



FEDERAL ELECTION COMMISSION
Washington, DC 20463

October 20, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2005-15

Mr. Scott D. Reed
Treasurer
Republican State Executive Committee of West Virginia
P.O. Box 2711
Charleston, WV 25330

Dear Mr. Reed:

We are responding to your inquiry on behalf of the Republican State Executive Committee of West Virginia ("the WV Republican Party Committee") concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") to a proposed reorganization of its structure. Under your proposal, the WV Republican Party Committee would terminate after creating a new State party committee incorporated as a non-profit corporation. You ask for guidance regarding the permissibility of incorporating this new committee, and the proper procedure for forming a new, incorporated State party committee and terminating the WV Republican Party Committee.

The Commission concludes that it would be permissible for the WV Republican Party Committee to incorporate a new State party committee for liability purposes only that would not be subject to the Act and regulations regarding corporate activity. However, it is not permissible currently for the WV Republican Party Committee to terminate due to its outstanding debt. Guidance on the proper procedure for terminating the WV Republican Party Committee is provided below.

Background

The facts of this request are presented in your letter received on September 1, 2005, and by you in a phone conversation on September 15, 2005, as well as in reports the WV Republican Party Committee filed with the Commission.

The WV Republican Party Committee is a qualified State committee of the Republican Party and files regular reports with the Commission as such. The WV Republican Party Committee is currently unincorporated and organized as a State party executive committee under section 3-1-9 of the West Virginia Code. The WV Republican Party Committee is contemplating terminating and creating a new State party committee that would be a non-profit corporation under West Virginia law. This new State party committee, as yet unnamed ("Party, Inc."), would be incorporated solely to limit liability.

The WV Republican Party Committee proposes a 5-step process by which it would terminate and create a new committee under the name of Party, Inc.:

1. The WV Republican Party Committee would file Articles of Incorporation with the West Virginia Secretary of State, pursuant to applicable West Virginia Law, using a name to be determined ("Party, Inc.").
2. Party, Inc. would then adopt new bylaws reflecting the corporate form and create a new committee for FEC purposes under the name Party, Inc. with a new FEC Identification number.
3. Party, Inc. would file state business registration forms, obtain a new Federal employer identification number, and file the required Internal Revenue Service forms.
4. The WV Republican Party Committee would transfer all funds remaining in its bank accounts to Party, Inc.
5. The WV Republican Party Committee would also transfer title to its headquarters building, and other real and personal property to Party, Inc., which would then assume the WV Republican Party Committee's outstanding mortgage, tax, insurance and maintenance payments. The WV Republican Party Committee would thereafter terminate.

Questions Presented

1. *May the WV Republican Party Committee create a new incorporated State party committee that would not be subject to the restrictions in 2 U.S.C. 441b or 11 CFR part 114 on corporations?*
2. *If the WV Republican Party Committee meets the requirements for termination and chooses to terminate and create a new State party committee, may it transfer the funds in the WV Republican Party Committee's account to the new State party committee?*
3. *What is the proper procedure for terminating the WV Republican Party Committee?*

Legal Analysis and Conclusions

1. May the WV Republican Party Committee create a new incorporated State party committee that would not be subject to the restrictions in 2 U.S.C. 441b or 11 CFR part 114 on corporations?

Yes, the WV Republican Party Committee may create a new incorporated State party committee, Party, Inc., that would not be subject to the provisions of 2 U.S.C. 441b or 11 CFR part 114 as they pertain to corporations.¹

Under 11 CFR 114.12(a), an organization may incorporate and not be subject to the provisions of 11 CFR part 114 provided that the organization is incorporating for liability purposes only and is a political committee as defined in 11 CFR 100.5. As stated above, Party, Inc. would be incorporated for liability purposes only, thereby satisfying the first requirement of 11 CFR 114.12(a). With respect to the second requirement, Party, Inc. would be a State committee of a political party.² As such, it would be a political committee under 2 U.S.C. 431(4)(C) and 11 CFR 100.5(c), assuming the contribution or expenditure thresholds of section 431(4)(C) have also been met. Because both requirements of 11 CFR 114.12(a) would be met, the WV Republican Party Committee may create a new incorporated State party committee, Party, Inc., that would not be subject to 11 CFR part 114. Neither the Act nor Commission regulations specify a particular procedure that political committees must follow when incorporating for liability purposes.

2. If the WV Republican Party Committee meets the requirements for termination and chooses to terminate and create a new State party committee, may it transfer the funds in the WV Republican Party Committee's account to the new State party committee?

Yes, if the WV Republican Party Committee meets the requirements for termination, as set forth below, and chooses to terminate and create a new State party committee, it may transfer any remaining funds from the existing committee to the new committee before it terminates.

The Commission's regulation at 11 CFR 110.3(c)(1) permits transfers of funds outside the contribution limits of 2 U.S.C. 441a between party committees of the same political party. In this case, such a transfer would be permitted between the WV Republican Party Committee and Party, Inc. Because the two party committees would be established, financed, maintained and controlled by the West Virginia Republican State Executive Committee, they would be affiliated committees under 11 CFR 100.5(g)(2). As a result, 2 U.S.C. 441a(a)(5) requires that all contributions made or received by these

¹ 11 CFR part 114 implements the corporate contribution and expenditure prohibitions contained in 2 U.S.C. 441b.

² The Commission assumes that Party, Inc., like the Committee, would qualify as a State party committee under 2 U.S.C. 431(15) and 11 CFR 100.14.

State party committees must be aggregated for the purposes of section 441a. *See* Advisory Opinion 1993-8, note 1.

3. What is the proper procedure for terminating the WV Republican Party Committee?

If the WV Republican Party Committee wishes to terminate, it must file a termination report on FEC Form 3X with the Commission. Termination of the WV Republican Party Commission is effective upon the Commission's approval of the termination. The WV Republican Party Committee would then no longer be permitted to receive contributions or make expenditures. In addition, a committee may terminate only if it has no outstanding debts or obligations. 2 U.S.C. 433(d)(1) and 11 CFR 102.3(a)(1).

A review of the WV Republican Party Committee's September monthly report indicates that it currently has \$15,474.25 cash on hand and outstanding debts of \$157,090.58. Because termination is only permissible under 2 U.S.C. 433(d)(1) and 11 CFR 102.3 if the political committee has no outstanding debts and obligations, the WV Republican Party Committee may not terminate as long as this debt remains outstanding. *See also* Advisory Opinion 1994-35.

A possible option for the WV Republican Party Committee would be for Party, Inc. to assume all debts of the WV Republican Party Committee.³ The assumption of the debts in their entirety by Party Inc., would constitute a simultaneous discharge of the debts by the WV Republican Party Committee, thereby allowing it to terminate under 11 CFR 102.3. Party Inc. would then be required to report the debts on Schedule D. *See* 11 CFR 104.11.

However, the WV Republican Party Committee is not required to terminate in order to incorporate for liability purposes only. The WV Republican Party Committee has the option of simply incorporating without forming a new State party committee. *See* Advisory Opinion 1993-8, note 1.

The Commission expresses no opinion regarding the application of the Internal Revenue Code or West Virginia law to your proposed activities as these topics are not within the Commission's jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any

³ The Commission expresses no opinion on the legality of, or procedures for, this assumption of debt under West Virginia law.

of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Scott E. Thomas
Chairman

Enclosures (AOs 1994-35 and 1993-8)