

OWENS FOR SENATE COMMITTEE  
P.O. BOX 959  
SALT LAKE CITY, UT 84110

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May 12, 1992

Mr. Brad Litchfield  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mr. Litchfield,

Our Committee requests that the Federal Election Commission issue an Advisory Opinion concerning the applicability of AO 1979-58 to Wayne Owens' current Senate campaign.

Mr. Owens is running in the state of Utah, which has its nominating convention scheduled for June 13, 1992. We understand that this convention is considered an election for reporting purposes under Title 2 U.S.C. 431(1)(B). We wish to verify the fact that this is also a separate election for contribution purposes.

It is our understanding that if, in fact, the convention is considered a separate election for contribution purposes, and if Mr. Owens is involved in the convention, a primary, and the general election, the Committee would be able to receive 3 contributions from any particular party, i.e. \$1,000 per election for an individual, for a total of \$3,000.

As our convention is approximately one month away, we respectfully request that you expedite your response if possible.

Please call me with any questions at (801) 521-3515.

Very truly yours,



Clay Newton, CPA  
Treasurer

CN:bg



FEDERAL ELECTION COMMISSION  
WASHINGTON D C 20463

May 19, 1992

Clay Newton, CPA  
Owens for Senate Committee  
P.O. Box 959  
Salt Lake City, Utah

Dear Mr. Owens:

This refers to your letter to the Office of General Counsel dated May 12, 1992.

Pursuant to your telephone conversations on May 14 and 15, 1992, with Jonathan Levin of our attorney staff, I am enclosing advisory opinions pertaining to the situation you presented.

Of particular relevance are Advisory Opinions 1986-21 and 1978-30, which we have enclosed. These opinions are still valid. The Federal Election Campaign Act of 1971, as amended, provides that any person involved in a specific activity, which is indistinguishable in all material respects from an activity described in a past advisory opinion, may rely on the opinion to govern his or her own situation. 2 U.S.C. §437f(c), 11 CFR 112.5. We have also enclosed Advisory Opinions 1986-17, 1984-16, 1982-49, 1981-29, and 1978-25 - Part B.

If you have any questions about the enclosed opinions or this letter, please contact the undersigned.

Sincerely,

Lawrence M. Noble  
General Counsel

BY:

  
N. Bradley Litchfield  
Associate General Counsel

Enclosures

OWENS FOR SENATE COMMITTEE  
P.O. BOX 959  
SALT LAKE CITY, UT 84110

RECEIVED  
MAY 22 1992  
SECRETARY PH 3-23

May 21, 1992

Mr. John Levin  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

AOR 1992 -25

FEDERAL ELECTION COMMISSION  
OFFICE  
92 MAY 22 PM 1:40

Dear Mr. Levin,


As a follow-up to our conversations last week, our Committee requests that the Federal Election Commission continue the process of issuing an Advisory Opinion concerning the applicability of AO 1979-58 to Wayne Owens' current Senate campaign as per our letter of May 12, 1992.

I have enclosed for your benefit a copy of the pertinent Utah Code section dealing with the State's nominating conventions, and the 70% rule.

We would again request that you expedite your response if possible.

I apologize for the delay in getting back to you. Please call me with any questions at (801) 521-3515.

Very truly yours,



Clay Newton, CPA  
Treasurer

CN:bg

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(3)(a) deleted "on April 25, 1984, and" following "in each voting district to be held," added the present Subsections (b) and (d), and in Subsection (4)(a) added "by the county central committee" at the end of the first sentence and deleted the former second sentence which read "The place shall be within the district or in a public building of an adjacent or nearby district," in Subsection (b) added at the end of the subsection "according to the procedures outlined in Section 20-4-9," in Subsection (d) substituted "by the mass meeting chairman and secretary and delivered to the county clerk and the county party chairman within seven days" for "at the county primary convention of the party by the chairman and secretary of the meeting" and in Subsection (e)(ii) substituted "appointed delegates to the county clerk and the county party chairman within seven days" for "same to the county primary conventions", and made minor changes in phraseology, punctuation and style throughout the section

The 1988 amendment, effective April 25, 1988, substituted "party caucus" for "mass meeting" and "party caucuses" for "mass meetings" throughout the section, rewrote Subsection (1)(a) following "even-numbered year," which had read, "the delegates elected at the

district mass meetings shall convene in each county at a time and place designated by the county central committee as a county primary convention", deleted former Subsection (1)(b)(ii), which had read, "elect the members of the county central committee of their party for the ensuing term" and redesignated former Subsection (1)(b)(iii) as present Subsection (1)(b)(ii), inserted "the party's county officers and" and "elected by the party" in Subsection (2), deleted "The county central committee of" at the beginning in Subsection (3)(a), and made minor stylistic changes

The 1989 amendment, effective April 24, 1989, substituted "Each" for "The county central committee of each" at the beginning of Subsections (3)(b) and (3)(c)(i) and substituted "party" for "county central committee" in Subsection (3)(c)(iii)

The 1991 amendment, effective April 29, 1991, inserted "at 7 p m." in Subsection (3)(a), deleted "designate the time for the party caucus and shall" before "designate" in Subsection (3)(b), substituted "7 p m at the place" for "the time and place" in Subsection (4)(a), inserted "and voting district officers" in Subsection (4)(d), and made minor changes in punctuation and style throughout the section

## 20-4-8. Repealed.

Repeals — Section 20-4-8, Utah Code Annotated 1953, relating to precinct primary con-

ventions, was repealed by Laws 1971, ch 33, § 5

## 20-4-9. Declarations of candidacy — Balloting procedure — Party nominees — Rules of procedure.

(1) (a) All persons intending to become candidates at a primary convention for any elective precinct, county, or district office solely within a county that is to be filled at the next general election shall file a declaration of candidacy with the county clerk between the March 15 and April 15 before the next general election

(b) All persons intending to become candidates at a primary convention for all other offices except the office of lieutenant governor, including the offices of United States senator or representative, that are to be filled at the next general election shall file a declaration of candidacy with the lieutenant governor between the March 15 and April 15 before the next general election.

(c) If April 15 is a Saturday or Sunday, the filing time shall be extended until 5 00 p m on the following Monday

(2) Before the filing officer accepts any declaration of candidacy, he shall

(a) read to the candidate the constitutional and statutory requirements for candidacy, and

(b) require the candidate to state whether or not the candidate fulfills the requirements of candidacy

- (3) (a) If the candidacy, the filing office  
 (b) If the candidacy, the filing office  
 (i) accept  
 (ii) provide  
 chairman of  
 is a member  
 (4) The form of the laws

State of Utah  
 County of \_\_\_\_\_  
 I, \_\_\_\_\_  
 candidate for nomination, solemnly swear that, if selected, I shall, as a member of the \_\_\_\_\_, state of Utah, accept the nomination and comply with the election laws and practice in effect at the time of election for the office if elected

Subscribed and sworn

(5) Any person who provides in this chapter  
 (6) At the time an primary convention, candidacy may be placed was filed

(7) (a) Following any candidate for shall proceed to

(b) The gubernatorial nominee shall affirmatively ratify the nomination if the gubernatorial nominee shall affirmatively ratifies

(c) The gubernatorial nominee shall comply with the requirements of the primary and

(d) Within five days shall file a declaration of candidacy and pay the fee required by law

(3) (a) If the candidate states that he does not meet the requirements of candidacy, the filing officer shall not accept the candidate's declaration of candidacy.

(b) If the candidate states that he meets the requirements of candidacy, the filing officer shall

(i) accept the candidate's declaration of candidacy, and

(ii) provide a certified copy of the declaration of candidacy to the chairman of the county or state political party of which the candidate is a member

(4) The form of the declaration of candidacy shall be substantially as follows

State of Utah  
County of \_\_\_\_\_

I, \_\_\_\_\_, hereby declare my intention of becoming a candidate for nomination by the \_\_\_\_\_ party for the office of \_\_\_\_\_. I do solemnly swear that I can qualify to hold said office, both legally and constitutionally, if selected, and I reside at No \_\_\_\_\_ Street in the City or Town of \_\_\_\_\_, state of Utah, Zip Code \_\_\_\_\_, Phone No \_\_\_\_\_, and that if nominated as a candidate of the \_\_\_\_\_ party at the ensuing election, I will accept the nomination and not withdraw, and that I will not knowingly violate any election law or any law defining and prohibiting corrupt and fraudulent practice in campaigns and elections in this state, and that I will qualify for the office if elected thereto

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary Public (or other officer  
qualified to administer oath)

(5) Any person who fails to file a declaration of candidacy within the time provided in this chapter is ineligible for nomination to office

(6) At the time and place set for the state, district, county, or precinct primary conventions, the name of any person who has filed a declaration of candidacy may be placed in nomination for the office for which the declaration was filed

(7) (a) Following all nominating and seconding speeches made on behalf of any candidate for governor at a state primary convention, the delegates shall proceed to vote as provided in this chapter

(b) The gubernatorial candidate nominated by the convention shall nominate a candidate for lieutenant governor who meets the eligibility requirements of the statutes and constitution. If the convention fails to affirmatively ratify the nominee for lieutenant governor, the gubernatorial nominee shall nominate other candidates until the convention affirmatively ratifies a nominee

(c) The governor and lieutenant governor nominated by the convention according to the requirements of this chapter shall run as a joint office in the primary and general elections

(d) Within five days of nomination, the lieutenant governor candidate shall file a declaration of candidacy with the lieutenant governor and pay the fee required by Section 20-3-14. Any candidate for lieutenant gover-

nor who fails to file within five days shall be disqualified and another candidate shall be nominated by the gubernatorial candidate to replace the disqualified candidate

(8) (a) Prior to any precinct, county, district, or state primary convention, the county clerk or lieutenant governor shall provide printed ballots to the convention that contain the names of all persons who have filed declarations of candidacy

(b) If an elected delegate dies, resigns, or is disqualified prior to the convention, the county central committee of the delegate's political party shall appoint a replacement from the voting district of the deceased or disqualified delegate

(c) Where the number of candidates filing declarations of candidacy is not greater than the number of nominees required for the next general election, those candidates shall be declared to be the party's nominees for those offices and shall not be required to run at either the primary convention or the primary election

(d) (i) Following the nominating and seconding speeches made on behalf of any candidate for an office to be filled by a precinct, county, district, or state primary convention the delegates shall vote

(ii) At the precinct, county, or district primary conventions, the delegates shall vote by secret ballot

(iii) At the state primary convention, the delegates may choose to vote by secret ballot or to vote by county

(iv) If the delegates to the state primary convention choose to vote by county, each county committee chairman shall poll his delegation for their votes and announce the county's total votes for each candidate when called upon by the secretary of the convention

(v) Each convention shall provide adequate time and voting facilities so that all delegates may vote

(e) Each delegate shall cast one vote for each office to be filled, except that if two or more candidates are to be elected to any office at the next general election, each delegate shall cast as many votes for candidates for the office as there are candidates to be elected to the office at the general election

(f) After voting, the delegate shall fold the ballot so that no person can see the marks and shall deposit the ballot in a common ballot box

(g) The ballots shall be counted by judges selected by the primary convention. The two persons receiving the highest number of votes for any office to be filled at the next general election shall be declared the party's nominees to run at the next primary election unless more than one candidate is to be elected to any office at the next general election. In that instance, the convention may nominate twice the number of the candidates to be elected at the next general election, and that number of candidates who receive the highest votes at the primary convention shall be declared the party's nominees to run at the next primary election

(h) Where only one office is to be filled, a candidate for that office that receives 70% or more of the votes cast at the primary convention shall become the party's candidate in the general election without the necessity of running in the primary election

(i) The secretary of each primary convention shall immediately certify to the county clerk or the lieutenant governor, as appropriate, the names of the party's nominees

(j) Each political primary convention shall establish rules to govern its procedure that are consistent with the laws of this state

History L. 1947, ch. 35, § 9; 1949, ch. 34, § 1, C 1943, Supp., 25-3-64; L. 1957, ch. 42, § 1; 1963, ch. 33, § 1, 1965, ch. 39, § 8; 1969, ch. 51, § 3, 1975, ch. 58, § 18; 1979, ch. 27, § 5; 1981, ch. 103, § 2, 1983, ch. 110, § 8, 1984, ch. 28, § 1, 1987, ch. 37, § 2; 1987, ch. 57, § 8; 1988, ch. 127, § 4

Amendment Notes. — The 1987 amend-

ment by ch. 37 inserted subsection designations and both 1987 amendments rewrote this section to such an extent that a detailed comparison is impracticable

The 1988 amendment, effective April 25, 1988, inserted "resigns" in Subsection (8)(b) and made minor changes in punctuation

#### NOTES TO DECISIONS

##### ANALYSIS

##### Form of declaration

##### Late filing of declaration

##### Statement that candidate fulfills requirement of candidacy

##### Form of declaration.

A federal statement of candidacy form was not substantially the same as the declaration of candidacy required by this section, and the filing of a copy of the federal form did not satisfy the requirements of this section, where the federal statement of candidacy form required no oath nor affirmation by the candidate that he would not violate the election laws and that he would qualify for his office if elected *Utah State Democratic Com v Monson*, 652 P 2d 890 (Utah 1982)

##### Late filing of declaration

Former provision requiring declaration of candidacy to be filed at least 20 days before date set for primary convention was mandatory, however, a candidate could be excused from filing on time when he relied in good faith on widely publicized, but erroneous, statement of secretary of state that a later date was ac-

tual deadline losing candidate who, on ground that successful candidate had failed to file a timely declaration of candidacy and was thus ineligible, petitioned Supreme Court for an extraordinary writ to place his name on the ballot did not act within the reasonable time contemplated by equity in such a case *Clegg v Bennion*, 122 Utah 188, 247 P 2d 614 (1952)

Candidate was not entitled to equitable relief to enable him to file a late declaration of candidacy when his failure to timely file was due solely to a misunderstanding between him and his campaign staff *Utah State Democratic Com v Monson*, 652 P 2d 890 (Utah 1982)

##### Statement that candidate fulfills requirement of candidacy

This section requires the filing officer to read to the candidate the constitutional and statutory requirements for candidacy and to obtain a statement from the candidate that he does in fact fulfill those requirements, this affirmation of qualification by the candidate is a requirement of filing, without which the filing is incomplete and cannot be accepted by the filing officer *Utah State Democratic Com v Monson*, 652 P 2d 890 (Utah 1982)

### 20-4-9.3. Election of county attorney — Conditions precedent to filing of declaration of candidacy.

Before accepting a declaration of candidacy for the office of county attorney, the county clerk shall ensure that the person filing that declaration of candidacy is

- (1) a United States citizen,
- (2) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar,
- (3) a registered voter in the county in which he is seeking office, and
- (4) a current resident of the county in which he is seeking office and has been a resident of that county for at least one year



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20463

June 18, 1992

The Honorable Wayne Owens  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Owens:

This is to confirm our telephone conversation of June 18, 1992, with respect to the request sent by your campaign treasurer on May 12, 1992. After a review of the materials sent by you, it is my view that Advisory Opinions 1986-21 and 1978-30 cover your situation, and your Senate campaign will have separate contribution limits for the convention and the primary, and a third limit for the general election if you win the primary.

As I explained to you, the above-expressed view is my personal opinion. According to the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations, no opinion of an advisory nature may be issued by the Commission or any of its employees, except in accordance with the provisions set out in the Act and regulations for the issuance by the Commission of an advisory opinion. 2 U.S.C. §437f(b); 11 CFR 112.4(f). You have expressed your desire to still receive an advisory opinion from the Commission. Accordingly, the letters from your campaign will be processed as an advisory opinion request.

If you have any questions, please feel free to call me at 202-219-3690.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence M. Noble".

Lawrence M. Noble  
General Counsel