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July 20, 2000

Mr. Edward T. Ramey, Esq.  
Attorney at Law  
Isaacson, Rosenbaum, Woods & Levy, P.C.  
633 17<sup>th</sup> Street, Suite 2200  
Denver, Colorado 80202

Re: Request for Advisory Opinion concerning Fair Campaign Practices Act

Dear Mr. Ramey:

I am writing in response to your inquiry dated June 9, 2000, in which you posed three questions relating to the reporting requirements that House Bill 00-1472 imposes on an organization that falls within the definition of an "issue committee" in section 1-45-103 (8) (a) (II), C.R.S., of the "Fair Campaign Practices Act". Please be advised that this opinion is advisory only.

Preliminarily, it should be noted that section 1-45-103 (8) (a) defines two kinds of issue committees. Subparagraph (I) of subsection (8) (a) defines what might be referred to as a "single-purpose issue committee", that is, a committee that was formed for the single purpose of accepting contributions and making expenditures to support or oppose a ballot issue or ballot question. Subparagraph (II), enacted by H.B. 00-1472, defines another class of issue committee, namely, an organization that accepts contributions or makes expenditures in excess of \$500 to support or oppose a ballot issue or question, regardless of whether the organization was originally formed for that particular purpose. An organization that meets the definition of subparagraph (II) but that was not originally formed for the single purpose of supporting a ballot issue or question as described in subparagraph (I), may be referred to as a "multi-purpose issue committee".

It appears that your questions relate specifically to the reporting obligations of "multi-purpose issue committees". I will address each of your questions in the order in which it was posed.

1. *If such a committee makes an expenditure from its general, non-earmarked, funds for the purpose of supporting or opposing a ballot issue or question, does the committee fulfill its reporting obligations by identifying itself as the source of the funds involved*

*irrespective of how, when, or from whom the committee itself may have received those funds?*

Answer: Yes. Section 1-45-108 (1) (b) provides that a multi-purpose issue committee is not required to report donations, membership dues, or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question. When such general, non-earmarked funds are used to support or oppose a ballot issue or question, then the report must show the expenditures and must also show sufficient contributions received to support the expenditures. (A report cannot show expenditures in excess of funds available.) However, it is sufficient for the committee to show its own organization as the source of contributions that support the expenditures. Since it is assumed that the organization received the funds from general, non-earmarked sources, then it would not be possible to attribute the funds to particular sources. Therefore, the contribution should be treated as coming from the organization itself. In such cases, it may be helpful to identify the contribution as from "general, non-earmarked funds".

2. *If such a committee sets up a separate account for the purpose of supporting or opposing a ballot issue or question, may it place in that separate account – in addition to all earmarked contributions it has received for that purpose – general funds of its own? If so, does the committee fulfill its reporting obligations by identifying itself as the source of such general funds irrespective of how, when, or from whom the committee itself may have received those funds?*

Answer: The committee must set up a separate account and must make expenditures solely from that account. Section 1-45-105.3 (8), C.R.S., requires that, "All contributions received by a candidate committee, issue committee, political committee, or political party shall be deposited in a financial institution in a separate account whose title shall include the name of the committee or political party." As discussed in the response to Question 1, an expenditure from the organization's general, non-earmarked funds represents a "contribution" from the organization. Therefore, in accordance with section 1-45-105.3 (8), that contribution must first be deposited into the separate account before it may be expended. Our understanding is that the legislative intent behind the separate account requirement is that the separate account will provide a complete financial record of all funds received and expended in connection with a candidate or issue. This legislative intent is reinforced for issue committees by H.B. 00-1472's enactment of new section 1-45-111 (2) (d), C.R.S., which limits the scope of subpoenas issued by an administrative law judge requiring the production of documents to documents pertaining to contributions to, and expenditures from, the separate account.

3. *If such a committee receives non-earmarked contributions during a period in time when a ballot issue or question is pending, are there any circumstances whereunder*

*the committee would be required to report the amount and source of those contributions if the committee independently decides to deposit those funds in a separate account or otherwise use those funds for the purpose of making an expenditure to support or oppose the ballot issue or question? If so, what are those circumstances, and how specifically can we determine the period of time during which receipt of a non-earmarked contribution may ultimately require that its source and amount be reported?*

Answer: When the committee on its own volition and not at the express or implied direction of any donor decides to deposit some or all of its general, non-earmarked funds in its separate campaign account, the committee would not be required to identify the original, specific sources of those funds. As provided in section 1-45-108 (1) (b), the committee is required to “report only those contributions accepted . . . for the purpose of supporting or opposing a ballot issue or ballot question”. When the organization receives funds from an outside source, it must make a reasonable, good-faith determination about whether the funds are for “the purpose of supporting or opposing a ballot issue or ballot question”. If they are, then the funds should be deposited into the separate account, and the amount and source of those funds should be reported as individual contributions. If they are not, then there is no obligation to report the amount and source individually, even if some portion of the aggregate of all such non-earmarked receipts are later allocated by the organization to the separate account. Instead, as discussed in the preceding responses, such an allocation will be reported as a contribution from the organization itself.

I am aware that section 1-45-108 (1) (b) also provides, “Such issue committee shall not be required to report donations, membership dues, or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question.” (Emphasis added.) However, in the circumstances where non-earmarked receipts “are used” for campaign purposes, I do not believe it was the legislative intent that such receipts then become reportable individually as campaign contributions, so long as there was a reasonable, good-faith determination upon receipt that such funds were not received “for the purpose of supporting or opposing a ballot issue or ballot question”. First, the discussion in legislative hearings supports the interpretation that individual donors would not be reported in such circumstances. Second, there would be a practical difficulty in reporting individual donors, in that the organization would have no reasonable method for determining which specific non-earmarked sources were being allocated to the separate account.

**Summary:** A multi-purpose issue committee is required to set up a separate financial account for all contributions and expenditures relating to the support or opposition of a ballot issue or question. When the organization receives funds from an outside source, it must make a reasonable, good-faith determination about whether the funds are for “the purpose of supporting or opposing a ballot issue or ballot question”. If so, then the funds

should be deposited into the separate account, and the amount and source of those funds should be reported as individual contributions. If not, then the funds should not be deposited into the separate account. If the organization later chooses to allocate some or all of such non-earmarked funds for campaign purposes, then it should transfer the funds into its separate campaign account and report the transfer as a contribution from the organization itself. The committee is never required to report the original amount and source of such non-earmarked funds, so long as it made a reasonable, good-faith determination upon receipt that such funds were not "for the purpose of supporting or opposing a ballot issue or ballot question".

I hope that this answers your questions. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Donetta Davidson

By: William A. Hobbs  
Deputy Secretary of State

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June 9, 2000

Donetta Davidson  
Secretary of State  
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Denver, CO 80202

Re: House Bill 00-1472

RECEIVED

JUN 14 2000

SECRETARY OF STATE

Dear Mr. Hobbs:

I am writing on behalf of several clients to request a clarification from the Secretary of State regarding the reporting requirements which HB 1472 places upon organizations that may fall within the definition of an "issue committee" under C.R.S. § 1-45-103(8)(a)(II).

Under new C.R.S. § 1-45-108(1)(b), such committees are required to report "only those contributions accepted . . . for the purpose of supporting or opposing a ballot issue or ballot question." This subsection then specifically provides that donations, dues, and other payments received by such committees need not be reported "unless such amounts are used or to be used for the purpose of supporting or opposing a ballot issue or ballot question."

It is certainly my understanding that new C.R.S. § 1-45-108(1)(b) will require such committees to report any contributions accepted by them - as well as expenditures made and obligations entered into - for the purpose of supporting or opposing a ballot issue or question. However, I am uncertain how to advise on the following points:

1. If such a committee makes an expenditure from its general, non-earmarked, funds for the purpose of supporting or opposing a ballot issue or question, does the committee fulfill its reporting obligations by identifying itself as the source of the funds involved irrespective of how, when, or from whom the committee itself may have received those funds?

June 9, 2000

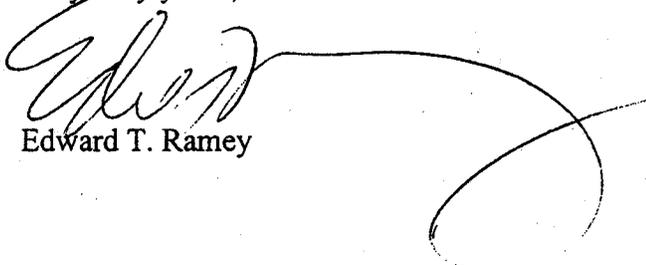
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2. If such a committee sets up a separate account for the purpose of supporting or opposing a ballot issue or question, may it place in that separate account – in addition to all earmarked contributions it has received for that purpose – general funds of its own? If so, does the committee fulfill its reporting obligations by identifying itself as the source of such general funds irrespective of how, when, or from whom the committee itself may have received those funds?

3. If such a committee receives non-earmarked contributions during a period in time when a ballot issue or question is pending, are there any circumstances whereunder the committee would be required to report the amount and source of those contributions if the committee independently decides to deposit those funds in a separate account or otherwise use those funds for the purpose of making an expenditure to support or oppose the ballot issue or question? If so, what are those circumstances, and how specifically can we determine the period of time during which receipt of a non-earmarked contribution may ultimately require that its source and amount be reported?

We would very much appreciate your guidance on the matters set forth above.

Very truly yours,



Edward T. Ramey

ETR/dk