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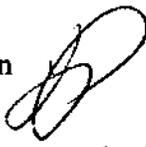
January 9, 2003

AGENDA ITEM

For Meeting of: 1-16-03

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Rosemary C. Smith 
Acting Associate General Counsel

John C. Vergelli 
Acting Assistant General Counsel

Jonathan M. Levin 
Senior Attorney

Subject: Draft AO 2002-14

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for January 16, 2003.

Attachment

DRAFT 4: 26

1 ADVISORY OPINION 2002-14
2
3 William W. Hall
4 Warner, Norcross & Judd
5 900 Fifth Third Center
6 111 Lyon Street, N.W.
7 Grand Rapids, Michigan 49503-2487
8

9 Dear Mr. Hall:

10 This responds to your letters dated September 20, October 24, and November 15, 2002,
11 on behalf of the Libertarian National Committee, Inc. ("LNC"), concerning the application of the
12 Federal Election Campaign Act of 1971, as amended ("the Act"), the Bipartisan Campaign
13 Reform Act of 2002 ("BCRA"), and Commission regulations to activities of the LNC that entail
14 the sale or lease of committee assets to others.

15 ***Background***

16 The LNC is the national committee maintained by the Libertarian Party of the United
17 States. The Commission recognized the LNC as a national committee of a political party in
18 Advisory Opinion 1975-129.¹ As a national committee, the LNC may accept contributions in
19 amounts greater than those made to other political party committees; as of January 1, 2003, the
20 calendar year limits are \$15,000 from multicandidate committees and \$25,000 from other
21 persons (other than prohibited entities). 2 U.S.C. 441a(a)(2)(B) and (1)(B); 11 CFR 110.2(c)(1)
22 and 110.1(c)(1).

23 You state that currently, and for many years, the LNC has engaged in a number of
24 "business" activities, in addition to its "political" activities. These business activities have

25 _____
¹ The Commission assumes for purposes of this Advisory Opinion that the LNC still engages in support of a sufficient range of Federal candidates and other activities to retain its status as a national committee of a political party under 2 U.S.C. 431(14) and 11 CFR 100.13; see Advisory Opinion 2001-13 and opinions cited therein.

1 included the sale or lease of items to others, made at arms-length and at fair market rates, and you
2 distinguish these transactions from the ordinary contributions and donations the LNC receives
3 from individuals and other persons. In the past, the LNC has deposited receipts from these
4 transactions in its non-Federal (or "soft money") account and reported those receipts in
5 accordance with Commission regulations regarding non-Federal accounts of national party
6 committees. You are concerned that under recently enacted 11 CFR 300.10 the LNC will no
7 longer be able to maintain a non-Federal account for the receipt of proceeds from transactions
8 where the sources are prohibited from making contributions under the Act or in amounts that
9 exceed the Act's limitations.

10 You describe three types of transactions by which the LNC receives funds: (1) rental of
11 the LNC's mailing list; (2) sale of advertising space in the *Libertarian Party News* ("LP News"),
12 a monthly newspaper; and (3) licensing Libertarian Party trademarks to t-shirt vendors and other
13 manufacturers of campaign items. You describe the transactions as follows.

14 *Mailing List*

15 The LNC rents its mailing list of members, contributors, and prospects on a commercial,
16 arms-length basis, either directly or using an incorporated commercial list broker. Typically, the
17 broker locates organizations desiring to rent the list and enters into contracts with them, some of
18 which may be corporations, political committees, or organizations qualified under 26 U.S.C.
19 501(c) or 527. Those organizations pay a market rate fee per name and address rented.²

20 The mailing list was developed in the course of LNC's political activities, primarily from:
21 (1) the names and addresses of Libertarian Party members and contributors to the party; (2) direct

² You state by phone that the broker sends you a check for the LNC's share of the fee, and the LNC deposits the check in its non-Federal account regardless of whether the purchaser is incorporated.

1 mail prospecting; (3) inquiries from persons interested in the party; (4) exchanges of lists with
2 other organizations; and (5) names and addresses of interested persons provided by the party
3 members. Typically, in the prospecting activities, the LNC rents lists from others at a fair market
4 rate, and, when it receives a positive response to a direct mail solicitation using a name from a
5 list, it adds that name to the LNC mailing list. Similarly, the LNC may also exchange its list with
6 other organizations on a limited or one-time basis, and then use that organization's list for direct
7 prospecting for new party members. Those who respond positively are added to the LNC list.
8 Generally, the purchases or exchanges by LNC do not involve more than a limited or one time
9 use of another's mailing list, and that use is for the purpose of generating more names for the
10 LNC list, in the manner described above. Occasionally, the LNC purchases the perpetual use of a
11 voter registration list.

12 You state that the mailing list was developed primarily for use by the LNC for its own
13 campaign purposes and "is primarily and substantially used for those purposes." Approximately
14 once a month, the LNC rents or exchanges a portion of the mailing list with another organization
15 for non-campaign purposes. Approximately once every two months in non-election years and
16 more often in election years, the LNC rents or provides free or at a reduced rate a portion of the
17 list to a Libertarian Party candidate or ballot initiative committee for political or campaign
18 purposes. Approximately three times a month, the LNC or one of its affiliates will use the list for
19 Libertarian Party political or campaign purposes. For example, the LNC uses the mailing list to
20 send the *LP News* to party members and a relatively small number of subscribers who are not
21 members.

1 *Advertising Space*

2 The *LP News*, which is published by the party, has a substantial circulation and, as a
3 consequence, Libertarian Party candidates and organizations that are and are not affiliated with
4 the party purchase advertising space in the newspaper. These organizations include for-profit
5 corporations, political committees, and organizations qualified under 26 U.S.C. 501(c) or 527.
6 The advertising is sold on an arms-length basis at a fair market rate. You enclose a sample issue
7 (September 2001) that includes advertisements for the sale of goods and services, political
8 candidates, ballot initiatives, and other causes.

9 *Trademarks*

10 The LNC owns the trademarks Libertarian Party® and Party of Principle®. From time to
11 time, the LNC has granted limited licenses to use the trademarks to t-shirt vendors and other
12 manufacturers of campaign items, for consideration. The LNC desires to continue and expand
13 this practice, offering licenses on an arms-length, fair market rate basis as a business transaction.
14 You state that your description of the development and uses of your mailing list applies also to
15 the trademarks. You assert that the trademarks were developed for the LNC's political campaign
16 activities and "are used primarily and substantially" for those activities, and that the licensing
17 activities "are merely incidental to the uses for political purposes."

18 The LNC asserts that its temporary cessation of renting its mailing list and selling
19 advertising space in the *LP News* to corporate advertisers, pending the issuance of this opinion,
20 "has already resulted in a material loss of revenues to the LNC, and hampered its abilities to
21 engage in political activities."

22 *Question Presented*

23 The Commission has usually considered the full amount of the receipts from the
24 transactions described above to be contributions, unless deposited in a non-Federal account. *See,*

1 e.g., Advisory Opinion 1991-34. The LNC asks the Commission to conclude that the receipts
2 from these transactions are not "contributions" or "donations," regardless of whether deposited in
3 a Federal account, because they are received in return for goods and services provided at
4 customary market rates. It wishes to continue these activities after BCRA and proposes to report
5 the receipts as "other federal receipts" on its reports filed with the Commission.

6 *Analysis*

7 *Statutory Provisions and Commission Regulations*

8 As indicated above, before BCRA, national party committees were able to raise and
9 spend non-Federal funds (i.e., funds not subject to the limitations, prohibitions, and reporting
10 requirements of the Act) from separate, non-Federal accounts. Under BCRA, however, "a
11 national committee of a political party may not solicit, receive, or direct to another person a
12 contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that
13 are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U.S.C.
14 441i(a); 11 CFR 300.10(a). Under BCRA's transition rules, the national party committee may
15 not receive non-Federal funds after November 5, 2002, and any such funds received on or before
16 that date - which, of course, would have been deposited in a non-Federal account - must have
17 been used before January 1, 2003. 11 CFR 300.12(a).

18 When adopting regulations to implement BCRA, the Commission broadly interpreted the
19 ban on the receipt by a national party committee of non-Federal funds and the spending of such
20 funds, and emphasized that such committees must not have non-Federal accounts. The
21 Commission states:

22 [T]he plain language of the ban on national party non-Federal fundraising at 2
23 U.S.C. 441i(a) cannot be plausibly construed to allow party committees to
24 continue to raise non-Federal funds for any purpose. The language is broad in
25 prohibiting a national party committee from soliciting, receiving, or directing to

1 another person “a contribution, donation or transfer of funds or any other thing of
2 value” or spending funds that are not subject to the Act’s limitation, prohibition,
3 and reporting requirements. A separate “non-Federal” account even if it contained
4 funds that complied with the prohibitions of the Act would not contain funds
5 complying with the amount limitations of the Act, if for example, individuals gave
6 \$20,000 per year to a national party’s account and also gave another \$20,000 to
7 the party’s “non-Federal” account as suggested by the party committee
8 commenters.

9
10 Explanation and Justification, *Prohibited and Excessive Contributions: Non-Federal Funds or*
11 *Soft Money; Final Rule*, 67 *Fed. Reg.* 49064, 49088 (July 29, 2002) (“Soft Money Final Rules”).

12 The Explanation and Justification (“E&J”) also pointed out the broad sweep of the ban as
13 expressed by one of BCRA’s principal sponsors during floor debate. Representative Shays stated
14 that the prohibition at section 441i(a) means that the national parties “are prohibited entirely from
15 raising or spending any soft money,” and that the provision is designed to “put the national
16 parties entirely out of the soft money business” and “covers all activities of the national party
17 committees, even those that might appear to affect only non-federal elections.” *Id.*, quoting 148
18 *Cong. Rec.* H408-409 (daily ed. February 13, 2002)(statement of Rep. Shays).³ The E&J also
19 noted the sweeping nature of Congressional intent as evidenced by its rejection of an amendment
20 that would have allowed national parties to raise and spend funds similar to the so-called “Levin
21 funds” that are permitted to State, district, and local party committees (*see* 11 *CFR* 300.30
22 through 300.36), and to establish a separate account for the raising and spending of soft money
23 for its “establishment, administration, or solicitation costs,” (i.e., “fundraising and overhead”

³ He further stated that “[b]ecause the national parties operate at the national level, and are inextricably intertwined with Federal officeholders and candidates, who raise money for the national party committees, there is a close connection between the funding of the national parties and the corrupting dangers of soft money on the federal political process.” *Id.*, quoting 148 *Cong. Rec.* at H409.

1 expenses). *Id.*; 148 Cong. Rec. H459-465 (daily ed. February 13, 2002) and 148 Cong. Rec.
2 H462 (daily ed. February 13, 2002)(statement of Rep. Ney); *see also* 11 CFR 300.10(a)(3).

3 *Advisory Opinions Pertaining to the Sale or Lease of Committee Assets*

4 The Commission has, in a number of advisory opinions, examined a variety of factual
5 situations where political committees have proposed to sell, lease, or otherwise use in a business
6 or commercial venture some form of committee asset. Generally, the Commission has viewed
7 such ventures by ongoing committees as simply another form of fundraising for political
8 purposes that results in a contribution subject to the limitations and prohibitions of the Act,
9 unless such funds were deposited in the committee's non-Federal account.⁴ *See* Advisory
10 Opinions 1992-40, 1991-34, 1990-26, 1990-3, 1988-12, and 1983-2. The amount of the
11 contribution is the full amount paid. This is consistent with 11 CFR 100.53 (formerly section
12 100.7(a)(2)), which provides that the entire amount paid as the purchase price of a fundraising
13 item sold by a political committee is a contribution.

14 The Commission has recognized some limited exceptions where the transaction does not
15 entail ongoing fundraising by the committee. The Commission has concluded that a contribution
16 to a political committee may not result in the case of (1) an *isolated* sale of a committee asset, (2)
17 which had been purchased or developed for the committee's own particular use (rather than for
18 sale in a campaign fundraising activity) (3) where the asset has an objectively ascertainable
19 market value, and (4) the price paid does not exceed the usual and normal charge for such assets
20 in the market where ordinarily sold. Advisory Opinions 1992-40, 1992-24, 1991-34, 1990-26,

⁴ For example, in Advisory Opinion 1992-40, the Commission stated that a State or local party committee may deposit sales commission proceeds into its non-Federal account, if permitted under State or local law and if used for purposes other than influencing any Federal election or the payment of the Federal share of allocable costs.

1 and 1989-4.⁵ For example, principal campaign committees (“PCCs”) with leftover campaign
2 equipment and campaign supplies that wished to terminate their operations have been permitted
3 to liquidate such assets for debt retirement purposes or in contemplation of a prompt dissolution
4 of the committee. *See* Advisory Opinions 1992-24 (sale of books, which had been initially
5 obtained by committee for free distribution during the campaign, back to the publisher at the
6 price of the purchase from the publisher), 1990-26 (personal computer), 1985-1 (sale of computer
7 system), and 1979-24 (campaign yard signs). *See also* Advisory Opinions 1989-4 (sale of
8 mailing lists, computer hardware, and used furniture by a non-terminating PCC of a Federal
9 officeholder to the new gubernatorial campaign committee of that officeholder) and 1986-14
10 (non-terminating PCC’s sale of a campaign van that was no longer usable by the campaign).

11 The Commission has relied on two reasons in explaining an exception for the sale or
12 lease of mailing lists. The Commission has stated that the list transaction would not result in a
13 contribution where the list had a unique quality and was developed by the political committee in
14 the normal course of its operation primarily for its own use, rather than as an item to be sold to
15 others as part of a campaign fundraising activity. *See* Advisory Opinions 1988-12 and 1986-14.
16 In subsequent advisory opinions, the Commission has referred to mailing list transactions while

17 _____
⁵ Although the Commission does not in this opinion define what constitutes an “isolated”
transaction, it emphasizes that the characterization should be construed narrowly. Note that, in
the opinions using this description of when a contribution may not result, the transactions by
ongoing, non-authorized committees resulted in contributions (Advisory Opinions 1992-40 and
1991-34), while similar transactions by authorized committees which were either ending their
operations, or where the candidate was preparing to run for State office, did not result in
contributions (Advisory Opinions 1992-24, 1990-26, and 1989-4). Moreover, BCRA compels a
very limited scope for any possible interpretation of what is “isolated” in the case of a national
party committee. BCRA prohibits a national party committee from receiving not just a
“contribution,” but also a “donation or transfer of funds or any other thing of value,” that is not
subject to the limitations and prohibitions of the Act. 2 U.S.C. 441i(a)(1).

1 discussing transactions involving other committee assets as well and has stated (as indicated
2 above) that a contribution does not result in the case of an isolated sale where the asset had been
3 purchased or developed for the committee's own particular use, rather than for fundraising and
4 had ascertainable market value. *See* Advisory Opinions 1992-40, 1992-24, 1991-34, 1990-26,
5 and 1989-4. Under both rationales, the fundamental basis of the Commission's determination as
6 to the contribution consequences of the list transaction was a concern as to the use of the
7 committee asset for fundraising purposes. The emphasis is not just on the primary purpose
8 behind the development of the list, but also on avoiding the ongoing sale or lease of the mailing
9 list or other asset as a means to raise funds for the committee.⁶ To the extent that Advisory
10 Opinion 1979-18 appears to countenance an ongoing sale or lease of a list as a means to raise
11 funds for a political committee, it is hereby superseded.

12 The Commission has also specifically addressed a political committee's sale of
13 advertising space in its newspaper or newsletter in a number of opinions, including one issued to
14 the LNC. The Commission has consistently concluded that "funds raised through the sale of
15 advertising space in the Party newsletter ... generally would be contributions by those individuals

⁶ In early opinions, the Commission concluded that the sale of a committee's mailing list would not result in a contribution if the amount or other consideration received for the list would not exceed the usual and normal charge. *See* Advisory Opinions 1983-2, 1982-41, 1981-46, 1981-7, 1979-76, 1979-18, and 1979-17. In some of these opinions, the Commission distinguished the sale of a list from other transactions by noting that the committee developed the list for its own use rather than for sale to others, or that the list is a unique asset whose value is determined on the basis of the committee's fundraising or other political use. In subsequent opinions, the Commission focused increasingly on the need for the committee to have developed the list for its own use, and not for a sale or lease of names to raise funds, and on the need for the list sale or lease to be an isolated transaction. *See*, for example, Advisory Opinion 1991-34. (The Commission still distinguishes an exchange of lists of equal value from the sale or lease of lists because an exchange is not a use of the list by the political committee to receive funds from the other entity in the transaction but a method of enhancing the committee's list development and use.)

1 and corporations and are, therefore, subject to the limitations and prohibitions of the Act.”
2 Advisory Opinion 1994-25. See 2 U.S.C. 431(8)(A)(i) and 441b(b)(2); 11 CFR 100.52(a)(1)
3 (formerly 100.7(a)(1)) and 114.1(a)(1); Advisory Opinions 1990-3, 1985-39, 1981-33, 1981-3,
4 and 1978-46.⁷ In Advisory Opinion 1990-3, the Commission emphasized the fundraising nature
5 of the sale of advertising space.

6 *Application to the Transactions Presented*

7 Nothing in BCRA, or the Commission’s new regulations, alters the analysis that has been
8 applied to the sale or lease of committee assets, including mailing lists and advertisements in
9 committee publications, in the advisory opinions discussed above. The Commission has
10 examined such transactions over a long period of time and has distinguished between
11 transactions that constitute fundraising and those that do not. Nothing in BCRA negates the
12 result that the proceeds of the transactions are contributions in the full amount of the payment.

13 What has changed after BCRA is that national party committees must not have non-
14 Federal accounts, that is, they must not raise *any* funds that do not comply with the limitations
15 and prohibitions of the Act, and must not use such funds. These provisions preclude the
16 establishment of a separate account containing non-Federal funds that would be used for the

⁷ In the case of party committee newsletters or journals, the Commission has allowed for allocation between Federal and non-Federal funds based upon the space apportioned to Federal elections in the publication, thus allowing payments for ads by corporations (except for entities prohibited from contributing in connection with any election) to be deposited in a non-Federal account. Advisory Opinions 1985-39, 1981-3, and 1978-46; *see also* Advisory Opinion 1994-25. In the case of a political committee that did not have a separate non-Federal account, as is now true of all national party committees, the Commission concluded that corporations could not pay for advertisements in its newsletter. Advisory Opinion 1990-3; *see also* Advisory Opinion 1990-5 (stating that corporations could not pay for ads in a Congressional candidate’s newsletter).

1 support of non-Federal candidates or activities, or for expenses that might not be construed as
2 direct candidate support, such as administrative or fundraising expenses.⁸

3 With respect to the leasing of the LNC mailing list, the list appears to have been
4 developed by the LNC over a period of time and to have a unique nature, and does not constitute
5 merely a list or lists that were purchased from other sources. In addition, the list was developed,
6 in part, for the LNC's own use. However, the use of the list involves a significant amount of
7 leasing to others and not just the LNC's own use. Over a typical two-month period, the LNC
8 rents or exchanges a portion of the mailing list for non-campaign purposes on two occasions. On
9 one other occasion in such a period in a non-election year, but more often in an election year, it
10 will rent or otherwise provide use of the list to Libertarian candidates or ballot initiative
11 committees. Approximately six times in that period, the LNC will use the list for its own
12 purposes. Even taking into account (as discussed below) that the rental of the LNC's list to a
13 Libertarian candidate should still be considered to be the LNC's own use (for the purposes of the
14 general interpretation of the purchase or lease of the list as a contribution), at least two out of
15 nine times – and more often during an election year, the list is being used for purposes other than
16 the LNC's own use, and often such purposes entail payments to the LNC. Based on these facts,
17 it appears that LNC continuously develops the list for lease to others, not just for internal use.
18 More significantly, such transactions for payment to the LNC are not isolated transactions, but
19 are periodic and continuous. LNC has conceded that income from the list rentals supports the
20 party's political activities. Hence, the payments to the LNC by those leasing the list, in the full

⁸ Although a national committee may establish a separate account for these purposes, the funds raised for and spent by the account are still subject to the Act's limitations (including when combined with the committee's other accounts), prohibitions, and reporting requirements of the Act.

1 amount of those payments, are contributions, with the exceptions (such as payments by PCCs or
2 State and subordinate Libertarian party committees) discussed below.

3 You have indicated that the LNC's periodic leasing of its licensed trademarks is done in a
4 manner similar to the leasing of its list trademark licensing. The Commission assumes that this
5 entails the leasing of the trademarks to others with a frequency similar to that of the list leasing,
6 relative to the LNC's own use. Even if the trademark was developed by the LNC, the
7 Commission does not consider the use by other entities of two, three, or more times per two
8 month period to be an isolated use. Hence, payments to the LNC by the licensees of the
9 trademarks are contributions in the full amount of those payments, excepted as discussed below.

10 The purchase of advertising space in the *LP News* is also a contribution in the full
11 amount. The LNC's sale of such space does not constitute an isolated use but is an ongoing
12 vehicle for the LNC to raise funds, except as discussed below.

13 The outcome that these transactions result in contributions cannot be negated by
14 depositing the proceeds in a separate, non-Federal account, as was possible before BCRA. (*See*
15 footnote 8, above.) Such receipts are now subject to the limitations and prohibitions of the Act
16 and must be reported by the LNC as contributions. As such, corporations, labor organizations,
17 Federal contractors, and foreign nationals may not make such payments.⁹ 2 U.S.C. 441b, 441c,
18 and 441e. Moreover, to avoid confusion on the part of persons making permissible payments,
19 the LNC, when soliciting such payments, or receiving them without a solicitation, should inform

⁹ You indicated that you use a broker to solicit renters of the list, and the broker sends you a check for the LNC's share of the fee. Assuming that this arrangement is conducted in the ordinary course of business and at the usual and normal charge for such list transactions, the receipt by the LNC of a check from an incorporated broker does not by itself result in the broker making a corporate contribution to the LNC.

1 the payers that their payments are contributions that are subject to the limitations and
2 prohibitions of the Act. *See* 11 CFR 102.5(a)(2).

3 Some of the entities leasing the list or purchasing advertising space in the *LP News* are
4 entities that are not political committees under the Act but are unincorporated political
5 organizations qualified under 26 U.S.C. 527, including entities or committees devoted
6 exclusively to electing a non-Federal candidate or candidates. The funds of such entities or
7 committees will likely be composed, in part, of donations in amounts exceeding the Act's
8 limitations or from sources prohibited by the Act from contributing. These entities are allowed
9 to lease the list or purchase advertising space in amounts that do not aggregate in excess of the
10 Act's limitations so long as they comply with the requirements of 11 CFR 102.5(b)(1). Any such
11 organization making a payment must keep records of receipts and disbursements and, upon
12 request, must make such records available for examination by the Commission. The
13 organization must demonstrate through a reasonable accounting method that, whenever such an
14 organization makes such a payment, it has received sufficient funds subject to the limitations and
15 prohibitions of the Act to make the payment. An organizations' payment for leasing the list, for
16 advertising space, or for the limited trademark license will count toward the political committee
17 registration threshold of contributions aggregating in excess of \$1,000 in a calendar year. *See* 2
18 U.S.C. 431(4)(A); 11 CFR 100.5(a).¹⁰

¹⁰ The LNC should inform such entities of the consequences and obligations resulting from their payments. Moreover, the proceeds from sales of assets by such entities will be subject to the same analysis as presented in this opinion and will generally be subject to the limitations and prohibitions of the Act if the entity makes a purchase from the LNC.

1 *Exceptions*

2 Purchases or rentals from the LNC by a principal campaign committee of a Federal
3 candidate would not result in a contribution or prohibited transfer to the LNC. Under 2 U.S.C.
4 439a(a)(4) and 11 CFR 113.2(c), funds of a PCC may be transferred without limit to a national,
5 State, or local committee of a political party. But for this exception, such transfers would be
6 contributions subject to the limitations at 2 U.S.C. 441a, i.e., \$25,000 per year to a national party
7 committee. 2 U.S.C. 441a(a)(1)(B). In view of the ability of a PCC to make unlimited transfers
8 to the LNC, the Commission views a payment by a PCC in the context of one of the transactions
9 covered by this opinion to be a transfer permitted under 2 U.S.C. 439a, rather than a contribution
10 by the PCC. *See* Advisory Opinion 1981-11 (where the Commission concluded that, pursuant to
11 2 U.S.C. 439a, a PCC could allow a national party committee the free use of the PCC's mailing
12 list). Hence, a payment by a PCC for list rental, advertising in the *LP News*, or licensed use of
13 the trademarks would not be a contribution by the PCC to the LNC. If the PCC pays less than
14 the usual and normal charge, however, for such an item, the difference between the amount paid
15 and the usual and normal charge would be a contribution by the LNC to the PCC and subject to
16 the per election limit at 2 U.S.C. 441a(a)(2)(A), or to the limit at 2 U.S.C. 441a(h) with respect to
17 a Senate candidate. *See* 11 CFR 100.52(d).

18 Subject to certain restrictions, transfers of Federal funds unlimited in amount are
19 permitted between a national party committee and a State party committee, and/or any
20 subordinate party committee. 11 CFR 102.6(a)(1)(ii). A purchase or lease of the LNC items by a
21 State, or subordinate Libertarian Party committee may be categorized as a transfer rather than as
22 a contribution, and the amount of the payments themselves would not be subject to the Act's

1 limits. However, the funds making up the transfer would still be subject to the limitations,
2 prohibitions, and reporting requirements of the Act. 2 U.S.C. 441i(a); 11 CFR 300.10(a).¹¹

3 The Commission concluded above that, under the circumstances you present, the leasing
4 of the LNC's list would generally result in a contribution by the paying entity. However, the
5 development of a donor list by a political party committee for support of its own candidates,
6 whether in Federal or non-Federal elections, and of its affiliated committees (which support the
7 party's candidates) constitutes a principal function of the party. (In fact, when a party committee
8 leases such a list at the usual and normal charge to a candidate or affiliated party committee, this
9 might, for the purpose of the analysis above, be considered as part of the party committee's own
10 use of the list.) The sale or lease of such lists in such circumstances makes available the use of
11 an integral party tool for the most fundamental of party purposes.

12 Hence, the Commission concludes that, in addition to the payments by the PCCs of
13 Federal candidates described above, the leasing of the LNC list to the campaign committee of a
14 Libertarian non-Federal candidate at the usual and normal charge would not result in a

¹¹ If the purchasing State or local party committee is a political committee under the Act, such payments may be made from its Federal accounts only. If the committee, such as a local party committee, is not a Federal political committee and does not have a separate Federal account (*see, e.g.*, Advisory Opinion 1999-4), it must demonstrate through a reasonable accounting method that, whenever it makes such a payment, it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. 11 CFR 102.5(b)(1). Such a payment will also count toward the political committee registration threshold of contributions aggregating in excess of \$1,000 in a calendar year. *See* 2 U.S.C. 431(4)(A); 11 CFR 100.5(a). As indicated above, the LNC should inform the committee of the consequences and obligations resulting from the payment. Moreover, proceeds from the sale of assets by State or subordinate party committees would also, in general, be subject to the limitations and prohibitions of the Act for purposes of the transfer. *See also* footnote 10 for the application of this opinion to proceeds from the State or subordinate party committee's sale of assets. *See also* 2 U.S.C. 441a(d)(4)(C) and 11 CFR 109.35(c) which would prohibit a transfer and hence a purchase or rental of LNC assets by any party committee barred from making a transfer under those sections.

1 contribution by that candidate's committee. The amount of the payments would not be subject to
2 the limitation on contributions to national party committees. However, the contents of such
3 payments would still be subject to the requirements of 11 CFR 102.5(b)(1) and to the other
4 conditions set out in the discussion of payments from Libertarian party committees that are not
5 political committees. (See footnote 11).

6 This response constitutes an advisory opinion concerning the application of the Act and
7 Commission regulations to the specific transaction or activity set forth in your request. See 2
8 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or
9 assumptions presented and such facts or assumptions are material to a conclusion presented in
10 this opinion, then the requester may not rely on that conclusion as support for its proposed
11 activity.

12 Sincerely,

13
14 Ellen L. Weintraub
15 Chair
16

17 Enclosures (AOs 2001-13, 1999-4, 1994-25, 1992-40, 1992-24, 1991-34, 1990-26, 1990-5,
18 1990-3, 1989-4, 1988-12, 1986-14, 1985-39, 1985-1, 1983-2, 1982-41, 1981-53, 1981-46, 1981-
19 33, 1981-11, 1981-7, 1981-3, 1979-76, 1979-24, 1979-18, 1979-17, 1978-46, and 1975-129)
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