

STATE OF COLORADO

Department of State

Civic Center Plaza
1560 Broadway, Suite 200
Denver, CO 80202-5169



Donetta Davidson

Secretary of State

William C. (Billy) Compton
Director, Elections Division

August 6, 2004

Mr. Thomas M. Rogers III, Esq.
Rothgerber Johnson & Lyons LLP
One Tabor Center, Suite 3000
1200 Seventeenth Street
Denver, CO 80202-5855

Re: Request for Advisory Opinion Regarding Definition of "Person" under Campaign Finance Law as Applied to State Banks Owned by a Common Holding Company

Dear Mr. Rogers:

I am writing in response to your inquiry dated July 9, 2004, in which you requested an advisory opinion concerning state chartered banks and contribution limitations to state political committees under Article XXVIII of the Colorado Constitution, concerning campaign and political finance. You provided additional information about the state banks you represent in your letter dated July 29, 2004. Please be advised that this opinion is advisory only, and that it is limited to the facts presented.

You raise the following question in your request:

Question Presented:

Are state banks, separately chartered pursuant to C.R.S. §11-103-303, et seq., but owned by a common holding company, separate "persons" as defined in Section 2(11) for purposes of Section 3(5) of Article XXVIII, which prohibits a political committee from accepting more than \$500 in contributions from any "person" in each House of Representatives election cycle?

Answer:

For the reasons that follow, it is my opinion that the answer is "Yes."

Discussion

Article XXVIII, Section 2(11) of the Colorado Constitution defines "person" as follows:

(11) "Person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons.

Article XXVIII, Section 3(5) of the Colorado Constitution states as follows:

(5) No political committee shall accept aggregate contributions or pro-rata dues from any person in excess of five hundred dollars per house of representatives election cycle.

Your letter of July 9 states that that each chartered bank that you represent has its own board of directors, its own president, and operates as an independent business unit. Your letter of July 29 further states that each bank is separately registered with the Secretary of State as a Colorado corporation with separate articles of incorporation, that each bank is separately insured by the Federal Deposit Insurance Corporation, that each bank has its own capital and reserves, and that each bank is separately examined by the appropriate regulators. I would also note that under section 11-103-101, C.R.S., each state bank is authorized to exercise general corporate powers as a separate legal entity, including the power to make contracts and to sue and be sued.

As stated in your inquiry, the only connection among the banks is that each is wholly owned by the same holding company. Although the banks share common ownership, each is clearly a distinct legal entity. Furthermore, each bank is a separate corporation, and Article XXVIII, Section 2(11) expressly provides that a corporation is a "person".

There is no provision in Article XXVIII of the Colorado Constitution or in Title 1, Article 45, also known as the "Fair Campaign Practices Act", that requires that subsidiaries of a parent organization share a single contribution limit. Therefore, in the absence of such a requirement, each separately chartered bank operates as a single "person" for purposes of contribution limitations enumerated in Article XXVIII, Section 3(5) of the Colorado Constitution.

Conclusion

It is my opinion that there is no constitutional or statutory requirement that individual subsidiaries of a parent organization share a single contribution limit. Each separately chartered bank, although sharing common ownership, is a distinct legal entity and operates as a single "person" for purposes of contribution limitations enumerated in Article XXVIII. Therefore, each separately chartered bank may contribute up to \$500.00 to any individual political committee.

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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Denver • Colorado Springs • Cheyenne • Casper

July 9, 2004

VIA HAND DELIVERY

Donetta Davidson
Secretary of State
1560 Broadway, Suite 200
Denver, CO 80202

Re: Request for Advisory Opinion

Dear Ms. Davidson:

We are writing on behalf of our clients, a number of separately chartered state banks (the "Banks"), to request an advisory opinion from you regarding the definition of "person" in Section 2(11) of Article XXVIII of the Colorado Constitution. In order to ensure that our client is in compliance with Article XXVIII, we seek clarification on the following issue: Are state banks, separately chartered pursuant to C.R.S. § 11-103-303, et seq., owned by a common holding company, separate persons as defined in Section 2(11)?

Each of the Banks is chartered pursuant to C.R.S. § 11-103-303, et seq. Each has its own board of directors, its own president, and operates as an independent business unit. The only connection among the Banks is that each is wholly owned by the same holding company.

Certain of the Banks may wish to contribute to one or more state political committees as defined in Section 2(12) of Article XXVIII. Pursuant to Section 3(5) of Article XXVIII, the maximum contribution any person may make to a political committee is \$500.00 per House of Representatives elections cycle. Pursuant to Section 2(11), "person" means any natural person, partnership, committee, association, corporation, labor organization, political party, or other organization or group of persons.

The Banks' position is that each is a person for purposes of § 2(11), and that each may contribute up to \$500.00 to any political committee. The fact that the Banks share common ownership does not change the fact that each is a distinct entity. By way of illustration, consider two corporations—expressly persons under Section 2(11)—owned by a common parent company. No provision of Article XXVIII requires that such subsidiaries and their parent share a single contribution limit. By the same token, the Banks should each be regarded as a person and should each be permitted to contribute up to the limit of Section 3(5).

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CO SECRETARY OF STATE

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Thank you in advance for your guidance on this matter. If you require additional information please do not hesitate to contact me.

Very truly yours,

ROTHGERBER JOHNSON & LYONS LLP

A handwritten signature in black ink, appearing to read 'T.M. Rogers III', with a stylized flourish at the end.

Thomas M. Rogers III

TMR:kdv

cc: William A. Hobbes, Deputy Secretary of State
Bill Compton, Elections Director, Secretary of State's Office



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July 29, 2004

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JUL 29 2004

CO SECRETARY OF STATE

VIA HAND DELIVERY

Donetta Davidson
Secretary of State
1560 Broadway, Suite 200
Denver, CO 80202

Re: Request for Advisory Opinion

Dear Ms. Davidson:

I am writing with additional information which you may find relevant to the issue presented in my letter of July 9, 2004 requesting an advisory opinion.

A review of the Secretary of State's web site indicates that each of the banks discussed in my letter of July 9, 2004, is registered as a Colorado corporation and each bank has filed with the Secretary of State the appropriate articles of incorporation. Each bank has a registered agent and the principal office address for each bank is on file. In addition, each bank files a periodic report as required by law. In addition, each bank is separately insured by the Federal Deposit Insurance Corporation. An individual depositor is able to obtain deposit insurance coverage up to \$100,000 at each of the separately-chartered banks. Each bank has its own capital and each bank establishes its own reserves. With regard to regulation, each bank is separately examined by the appropriate regulators. The one and only conclusion that can be reached is that these are separate persons for the purposes of Section 2(11) of Article XXVIII of the Colorado Constitution.

We hope you find this additional information helpful. We look forward to hearing from you soon.

Very truly yours,

ROTHGERBER JOHNSON & LYONS LLP

Thomas M. Rogers III

TMR/dlg

cc: William A. Hobbes, Deputy Secretary of State
Bill Compton, Elections Director, Secretary of State's Office