

**NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE
GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

Advisory Opinion No.: 2023-02

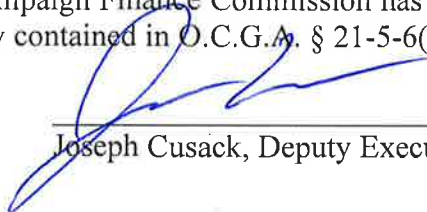
This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice and an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website (www.ethics.ga.gov) and copies may be requested by contacting the Commission at 404-463-1980.

A public hearing is scheduled to begin at 10:00 AM on June 26th, 2023 in Room 606 at the Coverdell Legislative Office Building, 18 Capitol Square SW, Atlanta, GA 30334 to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible and signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before September 20, 2017. Written Comments should be addressed to Nancy Sandberg, Legal Administrative Assistant, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 – West Tower, Atlanta, Georgia 30334. Fax: 404-463-1988.

The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on June 26th, 2023, at the Coverdell Legislative Office Building, Room 606, 18 Capitol Square SW, Atlanta, GA 30334.

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 22 day of May, 2023.



Joseph Cusack, Deputy Executive Secretary



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion No. 2023-02

In response to an advisory opinion request on March 23, 2023, from Bryan Sells, on behalf of the Libertarian Party of Georgia (“Libertarians”), the Georgia Government Transparency and Campaign Finance Commission (“Commission”) advises that a candidate nominated by the Libertarian Party is permitted to accept contributions for a primary election if they do not appear on a primary election ballot. Further, contribution limits do not apply when the Libertarian Party makes contributions to its party ticket or a group of named candidates as the Libertarians are considered a political party as defined by O.C.G.A. § 21-5-40.

Questions Presented in Request for Advisory Opinion 2023-02

1. Is a candidate nominated by the Libertarian Party entitled to a primary contribution and primary run-off contribution even though the Libertarian Party is not permitted to nominate candidates by primary election due to their status as a “political body”?
2. Contribution limits do not apply to political parties when a contribution is made by a political party in support of the party ticket or group of named candidates, do the contribution limits apply when the Libertarian Party contributes in support of its party ticket or a group of named candidates?

Discussion and Legal Analysis

Pursuant to a written request for an advisory opinion dated March 23, 2023, Bryan Sells, on behalf of the Libertarian Party of Georgia, seeks guidance as to how the nomination process and contribution limits affect the Libertarians due to their status as a “political body” rather than a “political party”, under O.C.G.A. § 21-2-2(23).

A political party is defined as,

“any political organization which at the preceding:

- (A) Gubernatorial election nominated a candidate for Governor and whose candidate for Governor at such election polled at least 20 percent of the total vote cast in the state for Governor; or
- (B) Presidential election nominated a candidate for President of the United States and whose candidates for presidential electors at such election polled at least 20 percent of the total vote cast in the nation for that office.”

O.C.G.A. § 21-2-2(25).



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A political body, is defined as, “any political organization other than a political party.” O.C.G.A. § 21-2-2(23). Political bodies are confined to nominate their candidates for office by the convention process and are not eligible as political bodies to participate in the primary election process. *See generally* O.C.G.A. §§ 21-2-172 and 151. As such, candidates put forward by political bodies qualify and appear on one ballot, the general election ballot.

The Campaign Finance Act is silent as to nominations by convention and how conventions impact the contribution structure, but a Commission rule has fleshed out the issue of when a candidate appears on the general election ballot and not the primary ballot. This rule states, “Any person who will be on the general election ballot as a candidate in an election preceded by a primary election may accept contributions designated for such primary election even though such candidate does not appear on the primary ballot.” Ga. Comp. R. & Regs. r. 189-6-.02. Utilizing this guidance, a Libertarian candidate who appears on the general election ballot is authorized to accept up to the maximum contribution limit for the primary election and the general election. Due to the impossibility of a Libertarian candidate appearing on the primary run-off ballot, much like a candidate in a single-person primary, they are not authorized to accept contributions for a primary run-off. *See generally* O.C.G.A. § 21-5-43(d).

Political parties are not bound by the contribution limits when they make contributions or expenditures for a group of named candidates or a party ticket. *See* O.C.G.A. § 21-5-40(j). Political party for purposes of multi-candidate communications enjoys a broader definition as previously defined in the election code,

““Political party” means any political party as that term is defined in paragraph (25) of Code Section 21-2-2, as amended; provided, however, that for purposes of this article, *local, state, and national committees shall be separate political parties.*”

O.C.G.A. § 21-5-40(emphasis added).

Given this broad definition including a multitude of committees in addition to the political parties as mentioned previously in O.C.G.A. § 21-2-2, the Libertarian Party of Georgia is authorized to make contributions or expenditures to a group of candidates or a party ticket and are not bound by the contribution limits for the contributions or expenditures.

Conclusion

The Georgia Government Transparency and Campaign Finance Commission advises a candidate nominated by the Libertarian Party is entitled to a primary contribution and general contribution



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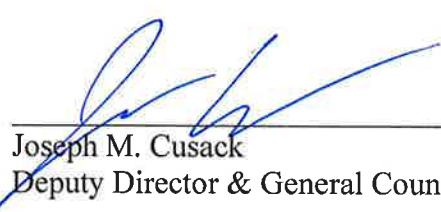
up to the contribution limits for both elections even if the candidate does not participate in the primary election. The Commission further advises that contribution limits do not apply when the Libertarian Party contributes in support of its party ticket or a group of named candidates.

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Transparency and Campaign Finance Commission, to the specific facts, transaction, or activity set forth for Advisory Opinion 2023-02.

Advisory Opinion 2023-02 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on June 26th, 2023.

Chairman

AO 2023-02 prepared by:



Joseph M. Cusack

Deputy Director & General Counsel