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Donetta Davidson
Secretary of State

William C. (Billy) Compton
Director, Elections Division

March 14, 2005

Mr. Rob Fairbank
Politically Direct
1410 Grant Street, B-305
Denver, CO 80203

Re: Request for Advisory Opinion Dealing with Contributions from a Candidate Committee to a 527 Entity organized under Section 527 of the Internal Revenue Service Code.

Dear Mr. Fairbank:

I am writing in response to your request dated February 3, 2005 for an advisory opinion regarding whether a candidate committee is allowed to contribute funds from the committee account to a 527 entity organized under Section 527 of the Internal Revenue Service Code. Please be advised that this opinion is advisory only, and that it is limited to the facts presented.

Question Presented:

May a candidate make a contribution to a 527 organization from the candidate's candidate committee?

Answer:
For the reasons that follow, the answer is "No."

Discussion

The facts, as you provided them, are that some sitting legislators have contributed monies from their candidate committees to section 527 organizations. You have asked if a candidate committee may contribute to a section 527 organization.

Your letter states that Colorado law is explicit in allowing candidate committees to spend money in an effort to educate the electorate about political issues and that a contribution by a candidate committee to an organization that is set up to do specifically that (such as a section 527 organization) is legitimate. Your letter cites section 1-45-106(1)(b)(II), C.R.S., which states as follows:

> **1-45-106. (Unexpended campaign contributions.** (1) (b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

However, a review of the legislative hearings concerning the enactment of section 1-45-1606 (1)(b)(II) indicates that it was the legislative intent that the issue education be personal to the candidate. In other words the focus is on the candidate personally gaining education on issues, or personally educating the electorate on issues.

Section 527 organizations are not limited to educating elected officials or their constituents. The Internal Revenue Service describes a section 527 organization as "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function. **The exempt function of a political organization is influencing or attempting to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization."** 26 USC (citation)(1)(F)(VI)(527)(e)(2), emphasis added. While section 527 organizations are not candidate committees, they may accept contributions from and make expenditures in order the influence the selection, nomination, election or appointment of an individual, other than the candidate whose committee would be making the contribution to the section 527 organization, to a federal, state, or local public office or office in a political organization.

Although not exactly parallel, section 527 organizations closely resemble "candidate committees" and "political committees". Colo. Const. Art. XXVIII, Section 2(3) and (12). All of these entities are established to enhance the chances of electing candidates. Reading both Article XVIII, and C.R.S. 1-45-106(1)(b)(II) together, the clear intent of current campaign and political finance law in the State of Colorado is to prohibit candidate committees from expending campaign funds for the election of candidates other than the candidate for whom they were formed. An interpretation of the phrase "political issue education" that allows candidate committees to give money to section 527 organizations would undermine the intent of voters "to reduce the potential for corruption and the appearance of corruption" in political campaigns. Colo. Const. Art XXVIII, Section 1.

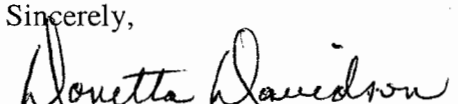
A contribution to a section 527 organization would also undermine the disclosure provisions of Article XXVIII. Section 527 organizations are not required to file disclosures with this office. Candidate committees that would contribute to a section 52 organization are not required to disclose how the contribution was spent by the section 527 organization. The public would not be informed about the actual use of the money in a political campaign.

Conclusion

In conclusion, while unexpended campaign contributions from a candidate committee may be spent on issue education for the candidate or by the candidate, it is my opinion that a candidate committee may not contribute unexpended candidate committee funds to a section 527 organization. Contributions and expenditures made by candidate committees concerning political issue education are to be limited to specifically educating their constituents about the elected official personally or educating the elected officials themselves on legislative issues directly affecting their constituents. In reviewing all of the outlined constitutional and statutory provisions listed above, it is the clear intent of the current campaign and political finance law to allow political issue education only as it is directly related to the education of the public about the elected official or the education of the immediate constituents of the elected official. Candidate committees may not contribute to section 527 organizations, and any such contributions made by a candidate committee to a section 527 organization must be returned to the candidate committee.

I hope this answers your question. Please let me know if we can be of further service.

Sincerely,



Donetta Davidson
Colorado Secretary of State

Document 1 of 1

Source:
Colorado Statutes/ TITLE 1 ELECTIONS/ELECTION CAMPAIGN REGULATIONS/ARTICLE 45 FAIR CAMPAIGN PRACTICES ACT/1-45-106. Unexpended campaign contributions.

1-45-106. Unexpended campaign contributions.

(1) (a) (I) Subject to the requirements of section 3 (3) (e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 1-45-105.3 (4) (b) and (c), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

(I) Voter registration;

(II) Political issue education, which includes obtaining information from or providing information to the electorate;

(III) Postsecondary educational scholarships;

(IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;

(V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3) (e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-109 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. Citizens for Responsible Gov't State Political Action Comm. v. Buckley, 60 F. Supp.2d 1066 (D. Colo. 1999).

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