usual and normal charge, *see* 11 C.F.R. § 100.52(d), because the LNP is offering the CRM to state affiliates for free, the LNP is soliciting donations on its public website for the nationwide CRM project, and AZLP acknowledges that it would like to “make a donation to [LNP] to assist in the cost of the overall CRM” rather than pay for a service provided by LNP. *See* AOR010. However, even if the disbursement of funds by the AZLP is not considered a transfer under 11 C.F.R. § 102.6(a)(2), it would still trigger the registration requirement. The definition of the term “expenditure” includes payments or gifts. 11 C.F.R. § 100.110. The proposed transaction could therefore be an expenditure even if it is styled as a donation, as stated in the request. The only remaining question for consideration, therefore, is whether the disbursement is “for the purposes of influencing a federal election.” 52 U.S.C. § 30109(a)(i); 11 C.F.R. § 100.111(a). A receipt of donated funds by a national party committee is reported as either a contribution or a transfer. *See* 11 C.F.R. § 104.3(a)(2)(i)-(v); *see also* 52 U.S.C. 30125(a)(1), 11 C.F.R. § 300.10(a)(1) (prohibiting national party committee from receiving contribution, donation, or transfer of funds not subject to limitations, prohibitions, and reporting requirements of the Act). A donation received by the national party committee would be a contribution, in other words, a deposit of money “made by [the requestor] for the purpose of influencing” a federal election, and therefore, would also constitute an expenditure by the AZLP.

³ If you proceed with this transaction, we recommend that you contact the Reports Analysis Division for guidance on how to report it to the Commission.

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

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On behalf of the Commission,

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Ellen L. Weintraub

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Chair