STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by THOMAS PROSE***** CHIEF ASSISTANT ATTORNEY GENERAL January 10, 2002	No. I02-001 (R01-050) Re: Restrictions on Qualifying Contributions by Lobbyists During Legislative Session

TO: The Honorable Wes Marsh
State Representative

Question Presented

You have asked whether the prohibition in Arizona Revised Statutes ("A.R.S.") § 41-1234.01 against lobbyists making campaign contributions to and soliciting campaign contributions for legislators during the regular legislative session applies to "qualifying contributions" under the Citizens Clean Elections Act.

Summary Answer

Yes. A qualifying contribution, as described in A.R.S. §16-946, is subject to the prohibitions in A.R.S. § 41-1234.01.

*** Attorney General Napolitano has recused herself from this matter. Accordingly, Thomas Prose, the Chief Assistant Attorney General, serves as the Acting Attorney General.**

Background

A. The Limits on Lobbyist Campaign Contributions in A.R.S. §41-1234.01.

Arizona prohibits lobbyists from soliciting campaign contributions for or making campaign contributions to legislators during the Legislature's regular session.[1] A.R.S. §41-1234.01. This prohibition became law in 1992 as part of a comprehensive overhaul of the laws regulating lobbyists. *See* 1991 Ariz. Sess. Laws, 3rd Spec. Sess., ch. 2. Specifically, A.R.S. §41-1234.01(A) provides:

> While registered under this article [Title 41, ch. 7, art. 8.1], a principal, public body, lobbyist, designated public lobbyist or authorized public lobbyist shall not make or promise to make a campaign contribution to or solicit or promise to solicit campaign contributions for:
>
> > 1. A member of the legislature when the legislature is in regular session.
> >
> > 2. The governor when the legislature is in regular session or when regular session legislation is pending executive approval or veto.

This prohibition applies to campaign contributions for legislators during a regular session of the Legislature, but it "does not prohibit . . . lobbyists from raising monies for any other purpose during the regular session of the [L]egislature." A.R.S. §41-1234.01(B).

B. The Clean Elections Act.

In 1998, Arizona voters approved the Citizens Clean Elections Act ("Act"). The Act states that it is intended to "improve the integrity of Arizona state government." A.R.S. §16-940. As a means to this goal, the Act authorizes public funding for the election campaigns of political candidates

[1]The term "lobbyists" is used generally in this Opinion to refer to registered lobbyists, their principals, designated public lobbyists, and authorized public lobbyists, as defined in A.R.S. §41-1231.

who voluntarily limit campaign spending and fund-raising in statewide and state legislative elections. *See generally* A.R.S. §§16-940 through -961; Betsy Bayless, Secretary of State, Ballot Propositions For The General Election of November 3, 1998 at 84 (1998) (analysis by Legislative Council). Candidates who qualify for the clean elections program receive public funding for their campaigns, based on amounts specified in the Act. *See* A.R.S. §§16-951, -961(G), (H). To be eligible for public funding, a candidate must be certified as a participating candidate pursuant to A.R.S. §16-947, obtain the requisite number of qualifying contributions pursuant to A.R.S. §16-950(D), and comply with the other requirements in A.R.S. §16-950(E).

Qualifying contributions are $5 contributions that meet certain statutory requirements set forth at A.R.S. §16-946. Pursuant to A.R.S. §16-946(B),

> [t]o qualify as a "qualifying contribution," a contribution must be:
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> 1. Made by a qualified elector as defined in section 16-121, who at the time of the contribution is registered in the electoral district of the office the candidate is seeking and who has not given another qualifying contribution to that candidate during that election cycle;
>
> 2. Made by a person who is not given anything of value in exchange for the qualifying contribution;
>
> 3. In the sum of five dollars, exactly;
>
> 4. Received unsolicited during the qualifying period or solicited during the qualifying period by a person who is not employed or retained by the candidate and who is not compensated to collect contributions by the candidate or on behalf of the candidate;

5. If made by check or money order, made payable to the candidate's campaign committee, or if in cash, deposited in the candidate's campaign committee's account; and

6. Accompanied by a three-part reporting slip that includes the printed name, registration address, and signature of the contributor, the name of the candidate for whom the contribution is made, the date, and the printed name and signature of the solicitor.

Qualifying contributions that are submitted by candidates seeking to qualify for public funding are deposited into the Clean Elections Fund ("Fund"). A.R.S. §16-950(B).

Analysis

Whether A.R.S. §41-1234.01 applies to qualifying contributions under the Act depends on whether qualifying contributions are campaign contributions. The language of the Act and the statutory definition of "contribution" indicate that they are.

Section 16-901(5), A.R.S., provides that for purposes of Arizona's campaign finance laws, a "contribution" is a "gift, subscription, loan, advance or deposit of money or anything of value made for the purpose of influencing an election." Qualifying contributions fall within this statutory definition. Candidates cannot spend qualifying contributions, but such contributions enable candidates to qualify for much larger amounts of public funding. For example, a legislative candidate can submit 200 five-dollar contributions ($1,000) and become eligible to receive $26,970 in funds through the general election, as well as three times that amount in matching funds. A.R.S. §§16-952,

16-961(G), (H).[2] In this way, qualifying contributions are something "of value made for the purpose of influencing an election" within the statutory definition of "contribution" in section 16-901(5).

The language of the Act also supports this conclusion. When describing a "qualifying contribution," A.R.S. § 16-946(B) explains that "to qualify as a 'qualifying contribution,' a *contribution* must" meet specified requirements. (Emphasis added.) The clear language of a statute is given its usual meaning, unless an impossible or absurd consequence would result. *Herberman v. Bergstrom,* 168 Ariz. 587, 589, 816 P.2d 244, 246 (App. 1991). This language indicates that a qualifying contribution is a contribution, as that term is used in the campaign finance laws.

The reporting requirements in the Act provide additional support for the conclusion that qualifying contributions are a type of campaign contribution. The Act specifically exempts qualifying contributions from the general reporting requirements that apply to campaign contributions. Section 16-946(C) provides that "[d]elivery of an original reporting slip to the secretary of state shall excuse the candidate from disclosure of these contributions on campaign finance reports filed under Article 1." If qualifying contributions did not fall under the A.R.S. §16-901(5) definition of "contribution," then such an exemption would be unnecessary and A.R.S. §16-946(C) would be mere surplusage. Rules of statutory construction prohibit construing a statute in such a fashion. *Walker v. City of Scottsdale*, 163 Ariz. 206, 210, 786 P.2d 1057, 1061 (App. 1989) (statutes are to be construed so no parts are void, inert, redundant, or trivial).

[2] Section 16-961(G) and (H) set forth the primary and general election spending limits for candidates for eligible offices. Those limits are adjusted for inflation after the 2000 election pursuant to A.R.S. § 16-959. Thus, with the inflation adjustment, legislative candidates receive $26,970 for the 2002 election cycle.

Your letter suggests that the $5 qualifying contribution could be characterized as a donation to the Fund, rather than as a campaign contribution, because the qualifying contributions are deposited into the Fund. In the Act, however, qualifying contributions serve as evidence of support for a candidate, rather than as a fundraising tool for the Fund. Qualifying contributions must be made by qualified electors registered in the district of the office sought by the candidate receiving the qualifying contribution. A.R.S. §16-946(B)(4). In addition, qualifying contribution checks must be made payable to the candidate's campaign committee, rather than to the Fund. A.R.S. §16-946(B)(5). Moreover, the Act provides other direct avenues for making donations to the Fund. These include a $5 check-off provision on the state income tax form that results in transferring $5 to the Fund and providing the taxpayer with a $5 reduction in his or her tax, A.R.S. §16-954(A), and a tax credit for donations to the Fund of up to $500, A.R.S. §16-954(B).

Statutes are to be construed as a whole and in light of their purpose. *Wyatt v. Wehmueller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991). In the statutory scheme, qualifying contributions have a specific and obvious purpose – to demonstrate support for a particular candidate. This is consistent with the purpose of campaign contributions. *See Buckley v. Valeo*, 424 U.S. 1, 20-21 (1976) ("A contribution serves as a general expression of support for the candidate and his views. . . ."). Public campaign finance systems generally require a demonstration of support as a prerequisite to receiving public funding. *See id.* at 96. ("Congress' interest in not funding hopeless candidates . . . necessarily justifie[d] the withholding of public assistance from candidates without significant public support."); *Daggett v. Comm'n on Gov't Ethics and Election Practices,* 205 F.3d 445, 471 (lst Cir. 2000) (upholding Maine's Clean Elections Act and noting "[i]n order to gain these [public funding] benefits,

. . . the candidate must go through the paces of demonstrating public support by obtaining seed money contributions as well as a substantial number of $5 qualifying contributions").

Your opinion request also suggests that a single $5 qualifying contribution may not raise concerns about "the perception of a quid pro quo between a campaign contribution and a vote by the recipient." The prohibition in Section 41-1234.01, however, applies to all campaign contributions, not just to contributions over a certain amount. Moreover, the prohibition is broader than a single qualifying contribution because it also prohibits lobbyists from soliciting contributions for legislators during the legislative session. Absent the restrictions in A.R.S. § 41-1234.01, a lobbyist could solicit an unlimited number of qualifying contributions for a legislator during the regular session to help him or her qualify for public funding. Such solicitations for legislators while the Legislature is in session could create the perception of a possible quid pro quo. For these reasons, the language and the purpose of A.R.S. §41-1234.01 support applying the prohibitions in that statute to qualifying contributions.

Conclusion

Although qualifying contributions under the Act are highly regulated, they are nonetheless "contributions" for purposes of A.R.S. §41-1234.01. Thus, the prohibitions set forth in A.R.S. § 41-1234.01 apply to qualifying contributions.

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Thomas Prose

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