

STATE OF COLORADO

Department of State

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**Donetta Davidson**  
Secretary of State  
**William A. Hobbs**  
Deputy Secretary of State

September 23, 2002

Mr. Kevin Conroy, Esq.  
Attorney at Law  
Foley Hoag, LLP  
155 Seaport Boulevard  
Boston, Massachusetts 02210

Re: Request for Advisory Opinion concerning Fair Campaign Practices Act

Dear Mr. Conroy:

I am writing in response to your inquiry dated August 12, 2002, in which you requested "an advisory opinion regarding the Fair Campaign Practices Act's [FCPA] regulation of a national non-profit organization's (the 'Organization') donations to a Colorado statewide issue committee". Please be advised that this opinion is advisory only, and that it is limited to the facts presented.

Your inquiry describes the Organization as a 501(c)(4) entity involved in nationwide activities that plans to organize a statewide issue committee in Colorado (the "Issue Committee"). Your inquiry then describes three different scenarios where a donor provides funds or securities to the Organization, and the Organization then uses all or a portion of the donation to provide funds to the Issue Committee. Finally, you inquire (1) whether the transactions violate the FCPA, and (2) whether the Organization would be required to register as a political committee in Colorado.

Preliminarily, it should be noted that section 1-45-103 (8) (a), C.R.S., 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) 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 would therefore appear that the Issue Committee formed by the Organization would be a single-purpose issue committee. In addition, the Organization itself might qualify as a multi-purpose issue committee if it accepts contributions or makes expenditures in excess of \$500 to support a ballot issue or ballot question in Colorado. If the Organization is an "issue committee" under the definition in section 1-45-103 (8), then it is expressly excluded from the definition of a "political committee" in section 1-45-103 (10), C.R.S.

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In each of the situations described in your inquiry, the Organization's donation of funds to the Issue Committee would be considered a "contribution" to the Issue Committee as the term "contribution" is defined in section 1-45-103 (4), C.R.S. However, the Organization's donation of funds to the Issue Committee would not also be considered an "expenditure", according to the last sentence of section 1-45-103 (8)(a)(II), which provides that a contribution does not count as an expenditure for purposes of determining whether an entity has made expenditures in excess of \$500.

Under the facts described in your inquiry, therefore, the Organization will not make expenditures in excess of \$500. As a result, the question of whether the Organization is an "issue committee" depends on whether the Organization has "accepted total contributions in excess of five hundred dollars . . . to support or oppose any ballot issue or ballot question". (Section 1-45-108 (8)(a)(II), C.R.S.)

#### Scenario #1

In this scenario, a "501(c)(3) organization makes a donation to the Organization, and specifically notes that the funds should be contributed to the Issue Committee once it is organized". In this scenario, the Organization has "accepted a contribution . . . to support or oppose [a] ballot issue or ballot question" and is therefore an "issue committee" for purposes of the FCPA if the total of such contributions exceeds \$500. Therefore, the Organization must register under the FCPA and report the contribution received, as well as the contribution subsequently made to the Issue Committee. This transaction would not violate the FCPA.

As an issue committee, the Organization would be required to deposit all contributions received "in a financial institution in a separate account whose title shall include the name of the committee". Section 1-45-105.3 (8), C.R.S.

#### Scenario #2

In this scenario,

A corporation gives a large donation to the Organization with specific instructions that the Organization give these funds to state ballot question committees around the country that are supporting Issue X. The Organization identifies ballot questions throughout the country which are supporting Issue X including the Issue Committee. With the advice and consent of the corporation, the Organization makes a contribution to the Issue Committee out of the funds that were donated by the corporation.

Assuming that the Organization accepted the donation from the corporation without having identified the specific ballot issue or question in Colorado that would be supported or opposed with a portion of the donation, then it is my opinion that the Organization would not be an "issue committee" under the FCPA because it did not accept "total contributions in excess of five hundred dollars . . . to support or oppose any ballot issue or ballot question". The fact that the Organization subsequently identifies a ballot issue or question in Colorado that it will support with a portion of the donation does not change the result.

The Organization would also not qualify as "political committee" as defined in section 1-45-103 (10). The definition of "political committee" is "two or more persons who are elected, appointed, or chosen, or have associated themselves, for the purpose of making contributions to candidate committees, issue committees, political parties, or other political committees, or for the purpose of making independent expenditures." Since the Organization was not formed "for the purpose of making contributions", it is not a political committee. See, *Common Sense Alliance v. Davidson*, 995 P.2d 748 (Colo. 2000), interpreting similar language in the definition of "issue committee".

Therefore, under Scenario #2, the Organization would not be required to register and report as a political committee, and the contribution from the Organization would be reported by the Issue Committee. This transaction would not violate the FCPA.

### Scenario #3

Under this scenario, a donor donates stock to the Organization with instructions that the stock be cashed and the proceeds donated to the Issue Committee. If the donation is a "contribution", then this scenario appears to be essentially the same as Scenario #1, in that the Organization will qualify as a multi-purpose issue committee (if the contribution is in excess of \$500). In other words, if the donation of stock is a "contribution" in excess of \$500, then the Organization is an "issue committee" as defined in section 1-45-103 (8)(a)(II), C.R.S. It must therefore register and report as an issue committee.

However, the answer to this question is complicated by the fact that the FCPA defines "contribution" generally as a donation of money (section 1-45-103 (4), C.R.S.) and separately defines "contribution in kind" as "gift or loan of any item of real or personal property, other than money" (section 1-45-103 (4.5), C.R.S.). Thus, there is an argument that by accepting stock instead money, the Organization has not accepted contributions in excess of \$500 and is therefore not an issue committee.

However, it is my opinion that the donation of stock is a "contribution" as that term is used in the context of the definition of "issue committee" in section 1-45-103 (8)(a)(II), C.R.S.

First, it should be noted that, as a matter of statutory construction, "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." Section 2-4-101, C.R.S.

Second, in the context of the definition of "issue committee", the general assembly's use of the term "contribution" must be construed to refer to contributions in the general sense, not just to contributions of money. To conclude otherwise would produce a significant loophole in the statute. In other words, the requirements of the statute could be easily evaded by contributing property easily convertible into cash. This would produce an unreasonable result that would undermine the effectiveness of the statutory scheme, contrary to the rules of statutory construction stated in sections 2-4-201 and 2-4-203, C.R.S.

Therefore, under the facts described in Scenario #3, the Organization would be an "issue committee" (if the value of the stock is greater than \$500), and would register and report accordingly under the FCPA.

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

Sincerely,

A handwritten signature in cursive script that reads "Donetta Davidson". The signature is written in dark ink and is positioned above the printed name.

Donetta Davidson  
Secretary of State



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

**RECEIVED**

August 12, 2002

**AUG 15 2002**

Kevin Conroy  
Boston Office  
617.832.1164

ELECTIONS / LICENSING  
SECRETARY OF STATE

Donnetta Davidson  
Secretary of State  
Office of the Secretary of State  
1560 Broadway, Suite 200  
Denver, CO 80202

Re: Request for an Advisory Opinion

Dear Ms. Davidson:

I am writing to request an advisory opinion regarding the Fair Campaign Practices Act's regulation of a national non-profit organization's (the "Organization") donations to a Colorado statewide issue committee.

The Organization is registered as a 501(c)(4) with the Internal Revenue Service and is involved in activities throughout the country. The Organization plans to organize a statewide issue committee in Colorado (the "Issue Committee"). I am writing to request an advisory opinion on the following three scenarios:

1. A 501(c)(3) organization wants to make a donation to the Issue Committee that is in the process of organizing. The 501(c)(3) organization makes a donation to the Organization, and specifically notes that the funds should be contributed to the Issue Committee once it is organized. The Organization then contributes the funds to the Issue Committee once it is organized. The Issue Committee would report that the 501(c)(3) organization made the donation via the Organization.

2. A corporation gives a large donation to the Organization with specific instructions that the Organization give these funds to state ballot question committees around the country that are supporting Issue X. The Organization identifies ballot questions throughout the country which are supporting Issue X including the Issue Committee. With the advice and consent of the corporation, the Organization makes a contribution to the Issue Committee out of the funds that were donated by the corporation. The Issue Committee would report that the corporation made the donation via the Organization.

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Donnetta Davidson  
August 12, 2002  
Page 2

3. A donor wants to make a donation of stock to the Issue Committee, but the Issue Committee does not have a brokerage account that can receive and sell stock. The donor donates the stock to the Organization with the instruction that the stock be cashed and the proceeds be donated to the Issue Committee. Following the donor's wishes, the Organization accepts the stock, sells it and donates the proceeds to the Issue Committee. The Issue Committee would report that the donor made the donation via the Organization.

I am requesting answers to the following questions:

- (1) Would the transactions above violate the Fair Campaign Practices Act?
- (2) Would the Organization be required to register as a political committee in Colorado if it participated in any one of these transactions?

Thank you for your prompt attention to this matter. Please feel free to contact me at (617) 832-1164 if you have any questions regarding my request. I look forward to hearing from you soon.

Sincerely,



Kevin Conroy