

**STATE OF COLORADO**  
**Department of State**

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



**Donetta Davidson**  
Secretary of State

**William A. Hobbs**  
Deputy Secretary of State

February 27, 2003

Senator Doug Linkhart  
People for Linkhart, City Council At-Large  
901 West 14<sup>th</sup> Ave. #1  
Denver, Colorado 80204

Re: Advisory opinion concerning lobbyist contributions to a member of the General Assembly who is a candidate for office in a home rule municipality when the General Assembly is in session

Dear Senator Linkhart:

I am writing in response to your inquiry dated January 15, 2003, in which you requested a formal opinion relating to the applicability of section 1-45-105.5, C.R.S., to you as a candidate for election to the Denver City Council. Please be advised that this opinion is advisory only, and that it is limited to the facts presented.

Section 1-45-105.5 is a provision of the Fair Campaign Practices Act (FCPA) that prohibits campaign contributions from lobbyists and their principals to members of the General Assembly during legislative sessions. The General Assembly is currently in a regular legislative session that is scheduled to adjourn after the date of the Denver municipal election (May 6, 2003). Thus, since you are currently a member of the General Assembly, it could be argued that section 1-45-105.5 prohibits lobbyists and their principals from making contributions to your campaign.

However, as you are aware, a recent formal opinion of the Colorado Attorney concludes that the FCPA, as well as Article XXVIII of the Colorado Constitution (concerning campaign and political finance) do not apply to home rule counties and municipalities that have charters or ordinances that address the matters covered by the FCPA and Article XXVIII. Opinion No. 03-1, January 13, 2003. Since you are a candidate for Denver municipal office and since the Denver is a home rule municipality that has adopted ordinances that address the matters covered by the FCPA and Article XXVIII, it could therefore be argued that contributions to your campaign for municipal office, including contributions from lobbyists, is governed exclusively by Denver's campaign finance regulations, and that the FCPA, including section 1-45-105.5, does not apply to your campaign.

Thus, your inquiry seeks an opinion as to two questions. First, does section 1-45-105.5 apply to you as a candidate for office in a home rule municipality? Second, if so, what is the scope of the prohibition in that section on contributions from "principals" of lobbyists? The focus of the second question is primarily whether the prohibition on contributions from "principals" of lobbyists extends to non-lobbyist members, officers, shareholders, and employees of such principals.

Main Number (303) 894-2200  
Administration (303) 860-6900  
Fax - Administration (303) 869-4860

TDD  
Web Site  
E-mail - Administration

(303) 869-4867  
[www.sos.state.co.us](http://www.sos.state.co.us)  
[sos.admin1@sos.state.co.us](mailto:sos.admin1@sos.state.co.us)

For the reasons discussed in the attached informal opinion of Deputy Attorney General Maurice G. Knaizer, my opinion is as follows:

(1) Section 1-45-105.5, C.R.S., prohibits lobbyists and their principals from making campaign contributions to a member of the General Assembly who is a candidate for office in a home rule municipality or home rule county when the General Assembly is in session.

(2) Any non-lobbyist member, shareholder, or employee of an entity that is a "principal" of a lobbyist may make contributions to a member of the General Assembly when the General Assembly is in session. For example, in the case of a law firm that is a principal (because the law firm engages or employs a lobbyist), any member of the law firm who is not a lobbyist may make campaign contributions to a member of the General Assembly. I recognize that the legislature may have intended that persons who exercise sufficient control over a principal would be prohibited from making contributions that the principal is prohibited from making. However, for the reasons given in the attached opinion, I believe that the lack of legislative standards defining the requisite degree of control makes the prohibition unenforceable against any members of principals at the present time.

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,

A handwritten signature in cursive script that reads "Donetta Davidson".

Donetta Davidson  
Secretary of State



**KEN SALAZAR**  
Attorney General

**DONALD S. QUICK**  
Chief Deputy Attorney General

**ALAN J. GILBERT**  
Solicitor General

**STATE OF COLORADO**  
**DEPARTMENT OF LAW**  
OFFICE OF THE ATTORNEY GENERAL

**STATE SERVICES BUILDING**  
1525 Sherman Street - 5th Floor  
Denver, Colorado 80203  
Phone (303) 866-4500  
FAX (303) 866-5691

February 14, 2003

**C O N F I D E N T I A L M E M O R A N D U M**

PRIVILEGED ATTORNEY-CLIENT MEMORANDUM

**TO:** William Hobbs  
Deputy Secretary of State

**FROM:** Maurice G. Knaizer *mk*  
Deputy Attorney General  
State Services Section

**RE:** Application of Section 1-45-105.5, C.R.S. (2002) to General Assembly members who are running for office in a home rule city

I write in response to your request for an informal opinion. This memorandum does not constitute a formal opinion of the Attorney General.

**QUESTIONS PRESENTED FOR REVIEW AND CONCLUSIONS**

1. May lobbyists or principals of lobbyists contribute to a member of the General Assembly who is a candidate for office in a home rule city and county when the General Assembly is in session?

No. Section 1-45-105.5, C.R.S. (2002) precludes lobbyists or principals of lobbyists from contributing to a member of the General Assembly who is a candidate for office in a home rule city and county when the General Assembly is in session.

2. Are members of principals of lobbyists prevented from making contributions to a member of the General Assembly who is a candidate for office in a home rule city and county when the General Assembly is in session?

At present, members of principals may make contributions to a member of the General Assembly who is a candidate for office in a home rule city and county when the General

Assembly is in session. The law does not provide adequate guidance to define who may be prevented from making such contributions.

## ANALYSIS

### QUESTION 1.

A member of the General Assembly is a candidate for public office in a home rule city and county. The member has asked whether he may accept contributions from lobbyists or their principals while the legislature is in session.

Section 1-45-105.5 (1)(a), C.R.S. (2002) provides:

No professional lobbyist, volunteer lobbyist or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to , or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session....

Because the section discusses members of, or candidates for, the general assembly, it can be interpreted as limited to persons who are running for a seat in the general assembly. Alternatively, the section can be read to prevent lobbyists from making contributions to a member of the general assembly if that member is a candidate for any state or local office.

In reviewing acts regarding campaign finance, the statute must be construed in a manner consistent with the object of the legislation. The consequences of a particular construction must be considered. *Colorado Common Cause v. Meyer*, 758 P.2d 153, 160 (Colo. 1988). The statement of purpose or intent also provides important guidance. *Id.* at 162.

Section 1-45-105.5 was passed in 1993. Representative Doug Friednash was the prime sponsor. *Tapes, House Judiciary Committee, HCR 112, January 28, 1993*. The statements by Rep. Friednash and other bill supporters focused on the risk of appearance of corruption. While stating that he did not observe or know of any actual instance of a *quid pro quo* between contributions by lobbyists and votes by legislators, Rep. Friednash believed that the appearance of corruption affected the public's confidence in the legislative process.

His concern is consistent with subsequent declarations by the voters of the state. In passing the Fair Campaign Practices Act in 1996, which included 1-45-105.5, the voters declared "that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption...and that the interests of the public are best served by...strong enforcement of campaign laws." Section 1-45-102, C.R.S. (2002). The voters reiterated this concern in the

findings accompanying the Campaign and Political Finance Amendment to the Colorado Constitution. Colo. Const. Art. XXVIII, § 1.

The appearance of corruption stems from the act of contributing money. It makes little difference whether the contribution is for a state office or a local office. "If lobbyists are free to contribute to legislators while pet projects sit before them, the temptation to exchange 'dollars for political favors' can be powerful." *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 716 (4<sup>th</sup> Cir. 1999)(quoting *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 497, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985)). Lobbyists "are paid to influence the course of government." *Institute of Governmental Advocates v. Fair Political Practices Commission*, 164 F.Supp. 1183, 1194 (E.D. Cal. 2001). The catalyst for the appearance of corruption is not the office for which the member of the General Assembly is a candidate; rather, it is the fact that he holds a position in the General Assembly and has the power to influence the course of legislation. The appearance of impropriety applies equally to members of the General Assembly who are candidates for a seat in the General Assembly and members of the General Assembly who are candidates for local offices, including those in home rule cities and counties.

The conclusion that section 1-45-105.5 applies to members of the General Assembly who are candidates for offices in home rule cities and counties does not contradict the conclusion that Colo. Const. Art. XXVIII does not apply to home rule cities and counties. See, *Formal Opinion of Ken Salazar*, No. 03-1. Article XXVIII does not address contributions made by lobbyists to state legislators while the legislature is in session.

It is true that section 1-45-105.5 can impact elections in a home rule city and county by prohibiting lobbyists from contributing to members of the General Assembly who are candidates for office in a home rule city and county while the General Assembly is in session. Thus, it is a matter of local concern. However, section 1-45-105.5 also addresses a matter of state concern. As noted above, the integrity of the legislative process in the General Assembly is at issue. The General Assembly has the power to take appropriate action "to protect its members against violence, or offers of bribes or private solicitations." Colo. Const. Art. V, § 12. This power is plenary and "is conclusive upon every department of government." *In re Speakership of House of Representatives*, 15 Colo. 520, 529, 25 P. 707, 710 (1891).

Section 1-45-105.5 addresses matters of state and local concern. In matters involving both state and local concerns, home rule entities and the state each may adopt legislation. In case of a conflict between the two, the state statute prevails. *City of Commerce City v. State*, 40 P.3d 1273, 1279 (Colo. 2002). Thus, § 1-45-105.5 must prevail to the extent it conflicts with the law of a home rule city and county concerning contributions.

## QUESTION 2.

You also have asked whether § 1-45-105.5(1) prohibits contributions by a lawyer who is not a lobbyist but who is members of a firm that is a registered lobbyist. I conclude that the

statute intended that persons who exercise sufficient control over the principal are deemed to be the principal. However, the statute and rules do not include adequate standards to determine who exercises control over the principal. Therefore, under these circumstances, a lawyer who is a member of a law firm that is a principal may contribute to a member of the General Assembly during a regular session.

Section 1-45-105.5 prohibits contributions by principals of a professional lobbyist. A "principal" is defined as "any person that employs, retains, engages or uses, with or without compensation, a professional or volunteer lobbyist." Section 1-45-105.5(b)(1), C.R.S. (2002). However, "[o]ne does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist." *Id.* A "person" is "an individual, limited liability company, partnership, committee, association, corporation or any other organization or group of persons." Section 24-6-301(4), C.R.S. (2002). A principal can be a lobbyist if the principal employs another lobbyist.

The question is whether non-lobbyists who are employed by a principal may contribute to a member of the General Assembly while in session. It is my conclusion that persons who exercise control of the principal may not contribute. If the legislature intended to allow all persons who belong to a principal or own stock in a principal, it would have not have used the term "merely". "Mere" means "having theoretical or legal but not practical reality (--- right)". *Webster's Third New International Dictionary* (1993) 1413. By using the work "merely", the General Assembly indicated that principals do not include persons who may be affiliated only as a matter of law. However, if a person has a relationship that constitutes more than a "mere" affiliation, then that person should be deemed a part of the principal.

This interpretation is consistent with the legislative purpose. The goal of eliminating the appearance of undue influence on legislators cannot be achieved if persons who control an artificial entity can contribute even though the entity itself cannot contribute. As a practical matter, artificial entities do not exist independent of their members. They can act only through officers, directors, partners, members or agents who have authority to act on their behalf. Actions by these individuals will likely be viewed as actions taken by the principal.

It is my opinion, however, that the prohibition against contributions by members who may control a principal cannot be enforced at this time. The statute is very broad and contains no standards by which one could determine whether a person in fact acts on behalf of a principal. Due process requires "fair notice of what conduct is prohibited and provides enforcement authorities with sufficiently definite standards to ensure uniform, non-discriminatory enforcement of those provisions." *Watso v. Colorado Department of Social Services*, 841 P.2d 299, 309 (Colo. 1992). Without standards established in statute or rules, persons who are members or employees of principals have no way to determine whether they may contribute to members of the General Assembly. Until clarifications are properly promulgated, this provision cannot be enforced. *See, Squire Restaurant and Lounge, Inc. v. City and County of Denver*, 890 P.2d 164, 171 (Colo. App. 1994)(agency must define term "good cause" prior to enforcement of statute.)