

April 3, 2024

Arizona Citizens Clean Elections Commission
c/o Thomas Collins, Executive Director
thomas.collins@azcleaselections.gov

**Re: Advisory Opinion Request – Arizona Democratic Legislative
Campaign Committee**

Dear Commissioners:

Pursuant to A.A.C. R2-20-808, the Arizona Democratic Legislative Campaign Committee (“ADLCC”) seeks an advisory opinion from the Arizona Citizens Clean Elections Commission regarding whether its payment of compensation, provision of benefits, and payment of training and travel expenses for the benefit of its employees qualify as “campaign media spending” under the Voters’ Right to Know Act (“Act”).

Background

ADLCC is a project of the Arizona Democratic Party (“ADP”). It “recruits, trains, and supports legislative candidates by vetting, selecting, and managing award-winning direct mail & digital consultants; providing comprehensive legal services; investing in high-quality polling and opposition research; and connecting local and national donors to the most competitive legislative races.”¹

ADP – and by extension, ADLCC – recently became a “covered person” under the Act, and is thus subject to the Act’s strictures. As the primary and general election quickly approach, ADLCC will begin hiring staff to support its general mission of electing Democrats to the Legislature. As employees of ADLCC/ADP, those staff members (like current staff members) will be paid a regular salary. But they also receive traditional benefits that ADLCC/ADP either covers entirely or subsidizes, including (1) health insurance, (2) dental insurance, and (3) vision insurance. Some employees may also be paid a stipend for transportation expenses, cell phone use, and laptop use. If resources were sufficient, ADLCC/ADP would consider contributing to a retirement account for its employees’ benefit. And lastly, ADLCC/ADP pays for other staff-related expenses, including staff coaching, management training and support (with related expenses such as food), and travel expenses associated with attending to ADLCC/ADP business.

ADLCC/ADP employees have various titles and roles, but all are essentially working toward the same common goal: helping elect Democrats. For example, some employees may help craft the messaging and design of a public advertisement (including conducting

¹ <https://adlcc.com/about> (last visited Apr. 3, 2024).

research), but the advertisement itself will only become “public” through a third-party vendor. Others may help craft the language of polling instruments, but the polls themselves will be conducted by a third-party vendor. Others may work with candidates on strategy (including communications strategy) and fundraising appeals (which may take the form of individual communication or mass email appeals). And still others may be responsible for helping organize and arrange the logistics for canvasses in targeted areas to allow volunteers to go door-to-door in support of Democratic candidates and policies.

Historically, ADLCC/ADP paid its employees (and paid for staff-related expenses) through various sources. Most significantly, however, it paid them using funds exempted by Title 16 from the definition of either a “contribution” or “expenditure.” See A.R.S. §§ 16-911(B)(5), 16-921(B)(3) (the payment by any person “to defray a political party’s operating expenses or party-building activities,” including “party staff and personnel,” is neither a “contribution” nor “expenditure”); see also *Arizona State Democratic Party v. State*, 210 Ariz. 527, 528 ¶ 2 (2005) (describing donations to cover party operating expenses such as these as falling outside the realm of reportable “contributions” because they weren’t made “for the purpose of influencing an election”). Now, however, questions have arisen regarding the source of funds that can be used to pay ADLCC/ADP employees because the Act defines “campaign media spending” to include “[a]n activity or public communication that supports the election or defeat of candidates of an identified political party or the electoral prospects of an identified political party.” A.R.S. § 16-901(2)(a)(vii) (emphasis added). Neither the statute nor the Commission’s rules define the term “activity” or provide ADLCC/ADP with guidance on whether it must now pay the salaries and benefits (and other staff-related expenses) of these employees with funds for which a donor has not “opted out” under the Act, or whether it can continue to use “exempt” funds (A.R.S. §§ 16-911(B)(5), 16-921(B)(3)) for that purpose.

Questions Presented

Based on these facts, ADLCC requests an advisory opinion from the Commission answering these questions:

1. Does the ADLCC’s payment of its employees’ salaries constitute “campaign media spending” under the Act?
2. Does ADLCC’s payment of the health insurance premiums for its employees constitute “campaign media spending” under the Act?
3. Does ADLCC’s payment of the dental insurance premiums for its employees constitute “campaign media spending” under the Act?
4. Does ADLCC’s payment of the vision insurance premiums for its employees constitute “campaign media spending” under the Act?
5. Would ADLCC’s contribution to a retirement account on behalf of its employees constitute “campaign media spending” under the Act?

6. Does ADLCC's payment of staff-related expenses (such as training, coaching, and travel) for the benefit of its employees constitute "campaign media spending" under the Act?

7. Does the answer to any of these questions depend on the duties of a particular employee?

Discussion

In November 2022, Arizonans approved the Act, which (at § 2(A)) "establishes that the People of Arizona have the right to know the original source of all major contributions used to pay . . . for campaign media spending." In adopting the Act (*see* § 2(C)), "the People of Arizona affirm their desire to stop 'dark money,' the practice of laundering political contributions, often through multiple intermediaries, to hide the original source."

The Act did not directly alter any existing provision of campaign finance law, including the definitions of "contribution" and "expenditure" set forth in Chapter 9 of Title 16. And no part of the Act even implies that the people intended it to require the disclosure of the "original source" of funds that do not have to be reported as either a "contribution" or "expenditure" under Arizona's longstanding campaign finance regime. This is reason enough to answer all the questions presented above in the negative.

Beyond that, ADLCC paying its employees' salaries, benefits, and other staff expenses is not itself an "activity" that triggers "campaign media spending" under A.R.S. § 16-901(2)(a)(vii). The Act doesn't define "activity," meaning that the Commission must "apply a practical and commonsense construction" and may "refer to a widely use dictionary to determine its meaning." *State v. Jernigan*, 221 Ariz. 17, 19 ¶ 9 (App. 2009) (cleaned up). Merriam-Webster², for example, defines "activity" to mean many things, including:

- "the quality or state of being active: behavior or actions of a particular kind";
- "vigorous or energetic action";
- "natural or normal function";
- "an active force";
- "a pursuit in which a person is active";
- "a form of organized, supervised, often extracurricular recreation"; and
- "an organizational unit for performing a specific function."

² https://www.merriam-webster.com/dictionary/activity?utm_campaign=sd&utm_medium=serp&utm_source=jsonld (last visited Apr. 3, 2024).

And the Oxford English Dictionary³ defines the term as “[t]he state of being actively occupied; brisk or vigorous action; busyness, liveliness, vigour.” None of these definitions suggest that “activity,” as used in this context, includes the mere payment of employees’ salaries, benefits, and other expenses by a political party whose entire existence is intended to enhancing its own “electoral prospects.”

This conclusion finds more support in the structure of the Act as compared to other campaign finance provisions in Title 16. The Act did not remove (or impliedly repeal) the existing exemptions to the definition of “contribution” and “expenditure” in Title 16 under which any person can “defray a political party’s operating expenses or party-building activities” in the form of “party staff and personnel.” This contrasts with other existing provisions of Title 16’s exemptions which the Act arguably did affect. For example, A.R.S. § 16-911(B)(5)(c) and 16-921(B)(3)(c) say that a person’s payment to defray a political party’s efforts in “[v]oter registration, recruitment, polling and turnout efforts” are neither a “contribution” nor an “expenditure.” The Act, however, says that “partisan voter registration,” “partisan get-out-the-vote-activity,” and “polling” are all “campaign media spending” and thus reportable under the Act. A.R.S. § 16-971(2)(a)(vi), (vii). That the Act specified these items to the exclusion of others is evidence that the people did not intend to upend existing law related to the latter. *See State v. Maestas*, 244 Ariz. 9, 13 ¶ 15 (2018) (“In general, when the legislature (or voters) expressly prescribes a list in a statute (or initiative), we assume the exclusion of items not listed.”) (cleaned up).

This conclusion is also in line with the Commission’s treatment of A.R.S. § 16-971(2)(a)(vii). Under A.A.C. R2-20-801, “[r]esearch, design, production, polling, data analytics, mailing or social media list acquisition or any other activity conducted in preparation for or in conjunction with any of the activities described in items (i) through (vi),” is not campaign media spending “unless these activities are specifically conducted in preparation for or in conjunction with those other activities.” This is a valuable interpretation of the statute to ensure that its application accurately reflects the will of the voters. It also avoids diluting the value of reporting by disclosing funding information that has no relationship to campaign media spending. Similarly, the employee compensation, benefits, and expenses at issue in this Request are not “specifically” directed to the activity described in A.R.S. § 16-971(2)(a)(vi) or elsewhere.

Lastly, we note that nothing in the Act or the Act’s supporting materials sent to voters before the 2022 general election suggests that the people expressed any opinion about whether a political party paying its employees’ salaries, benefits, and other staff-related expenses is something that should require any new disclosure. *See Heath v. Kiger*, 217 Ariz. 492, 496 ¶ 13 (2008) (“To determine the intent of the electorate, courts may also look to the publicity pamphlet distributed at the time of the election.”). Indeed, the Act’s sponsoring political action committee and co-chairs told voters that voters “should know who is actually behind political ads” and that the Act would change Arizona law that “allow[ed] unlimited

³ <https://www.oed.com/search/dictionary/?scope=Entries&q=activity> (last visited Apr. 3, 2024).

money to be spent on anonymous political ads.”⁴ As the sponsors pointedly explained, “[w]e believe knowing who is running political ads is critical to understanding their message and motivation. Without accountability for what is said, those running misleading or inaccurate ads face no consequences and politics becomes dirtier.” *Id.* This (and nearly every other) supportive statement focuses narrowly on political advertisements, not on personnel expenses like those at issue in this Request.

At bottom, neither the plain language of the Act nor the intent of the electorate that adopted it supports an interpretation under which a political party’s payment of salaries and benefits to its employees and personnel (or covering staff-related expenses on their behalf) constitutes “campaign media spending.” At the very least, the Commission should conclude that paying for employee benefits is exempt, as it is hard to see why the public has any interest in knowing the original source of funds that paid for someone’s dental insurance. ADLCC supports transparency in campaign finance, but not to that level of absurdity.

Conclusion

Please let me know if I can provide any further information that will help you in responding to these important questions. ADLCC thanks the Commission for its hard work in implementing the Act and looks forward to an advisory opinion that will benefit both it and the public at large.

Sincerely,



D. Andrew Gaona

DAG:djh

⁴ Arizona 2022 General Election Publicity Pamphlet, at 236, *available at* http://apps.azsos.gov/election/BallotMeasures/2022/azsos_2022_publicity_pamphlet_standard_english_web_version.pdf.