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Donetta Davidson
Secretary of State

William C. (Billy) Compton
Director, Elections Division

August 6, 2004

Ms. Denise D. Hoffman
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Re: Request for an Advisory Opinion Regarding Multi-Purpose Issue Committees

Dear Ms. Hoffman:

I am writing in response to your inquiry dated May 14, 2004 in which you requested an advisory opinion concerning multi-purpose issue committees under Article XXVIII of the Colorado Constitution, concerning campaign and political finance. Please be advised that this opinion is advisory only, and that it is limited to the facts presented.

You raised a series of questions concerning a client that you describe as a multi-purpose issue committee. Your letter explains that the committee "is organized and operated primarily for the purpose of obtaining and expending contributions to support or oppose ballot issues and ballot questions in any election", and that you are seeking to determine the proper reporting requirements for such a committee.

Each of your questions is listed and addressed separately below.

1. *Question Presented:*

   Must a multi-purpose issue committee file cumulative committee registration forms each time it supports and/or opposes a particular ballot issue or ballot question?

   Answer:
   For the reason outlined below, it is my opinion that Rule 3.1 requires an amended registration form whenever the information disclosed on the registration form changes.

   Discussion

   Issue committees, candidate committees, political committees, small donor committees, and political parties are required to register by section 1-45-108 (3), C.R.S. When registering, the committee or party must state their "purpose or nature of interest" in accordance with section 1-45-108 (3) (e), as follows:

(3)...Registration shall include a statement listing:
(e) The purpose or nature of interest of the committee or party.

Rule 2.4 of the Secretary of State's "Rules Concerning Campaign and Political Finance", 8 CCR 1505-6, clarifies that a group that wishes to support or oppose multiple issues need not form a separate issue committee for each issue, but allows a single registration as a "multi-purpose issue committee", as follows:

> 2.4 An issue committee may support or oppose more than one issue without having to open numerous campaign accounts and file numerous committee registration forms if the following conditions are met: the specific issues are included on the committee registration form; no generic phraseology is used (i.e. Support or oppose issues affecting the basic rights of cattle); and the registration form states whether the committee will be supporting or opposing said issues.

Rule 2.4 requires that a "multi-purpose issue committee" must include the specific issues that it supports or opposes on the registration form. Where a multi-purpose issue committee changes the specific issues that it is supporting or opposing, it is obligated by Rule 3.1 to amend its registration, as follows:

> 3.1 Whenever any of the information disclosed on the committee registration form changes, the change must be reported within five days by filing an amended committee registration form with the secretary of state. When filing an amendment to the committee registration form, a new form should be completed that includes any updated information. The form must be signed by the registered agent, and, if for a candidate committee, the candidate must also sign the form.

Therefore, the registration form of the issue committee must at all times accurately reflect the specific ballot issues or ballot questions that the committee is supporting or opposing and whether the committee is supporting or opposing those issues or questions. Pursuant to Rule 3.1, an amended registration form must be filed whenever any of the information disclosed on the committee registration form changes.

2. *Question Presented:*

Must a multi-purpose issue committee file amended committee registration forms to indicate that they are no longer supporting and/or opposing issues previously reported?

Answer:
For the reasons given in my answer to Question 1, it is my opinion that the answer is "Yes."

3. *Question Presented:*

What action taken by the multi-purpose committee triggers the requirement, and more importantly the deadline, to file a new committee registration form: For example, would a decision by the Board of Trustees to support and/or oppose an issue trigger this requirement? Would the obligation of the funding to support and/or oppose an issue trigger this requirement?

Answer:
For the reasons that follow, it is my opinion that the triggering mechanism for filing an amended issue committee registration form could be either a decision by the Board of Trustees or the obligation of the funding to support and/or oppose an issue, whichever occurs first.

Discussion

The requirement to amend a committee registration form is triggered by the change in the purpose of the committee, pursuant to C.R.S. 1-45-108(3)(e), or by the change in information disclosed on the committee registration form, pursuant to Rule 3.1, Secretary of State Rules Concerning Campaign and Political Finance. This could theoretically occur prior to any obligation of funding to support and/or oppose the issue if action is taken by the Board of Trustees, or it could occur at the time the obligation of the funding to support and/or oppose a ballot issue or ballot question, if such obligation occurs prior to action taken by the Board of Directors. Amendment XXVIII, Section 2(10)(a) states as follows:

> (10)(a) 'Issue committee' means any person, other than a natural person, or any group of two or more persons, including natural persons:
>
> (I) That has a major purpose of supporting or opposing any ballot issue or ballot question; or
>
> (II) That has accepted or made contributions or expenditures in excess of two hundred dollars to support or oppose any ballot issue or ballot question.

Additionally, Amendment XXVIII, Section 2(8)(a) states as follows:

> (8)(a) 'Expenditure' means any purchase, payment, distribution, loan, advance, deposit, or gift of money by any person for the purpose of expressly advocating the election or defeat of a candidate or supporting or opposing a ballot issue or ballot question. An expenditure is made when the actual spending occurs or when there is a contractual agreement requiring such spending and the amount is determined.

Therefore, the requirement to file an amended issue committee registration is triggered when either a contractual obligation or agreement requiring such spending in the amount of two hundred dollars or more is determined or when the Board of Trustees makes a decision to change the purpose of the committee to support or oppose a ballot issue or question, whichever occurs first.

4. *Question Presented:*

Would the multi-purpose issue committee be obligated to satisfy the 5-day period filing deadline for each new committee registration form as currently set forth in Rule 23.1?

Answer:
For the following reason, it is my opinion that the answer is "Yes."

Discussion

Rule 3.1 (formerly Rule 23.1), Secretary of State Rules Concerning Campaign and Political Finance (*see above)*, requires an amended registration form with any updated information to be filed within five days of the change of the information. This rule applies to all

committees, and there is no constitutional amendment, statute, or rule that would exempt a multi-purpose issue committee from this requirement.

5. *Question Presented:*

Would filing a new committee registration form for every issue and question that the multi-purpose committee supports and/or opposes require the Secretary of State to assign identification numbers to the committee as required in Rule 22.1?

Answer:
For the reasons that follow below, it is my opinion that the answer is "Yes" if a new committee registration is filed for each ballot question or ballot issue; however, it is my opinion that the answer is "No" if the multi-purpose committee is simply amending its registration form.

Discussion

Rule 2.1 (formerly Rule 22.1), Secretary of State Rules Concerning Campaign and Political Finance, states as follows:

> 2.1 When a committee registration form is received by the secretary of state's office, an identification number will be assigned and a letter of acknowledgement will be sent to the registered agent on file informing him/her of the identification number.

When the Secretary of State's Office receives a committee registration for a new committee, it sends a letter including the identification number of the new committee to the registered agent of the committee. If the multi-purpose issue committee chooses to file new committees to support and/or oppose various ballot issues or ballot questions, then the Secretary of State's Office would issue a unique identification number to each of the committees. However, if an existing committee is simply amending the purpose of the committee in accordance with Rule 3.1 (*see above*) to add or delete ballot questions and ballot issues that the committee is supporting or opposing, then no new committee registration is being filed and no new identification number will be assigned.

6. *Question Presented:*

Would a multi-purpose issue committee be in compliance with Rule 22.4 and the provisions of Article XXVIII if they filed an annual committee registration form to indicate all of the issues that they were currently supporting or opposing, as well as all issues that they had supported or opposed during the preceding year, i.e., since the filing of the previous year's form?

Answer:
For the reason that follows, it is my opinion that the answer is "No."

Discussion

There is nothing in Article XXVIII, Title 1, Article 45, or the Secretary of State Rules Concerning Campaign and Political Finance that would prevent or prohibit the multi-purpose

issue committee from filing an annual committee registration form. However, Rule 3.1, Secretary of State Rules Concerning Campaign and Political Finance (*see above*) is explicitly clear and requires an amended registration form to be filed within 5 days of the change of any information on the registration form. Therefore, while the committee may wish to file an annual committee registration form, this action will not alleviate the requirement to file an amended committee registration form within 5 days of the change of the information on the form. It should be pointed out that one of the major purposes of the existing constitutional and statutory provisions relating to campaign and political finance is "full and timely disclosure". (See Article XXVIII, Section 1.) This purpose would be significantly undermined if an issue committee only filed an annual report as the question suggests, since for a substantial portion of every year the public would be deprived of knowing the specific issues that the issue committee was actually supporting or opposing.

Summary of Conclusions

Under Rule 3.1 of the Secretary of State's Rules Concerning Campaign and Political Finance, a multi-purpose issue committee must file an amended registration form whenever the information disclosed on the registration form changes, including any change in the ballot issues/questions that the committee supports or opposes. This amended registration form must be filed within 5 days of the change of information. If the multi-purpose issue committee no longer supports and/or opposes an issue previously reported on the registration form, then the committee should amend its registration form to reflect the new information, pursuant to Rule 3.1.

The requirement to file an amended issue committee registration may be triggered when either a contractual obligation or agreement requiring spending in the amount of $200 or more to support or oppose a ballot issue or ballot question is determined, or by action of the Board of Trustees if the Board changes the purpose of the committee to support or oppose a particular ballot issue or ballot question, whichever occurs first.

Whenever the Secretary of State's Office receives a new committee registration, a unique identification number is issued to the committee. However, no new identification number will be issued to an existing committee that is only amending its registration information. There is nothing in Article XXVIII, Title 1, Article 45 or the Secretary of State's Rules Concerning Campaign and Political Finance that requires or would prevent or prohibit a multi-purpose issue committee from filing an annual committee registration with this office; however, that action will not alleviate the requirement to amend the registration form within 5 days of any change of information on the registration form.

Your letter indicates that you believe that these requirements are "burdensome" and "not conducive to the activities of a multi-purpose issue committee that supports or opposes various issues and questions throughout its existence." The purpose of Amendment XXVIII, Title 1, Article 45, and the Secretary of State's Rules Concerning Campaign and Political Finance is not to make it difficult or convenient for committees to comply with the requirements of each. The purpose of these laws and regulations is to effectuate the purpose and findings of the People of the State of Colorado when they passed Amendment 27: providing for full and timely disclosure of campaign contributions, independent expenditures, and funding of electioneering communications, and strong enforcement of campaign finance requirements.

I hope that you will find this response helpful. If we can be of further assistance, please do not hesitate to contact this office.

Sincerely,

Donetta Davidson
Secretary of State

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May 14, 2004

VIA HAND DELIVERY

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Re: Request for an Advisory Opinion

Dear Ms. Davidson:

We are writing on behalf of our client, REALTOR® Issue Political Action Committee ("RIPAC"), to request a clarification from the Secretary of State regarding the registration requirements for multi-purpose issue committees. Specifically, we are seeking clarification regarding the requirements for filing committee registration forms pursuant to Rule 22.4 of the Rules Concerning Campaign and Political Finance.

Prior to June 3, 2003, the definition of an issue committee as set forth in Title 1, Article 45 of the Revised Statutes provided for a distinction between single purpose and multi-purpose issue committees (see Exhibit A, paragraph 2). This distinction is no longer provided for in the statutory definitions. Currently, Section 1-45-103(12) of the Colorado Revised Statutes defines an issue committee by reference to the definition provided in Article XXVIII of the Colorado Constitution. This new definition of an issue committee is very different from the definition that appeared in the Colorado Revised Statutes prior to the promulgation of Article XXVIII.

Section 2.(10)(a) of Article XXVIII of the Colorado Constitution defines an issue committee as "any person other than a natural person or any group of two or more persons including natural persons: (I) that has a major purpose of supporting any ballot issue or ballot question; or (II) that has accepted or made contributions or expenditures in excess of $200 to support or oppose any ballot issue or ballot question."

RIPAC is a multi-purpose issue committee as previously defined in the statutes. RIPAC is organized and operated primarily for the purpose of obtaining and expending contributions to support or oppose ballot issues and ballot questions in any election in Colorado in accordance with all applicable federal tax laws and Colorado campaign laws. We are now attempting to determine the proper reporting requirements for a multi-purpose issue committee versus a single purpose issue committee.

Rule 22.4 of the Rules Concerning Campaign and Political Finance expressly permits an issue committee to support or oppose more than one issue. However, it places restrictions upon the manner in which the committee registers with the Secretary of State's office. The rule contemplates that an issue committee shall file one committee registration form, ***but only if*** all of the issues and questions that the committee will support or oppose are included on the form. This requirement is not conducive to the activities of a multi-purpose issue committee that supports or opposes various issues and questions throughout its existence. This is specifically a problem based upon the fact that when the registration form is initially filed with the Secretary of State's office, all of the various issues and questions that a multi-purpose issue committee may support or oppose are not known.

It appears that the only way a multi-purpose issue committee can comply with Rule 22.4 would be by filing a new or amended committee registration form each time it supports or opposes an issue or question. This is a very burdensome requirement to place upon a multi-purpose committee. Moreover, it is unclear when this new or amended registration form would need to be filed and if another amended form would need to be filed to redact the information when the committee is no longer supporting or opposing a particular issue.

The practical concerns arising from the registration requirements for a multi-purpose issue committee make it difficult to ensure compliance with both the provisions of Article XXVIII and the Rules Concerning Campaign and Political Finance. In order to ensure that our client is in compliance with all of these rules and provisions, we seek clarification regarding the application of Rule 22.4, specifically in regard to the following issues:

1. Must a multi-purpose issue committee file cumulative committee registration forms each time it supports and/or opposes a particular ballot issue or ballot question?

2. Must a multi-purpose issue committee file amended committee registration forms to indicate that they are no longer supporting and/or opposing issues previously reported?

3. What action taken by the multi-purpose issue committee triggers the requirement, and more importantly the deadline, to file a new committee registration form? For example, would a decision by the Board of Trustees to support and/or oppose an issue trigger this requirement? Would the obligation of the funding to support and/or oppose an issue trigger this requirement?

4. Would the multi-purpose issue committee be obligated to satisfy the 5-day period filing deadline for each new committee registration form as currently set forth in the Rule 23.1?

5. Would filing a new committee registration form for every issue and question that the multi-purpose committee supports and/or opposes require the Secretary of State to assign identification numbers to the committee as required in Rule 22.1?

6. Would a multi-purpose issue committee be in compliance with Rule 22.4 and the provisions of Article XXVIII if they filed an annual committee registration form to indicate all of the issues that they were currently supporting or opposing, as well as all issues that they had supported or opposed during the preceding year, i.e., since the filing of the previous year's form?

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

Very truly yours,

ROTHGERBER JOHNSON & LYONS LLP

Denise D. Hoffman

DDH\z
cc: William A. Hobbs

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Secretary of State

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July 20, 2000

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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*

EXHIBIT A