

STATE OF COLORADO

Department of State

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Donetta Davidson

Secretary of State

William C. (Billy) Compton
Director, Elections Division

August 11, 2004

Hon. Ray Rose
Hon. Ramey Johnson
Hon. Shawn Mitchell
Hon. Dale Hall
Hon. Bob Briggs
Hon. Jim Welker

Re: Request for Advisory Opinion Regarding the Transfer of Membership Dues to Small Donor Committees

Dear Representatives:

I am writing in response to your inquiry dated April 27, 2004, in which you requested an advisory opinion concerning the transfer of membership dues to small donor 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, each of which is listed and addressed separately below.

1. *Question Presented:*

Is a membership organization required to segregate the dues it receives from corporations from the dues it receives from natural persons?

Answer:

For the reason that follows, it is my opinion that the answer is "No", if the dues received from corporations are for the membership dues of natural persons. If the dues are received from corporations for their own corporate memberships, then such dues must be segregated and cannot be transferred to a small donor committee.

Discussion

A membership organization may receive dues from a corporation either because the corporation is paying the membership dues of individual officers and employees of the corporation, or because the corporation is paying for its own dues as a corporate member of the organization. Since a small donor committee can only receive contributions from natural persons and not corporations, then membership dues transferred to a small donor committee may come only from the membership dues of natural persons. Therefore, it is assumed that your question only relates to dues received from a corporation on behalf of its individual officers and employees.

Your letter states that dues are paid by many methods, including credit cards, checks, electronic fund transfers, and cash. Additionally, your letter states that no organization you are familiar with records who paid or how a member's dues were paid, and that the organization only records and keeps records that the dues were paid. Neither Title 1, Article 45, also known as the "Fair Campaign Practices Act", nor Article XXVIII addresses how a membership organization keeps its records, nor does the Fair Campaign Practices Act or Article XXVIII require a segregation of dues it receives from corporations for the memberships of natural persons from the dues it receives from natural persons for their memberships.

On the other hand, if a membership organization accepts corporate memberships, then the membership organization is expected to keep records of which memberships were corporate memberships and which were of other types. Membership dues received from corporations and other organizations for corporate memberships must be kept separate from dues received for natural persons, and dues received for corporate memberships may not be transferred to a small donor committee.

2. *Question Presented:*

May a membership organization transfer dues to a small donor committee paid to it by a member's corporation on behalf of the individual member?

Answer:

For the reason that follows, it is my opinion that the answer is a qualified "Yes."

Discussion

Your letter states that in most cases of professional groups, the member's professional corporation pays all expenses of the member, including professional dues to the organizations the member has joined. Article XXVIII, Section 2 (14)(a) states, in part, as follows:

(14)(a)...For purposes of this section, dues transferred by a membership organization to a small donor committee sponsored by such organization shall be treated as pro-rata contributions from individual members.

Therefore, the dues transferred by such membership organization to the small donor committee sponsored by such organization will be treated as pro-rata contributions from the individual members whose portion of their membership dues was transferred. It is not considered to be a contribution from the corporation paying the member's dues, but, rather, a contribution from the member. In other words, it is the individual member's dues being transferred to the small donor committee, not the corporation's membership dues.

This answer assumes, however, that the membership organization is a professional group as stated in your question, or that it is some other kind of bona fide membership organization, where individual members expect or allow their corporate employer to pay dues on their behalf and where the individual members receive some benefits of membership in proportion to the amount of dues paid on their behalf. This answer should not be construed to mean that a "sham" membership organization could be formed to collect "membership dues" from

corporations on behalf of individuals who have not given their consent and who receive no benefit corresponding to the amount of dues paid on their behalf.

3. *Question Presented:*

May a membership organization transfer dues to a small donor committee paid to it by a corporation on behalf of more than one individual member?

Answer:

For the reason that follows, it is my opinion that the answer is “Yes.”

Discussion

Your letter states that in most cases of professional groups, there may be more than one individual member who is a shareholder or a member of the corporation, or who is employed by the corporation, and the professional corporation again pays all of the shareholder’s, member’s, or employee’s expenses, including professional dues to the organizations the member has joined. Article XXVIII, Section 2(5)(b) states, in part, as follows:

2(5)(b) “Contribution” does not include...a transfer by a membership organization of a portion of a member’s dues to a small donor committee or political committee sponsored by such membership organization.

Additionally, Article XXVIII, Section 2(8)(b)(IV) states, in part, as follows:

(8)(b) “Expenditure” does not include:

(IV) Any transfer by a membership organization of a portion of a member’s dues to a small donor committee or political committee sponsored by such membership organization;

These particular sections of Article XXVIII anticipate that a membership organization may transfer more than one member’s membership dues to the small donor committee at one time. This section exempts the actual “transfer” of the dues from the definition of “contribution. The purpose of this section is to clarify that the transfer of member dues from a membership organization to a small donor committee sponsored by the membership organization would not violate the constitutional requirement that all contributions to small donor committees come from natural persons and be limited to fifty dollars per year per natural person contributor. There is no prohibition against a corporation paying the dues for more than one individual. Therefore, the membership organization may transfer dues to a small donor committee paid to it by a corporation on behalf of more than one member.

4. *Question Presented:*

How does a small donor committee list a membership transfer from a membership organization since they are not contributions, and the reporting form that is part of the rules only has two line items, one for \$20 or more of “contributions” and one for “non-itemized contributions of \$19.99 or less” and no line item for a transfer of a portion of a member’s dues which by definition are not “contributions”?

Answer:

If the small donor committee received \$20 or more in dues and other contributions for any individual during the reporting period, the small donor committee should list each such individual and the total amount received from each individual on Schedule A – Itemized Contributions. In the case of the dues received for any individual that totals less than \$20 during the reporting period, the small donor committee should report those contributions on Schedule A as one entry from the membership organization with the description of “dues transfer”. The membership organization must provide to the small donor committee a list of the members and the amount of dues transferred for each member, and the small donor committee must keep that list for audit purposes to be sure that individuals do not exceed the \$50 per year contribution limit to the small donor committee.

5. *Question Presented:*

Since a “transfer by a membership organization or a portion of a member’s dues to a small donor committee” is not a contribution, is there any constitutional or statutory requirement to list the transfer of a member’s dues by a small donor committee?

Answer:

For the reason that follows, it is my opinion that the answer is “Yes”, if the amount of dues received by the small donor committee from the member totals \$20 or more during a reporting period.

Discussion

The “transfer” of the member’s dues is not considered a contribution from the membership organization; however, the portion of the member’s dues transferred is considered to be a pro-rata contribution from the individual member. C.R.S. 1-45-108(1)(a)(I) states as follows:

(1)(a)(I) All candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

Since Article XXVIII, Section 2(14)(a) states that the portion of the member’s dues transferred is considered to be a pro-rata contribution from individual members, the small donor committee is required to itemize all contributions received by natural persons in the form of transferred membership dues that reach \$20 or more for that natural person during a reporting period.

6. *Question Presented:*

Since a “transfer by a membership’s organization of a portion of a member’s dues to a small donor committee” is not a contribution, is there any constitutional or statutory requirement to identify the member’s name whose dues are being transferred to a small donor committee?

Answer:

For the reason given in the answer to Question 5 above, it is my opinion that the answer is “Yes.”

7. *Question Presented:*

Is there any constitutional or statutory requirement for a small donor committee to identify the membership organization from whom it receives a membership dues transfer?

Answer:

For the reason that follows, it is my opinion that the answer is “No.”

Discussion

Article XXVIII, Sections 2(5)(b) and 2(14)(a) of the Colorado Constitution do not treat the “transfer” of the member’s dues as a contribution from the membership organization; rather, they treat the portion of the dues transferred as a contribution from the individual member. Therefore, there appears to be no constitutional or statutory requirement that the membership organization transferring its member’s dues to the small donor committee be identified by the small donor committee. However, Article XXVIII, Section 2(14)(c)(IV) states as follows:

2(14)(c) For the purposes of this article, the following are treated as a single small donor committee:

(IV) All small donor committees established, financed, maintained, or controlled by substantially the same group of persons.

Therefore, while there appears to be no constitutional or statutory requirement that the membership organization transferring its member’s dues to a small donor committee be identified by the small donor committee, multiple small donor committees established, financed, maintained or controlled by substantially the same group of persons are considered and treated as a single small donor committee, and individuals or corporations that wish to form multiple small donor committees should be able to defend their association with those small donor committees should a complaint be filed with this office pursuant to Article XXVIII, Section 9.

8. *Question Presented:*

Since a “transfer by a membership organization of a portion of a member’s dues to a small donor committee” is not a contribution, can the dues transfer be more than \$50?

Answer:

For the reasons that follow, it is my opinion that the answer is “No.” The total amount transferred for all members is unlimited, but the amount transferred may not include more than \$50 for any individual member.

Discussion

Although a transfer of membership dues to a small donor committee sponsored by the membership organization is not considered a “contribution” from the membership organization, the portion of the dues transferred to the small donor committee by the membership organization is considered to be a pro-rata contribution from the individual member. Article XXVIII, Section 2 (14)(a) of the Colorado Constitution states as follows:

2(14)(a) "Small donor committee" means any political committee that has accepted contributions only from natural persons who each contributed no more than fifty dollars in the aggregate per year. For purposes of this section, dues transferred by a membership organization to a small donor committee sponsored by such organization shall be treated as pro-rata contributions from individual members.

The portion of the dues transferred to the small donor committee by the membership organization is considered a pro-rata contribution by the individual member and, hence, may not exceed \$50 in the aggregate per year for any member. Therefore, the transfer to a small donor committee of a portion of an individual's membership dues may not exceed \$50 per year. It would be a violation of the limitation found in Article XXVIII, Section 2(14)(a) of the Colorado Constitution to exceed \$50 in the aggregate per calendar year per natural person in contributions to a small donor committee.

Conclusion

Neither Title 1, Article 45 (the "Fair Campaign Practices Act"), nor Article XXVIII of the Colorado Constitution addresses how a membership organization keeps its records, nor do they require a segregation of dues it receives from corporations on behalf of individuals from the dues it receives from natural persons. A membership organization may transfer dues to a small donor committee paid to it by a member's corporation on behalf of the individual member, because the portion of the dues transferred is not considered a contribution from the corporation; rather, it is considered a pro-rata contribution from the individual member whose dues are being transferred. A membership organization may transfer dues to a small donor committee paid to it by a corporation on behalf of more than one individual member and not violate the constitutional requirement that all contributions to small donor committees come from natural persons and be limited to fifty dollars per year per natural person contributor. A small donor committee would itemize the dues transferred for an individual member only when the total contributions from that individual member reached \$20 or more during the reporting period, pursuant to C.R.S. 1-45-108(1)(a)(I). A small donor committee is required to report the name, amount of contribution, and the date the contribution was made, or the dues transferred, if the individual whose dues are transferred contributes \$20 or more during a reporting period. There is no constitutional or statutory requirement that the small donor committee identify the membership organization from which it receives a membership dues transfer. No more than \$50 per natural person per calendar year aggregate in membership dues may be transferred to a small donor 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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