



August 10, 2011

**ADVISORY OPINION**

Janice Vos Caudill  
Pitkin County Clerk & Recorder  
530 E. Main Street, Suite 101  
Aspen, CO 81611

*Re: Applicability of state campaign finance law to a home rule county*

Dear Ms. Vos Caudill:

This Advisory Opinion concerns the application of state campaign finance law in the home rule jurisdiction of Pitkin County. We have interpreted your requests for guidance and an endorsement of a "hybrid" system of campaign finance law as a request for an Advisory Opinion. This Opinion serves as a reply to your inquiry.

**Question Presented**

Pitkin County has asked the Secretary of State whether a "hybrid" approach to campaign finance is acceptable in a home rule jurisdiction. Under the proposed hybrid approach, the home rule jurisdiction adopts a limited set of campaign finance laws applicable locally and seeks to have state law, and thus state enforcement, apply in areas not addressed by the local laws. Can a home rule jurisdiction utilize a hybrid approach under Article XXVIII and Title 1, Article 45?

**Short Answer**

No. When a home rule jurisdiction adopts any form of campaign finance law, then state law no longer applies to local matters.

**Analysis**

Municipalities and counties in Colorado are free to become home rule.<sup>1</sup> Home rule jurisdictions are vested with significant powers of local control, and campaign finance is one area in which a

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<sup>1</sup> Colo. Const. art. XX, § 6 and art. XIV, § 16.

home rule jurisdiction may choose to exercise this right.<sup>2</sup> Although adopting a campaign finance regime is certainly within the power of a home rule city or county, it has consequences.

State campaign finance law, contained in Article XXVIII and Title 1, Article 45 of the Colorado Revised Statutes, does not apply to home rule jurisdictions that adopt any campaign finance laws of their own.<sup>3</sup> The Colorado Attorney General has concluded that in local election matters, “neither Article XXVIII of the Colorado Constitution nor the FCPA applies to home rule counties and municipalities which have charters or ordinances that already address the matters covered by Article XXVIII and the statute.”<sup>4</sup>

This is the case if a home rule jurisdiction adopts *any* campaign finance provisions of its own. Therefore, a home rule jurisdiction must be either “all in”—it follows state campaign finance law, or “all-out”—it follows its own provisions, exempting itself from the application of state law. The adoption of even the most limited campaign finance provisions in a home rule jurisdiction exempts the home rule municipality from the application of state law altogether.

A “hybrid” approach—in which a home rule jurisdiction seeks to create special laws enforceable against some filers while adopting state law for the remainder—is inconsistent with Colorado law. Even where a home rule jurisdiction expressly adopts state law to backfill where local provisions are silent, the state is powerless to enforce its campaign finance provisions as they apply to those jurisdictions. Therefore, a home rule jurisdiction attempting a hybrid approach may find itself with no enforcement mechanism at all.<sup>5</sup> For example, Colorado Springs was found to have plenary power over campaign finance matters because the City adopted campaign finance provisions, and therefore the Office of Administrative Courts found that it lacked subject matter jurisdiction over campaign finance complaints arising in the City.

A home rule jurisdiction may adopt state campaign finance law to provide the framework for disclosure, but the state cannot exercise enforcement power in such a regime.<sup>6</sup> Therefore, it is essential that a home rule jurisdiction that adopts campaign finance provisions of any kind, establish a system to enforce those provisions.

Good public policy further supports our conclusion. Mixing state and local campaign finance law is administratively complex and confusing to the public. Reporting and enforcement become unnecessarily complicated, and the public may have a difficult time understanding where, when, and on what terms the various campaign entities report. Bifurcated enforcement might result in disparate penalties for different types of local committees. There is also potential for conflicting interpretations of the interplay between local laws and state law. After examining both existing

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<sup>2</sup> See, e.g. § 1-45-116, C.R.S. (2010), Formal Op. Att’y. Gen. Ken Salazar, No. 03–1 -AG Alpha No. ST EL AGBAS (January 13, 2003), available at <http://www.sos.state.co.us/pubs/elections/CampaignFinance/files/agopinion.pdf>.

<sup>3</sup> *Id.*, *Campaign and Political Finance Rule 7.1, 8 Colo. Code Regs. 1505-06* (2011).

<sup>4</sup> Formal Op. Att’y. Gen. Ken Salazar, No. 03–1 -AG Alpha No. ST EL AGBAS (January 13, 2003).

<sup>5</sup> Case No. OS 2011-0010 (June 8, 2010), available at

<http://tracer.sos.colorado.gov/PublicSite/SearchPages/ComplaintSearch.aspx>). Case is pending on appeal to the Colorado Court of Appeals, Case No. 2011 CA 0892.

<sup>6</sup> See Colo. Const. art. XXVIII, § 10(2)(a).

law and public policy, the Secretary of State cannot endorse a hybrid campaign finance system for home rule jurisdictions.

Dated this 10th Day of August, 2011.



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William A. Hobbs  
Deputy Secretary of State