

To: The Honorable Jeff Hatch-Miller

May 1, 2000

**Re: Expenditures of an Elected Official's
Personal Money for Constituent
Communications**

Arizona House of Representatives

**I00-007
R99-048**

Questions Presented

You have asked whether (1) an elected official's direct payment from personal monies for a newsletter to constituents that does not have the purpose of influencing an election constitutes a "contribution" or "expenditure" within the meaning of Arizona Revised Statutes ("A.R.S.") § 16-901; and (2) an elected official may spend personal monies for a newsletter to constituents without paying for it through a campaign committee account and reporting the expenditure under campaign finance laws.

Summary Answers

An expenditure of an elected official's personal monies for a newsletter to constituents is within the campaign finance regulatory scheme and must be disclosed. All expenditures of an elected official's personal monies for a newsletter to constituents must be reported as an expenditure of that person's campaign committee.

Background

A. Constituent communication contributions and expenditures.

Arizona's campaign finance laws expressly define "contribution" to include "[m]oney or the fair market value of anything directly or indirectly given or loaned to an elected official for the purpose of defraying the expense of communications with constituents, regardless of whether the elected official has declared his candidacy." A.R.S. § 16-901(5)(a)(ii). A contribution, however, does not include "[m]oney or the value of anything . . . provided by the state or a political subdivision to an elected official for communication with constituents if the elected official is engaged in the performance of the duties of his office." A.R.S. § 16-901(5)(b)(ii).

Until 1991, expenditures and contributions for constituent communications incurred more than 60 days before an election were not subject to campaign contribution limits or to the campaign finance reporting requirements. Ariz. Atty Gen. Op. I88-007. In 1991, in response to concerns that the exemption for constituent communications created a loophole that was subject to abuse, the Legislature eliminated the sixty-day limitation. 1991 Ariz. Sess Laws ch. 241; see *Hearing on S.B. 1158 Before the Senate Judiciary Comm.*, Ariz. 40th Legis., 1st Reg.Sess. on March 4 and 5, 1991.

B. Personal Monies.

Under Arizona's campaign finance system, expenditures of personal monies in connection with a campaign must be reported along with other campaign expenditures. A.R.S. § 16-915(A)(2)(c).⁽¹⁾ In addition, if a candidate spends more than a specified dollar amount of personal monies on his or her campaign, he or she must give notice to the other candidates, and those candidates are not subject to contribution limits until they raise the same amount of money. A.R.S. § 16-

905(F). Unless a candidate participates in Arizona's "clean elections" public financing system, personal monies are not subject to contribution limits.⁽²⁾ See A.R.S. § 16-905.

Analysis

A. Constituent Communication Contributions Are Subject to Campaign Finance Laws.

Arizona law generally defines "contribution" as any "gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election." A.R.S. § 16-901(5). In addition to the general definition of "contribution," the Legislature has also expressly specified that monies for constituent communications are contributions, except if those constituent communication expenses are paid for by the State or a political subdivision. A.R.S. §§ 16-901(5)(a)(ii) (including constituent communications as contributions), 16-901(5)(b)(ii) (exception for constituent communications paid for by State or political subdivisions). Under the statute, monies for these communications are contributions "regardless of whether the elected official has declared his candidacy." A.R.S. § 16-901(5)(a)(ii).⁽³⁾

If the Legislature had intended to adopt an ad hoc approach to constituent communications based on an evaluation of whether a specific correspondence had the purpose of influencing the outcome of an election, the Legislature would not have specified that monies received for constituent communications are "contributions." See A.R.S. § 16-901(5) (definition of contribution); *Champlin v. Sargeant*, 192 Ariz. 371, 374, 965 P.2d 763, 766 (1998) (statutes are to be interpreted to give every phrase meaning and not render any provision a superfluous). The specific legislative inclusion of constituent communications in the definition of contributions brings all donations for constituent communications within the campaign finance regulatory scheme, making them subject to contribution limits and disclosure requirements.

B. A Direct Payment from an Elected Official's Personal Money for a Newsletter to Constituents Requires Disclosure under Arizona's Campaign Finance Laws.

Arizona's campaign finance laws require that every candidate who receives or spends more than \$500 in connection with a campaign designate a political committee to serve as the candidate's campaign committee. A.R.S. § 16-903(A). If a candidate receives a contribution or makes a disbursement "in connection with the campaign" he or she is deemed to have done so as an agent for the campaign committee. A.R.S. § 16-903(E). A candidate's campaign committee is expressly required to report "the candidate's contribution or promise of personal monies." A.R.S. § 16-915(A)(2)(c). In addition, if a candidate contributes or promises personal monies

reaching specified amounts, he or she must disclose those amounts to other candidates within 24 hours, and the contribution limits for other candidates are lifted until they raise a like sum. A.R.S. § 16-905(F).

A basic principle of statutory construction requires that statutes relating to the same subject be read together and construed as whole. *State v. Sweet*, 143 Ariz. 266, 270, 693 P.2d 921, 925 (1985). Because amounts for constituent communications are contributions subject to disclosure requirements, an elected official must treat constituent communications expenditures as the official treats other expenditures that are within the scope of the campaign finance laws. This means the elected official must disclose the expenditures on his or her campaign committee reports.⁽⁴⁾ See A.R.S. § 16-915. Personal expenditures for newsletters to constituents would also be included in the calculation of expenditures of personal monies that may result in the lifting of the contribution limits of other candidates. See § A.R.S. 16-905(F).

Conclusion

Expenditures of personal monies for newsletters to constituents must be reported under the campaign finance laws because all private contributions and expenditures of monies to defray the expense of constituent communications are within the campaign finance regulatory scheme.

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1. Arizona's campaign finance law treats monies from specified relatives as "personal monies." *See* A.R.S. § 16-901(10) (definition of "family contribution") and § 16-901(18) (definition of "personal monies").
2. Candidates choosing to participate in the clean elections public financing system are subject to additional restrictions. *See* A.R.S. § 16-947. Clean elections candidates for statewide office cannot use more than \$1,000 in personal monies, and clean elections candidates for the Legislature cannot spend more than \$500 in personal monies on their campaigns. A.R.S. § 16-941(A)(2). This amount is subject to adjustment every two years to account for inflation. A.R.S. § 16-959(A).
3. Similarly, the Legislature has specified that all donations to pay off debt are contributions. A.R.S. § 16-901(5)(a)(i). These donations, even though received after the election is over, are deemed to be contributions within the campaign finance system. *Id.*
4. The only exception would be for candidates who spend or receive less than \$500 and, therefore, are not required to form a candidate's campaign committee. A.R.S. § 16-903(A).

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