



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

CHARLES G. BROWN  
ATTORNEY GENERAL

(304) 348-2021

CONSUMER HOT LINE  
(800) 368 8808

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The Honorable Ken Hechler  
Secretary of State  
State of West Virginia  
Capitol Complex, Suite 157-K  
Charleston, West Virginia 25305

Dear Mr. Hechler:

This will acknowledge receipt of your request for the advice of the Attorney General. Your letter raises two issues with respect to reporting requirements for labor unions established by Chapter 3, Article 8, Section 1, et seq. of the Code of West Virginia of 1931, as amended (hereinafter Code), and Title 153, Legislative Rules, Secretary of State, Series 9, Regulation of Campaign Finance (hereinafter 153 CSR 9).

The first issue presented by your request for advice concerns transfers of money between labor organizations. Two distinct situations exist.

Dues are paid by members of labor organizations to the local in which the member is enrolled. The local transfers a percentage of those dues to a statewide labor organization. A portion of those dues transferred by the local to the statewide labor organization is transferred to a "political action committee" within the statewide organization. The amount attributable to any single member is six cents per month. The "political action committee" then uses the funds for any purpose authorized under its enabling powers. These purposes traditionally include such things as contributions to candidates and expenditures made for the purpose of influencing the nomination, election or defeat of a candidate, or for the passage or defeat of any issue, thing or item to be voted upon.

Similarly, dues are paid by members of labor organizations to the local in which the member is enrolled. The local transfers a percentage of those dues to a national labor organization. A portion of those dues transferred by the local to the

national labor organization is transferred to a "political action committee" within the national organization. The "political action committee" then uses the funds for any purpose authorized under its enabling powers. Those purposes traditionally include such things as direct transfers to "political action committees" in statewide labor organizations, contributions to candidates and expenditures made for the purpose of influencing the nomination, election or defeat of a candidate, or for the passage or defeat of any issue, thing or item to be voted upon.

The question presented by the first issue is whether or not any of the transfers described above are contributions within the meaning of Code 3-8-1 et seq., or 153 CSR 9.

Code 3-8-5c defines contribution and provides in full as follows:

"The term 'contribution,' as used in this article, shall mean a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate, or for the passage or defeat of any issue, thing or item to be voted upon. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation."

Title 153 CSR 9-2.14 defines contribution and provides in full as follows:

"'Contribution' means a gift subscription, assessment, payment for services, dues, advance donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for political purposes, as defined herein. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected before it is received or returned within thirty (30) days

and not used during that time for political purposes. A contribution does not include volunteer personal services provided without compensation."

Title 153 CSR 9-2.5 defines political purposes and provides in full as follows:

"'Political purposes' means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the administration or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee, advocating or opposing the passage or defeat of a ballot issue, determining the advisability of becoming a candidate under the precandidacy financing provisions, and supporting the retirement of the debt of a candidate or political committee incurred for any of the above purposes."

Code 3-8-5c and 153 CSR 9 2.14 contain the only definition of contribution that is relevant to the issues presented by your request for advice. Both the statute and the regulation set up a three part test for defining a contribution. First, the subject of the contribution must be a "gift subscription, assessment, forbearance or promise of money or other tangible thing of value, whether or not conditional or legally enforceable, or a transfer of money or other tangible thing of value."<sup>1</sup> Second, the contribution must be made to a person. Third, the transfer must be made for a purpose described in either the statute or the regulation.

The transfers described above are transfers of money. Transfers of money are specifically included within the plain language of both Code 3-8-5c and 153 CSR 9-2.14. Words used in a statute are to be given their ordinary and natural meaning. State v. Cole, 160 W. Va. 804, 238 S.E.2d 849 (1977). Further, the transaction described above that constitutes dues are

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<sup>1</sup> Volunteer personal services do not constitute a contribution within the definition of either the statute or the regulation if provided without compensation.

specifically included within both the statutory and the regulatory language.

Code 3-8-4 provides, in pertinent part, as follows:

"As used in this article:

"The term 'person' shall include an individual, partnership, committee, association, corporation, and any other organization or group of persons; and

"The term 'financial agent' shall include any person acting for and by himself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party or principle at any election, or any proposition submitted to a vote at a public election."

Both labor organizations and "political action committees" within labor organizations are persons within the definition of Code 3-8-5a. Therefore, both labor organizations and "political action committees" are persons within the meaning of Code 3-8-5c.

The only matter remaining to be solved is whether or not the transfer of money to a person as described above was made for a purpose described in Code 3-8-5c or 153 CSR 9-2.14. A statute that limits the exercise of free speech is to be strictly and narrowly construed in a manner that has the smallest effect on the exercise of free speech. Bacon v. Commonwealth, 48 Va. (Grat) 602 (1850). Campaign activities in the exercise of First Amendment rights are protected from significant legislative chilling. Fortson v. Weeks, 232 Ga. 472, 208 S.E.2d 68 (1974); see State v. Flinn, 158 W. Va. 111, 208 S.E.2d 538 (1974). A state may constitutionally regulate election expenditures. State v. Proto, 203 Conn. 682, 516 A.2d 1297 (1987); Mall v. Underwood, \_\_\_ W. Va. \_\_\_, 366 S.E.2d 631 (1988). The public policy of the state requires the reporting of election campaign contributions. Friends of Governor Kean v. N.J. Election Law Com'n, 203 N.J. Super. 523, 497 A.2d 555 (1985).

Further, where a criminal penalty attaches to the violation of a statute, the statute is to be construed strictly against the state and in favor of the liberty of the citizen. State ex rel. Carson v. Wood, 154 W. Va. 397, 175 S.E.2d 482 (1970). A penal statute may not be extended by implication or construction nor

may it be construed to include cases not within the letter of the law. Dials v. Blair, 144 W. Va. 764, 111 S.E.2d 17 (1959); United States v. Truslow, 527 F.2d 980 (4th Cir. 1975).

In statutes, limiting the exercise of free speech providing that a specific purpose be intended, our courts have held that the statute is violated only if the prohibited activity is engaged in solely for the purpose described in the statute. State v. Thorne, \_\_\_ W. Va. \_\_\_, 333 S.E.2d 817 (1985); Thorne v. Bailey et al., No. 86-7697 (4th Cir. 1988). See also State v. Dan O. Evans Campaign Committee, 86 Wash. 2d 503, 546 P.2d 75 (1976).

Transfers of money from a union member to a local, from a local to a statewide labor organization, or to a national labor organization from a statewide labor organization are not made solely for the purposes described in Code 3-89-5c or in 153 CSR 9-2.14. Each transfer includes a substantial component dedicated to other purposes. Accordingly, it is the advice of the Attorney General that such transfers are not contributions within the meaning of Code 3-8-5c or 153 CSR 9-2.14. However, if a showing is made by a clear preponderance of the facts that the member, the local, or the statewide labor organization made the transfer with the intent that it be used for a political purpose, then the transfer would be a contribution to the extent that it was intended for a political purpose. As such, it should be itemized in a detailed financial statement. Transfers of money from a local, a statewide labor organization, or a national labor organization directly to a candidate are contributions within the meaning of Code 3-8-5c and 153 CSR 9-2.14. Such contributions must be reported in a detailed financial statement as described in Code 3-8-5 and Code 3-8-5a by the candidate and filed with the Secretary of State or the clerk of the county commission as appropriate under Code 3-8-6.<sup>2</sup> Transfers of money from a national labor organization to a statewide labor organization may or may not be contributions within the meaning of Code 3-8-5c and 153 CSR 9-2.14. Each such transfer stands alone. If the transfer is made solely for the purposes described in Code 3-8-5c or 153 CSR 9-2.14, then the transfer is a contribution.

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<sup>2</sup> Code 3-8-5b requires that candidates for nomination in elections file an itemized financial statement with the Secretary of State or Clerk of the County Commission as appropriate. There seems to be no statutory requirement that labor organizations file such a report with any state officer.



The issue of whether or not the transaction constitutes a contribution within either the meaning of the statute or the regulation is not determined by the method of the transfer but by the purpose for which the transaction was instituted. A transfer could take place by check in which a portion of the funds transferred are intended for political purposes and a portion of the funds transferred are intended for other purposes. In that event, the portion of the funds transferred for political purposes must be itemized and reported as contributions. Each transaction must be fully analyzed and a determination made as to whether or not it is a contribution based upon the facts and purpose of each particular transaction.

The second issue raised by your request for advice is whether or not the cost of labor organizations communicating to their members constitutes an expenditure under Code 3-8-2 and Code 3-8-5 subject to the requirements of Code 3-8-5a.

Code 3-8-2 provides in full as follows:

"Except candidates for party committeemen and committeewomen, in primary and other elections, all candidates for nomination or election and all persons or organizations of any kind advocating or opposing a nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, shall keep records of receipts and expenditures which are made for political purposes. All such receipts and expenditures shall be subject to regulation by the provisions of this article. Verified financial statements of such records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives, or any person acting for and on behalf of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, and by the treasurers of all political party committees."

Code 3-8-5 provides in full as follows:

"Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by said

section eight of this article and also including the treasurer or equivalent officer of such association or organization, advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, and the treasurer of every political party committee shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, liabilities incurred, by such candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of such committee, or any person acting under its authority or on its behalf.

"Each person who files a certificate of candidacy for nomination or election in this state as provided for in article five of this chapter and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind supporting or opposing the candidacy of any such candidate, or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, shall within fifteen days following the first Saturday of February next preceding the primary election day, file a detailed itemized statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth all contributions and expenditures concerning the candidacy of that person or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon. Such statement shall include all contributions received or expenditures made which have taken place by the date of such report, subsequent to any previous report filed within the previous five years under this section or under the former provisions of this section, or if no report was filed, all contributions received or expenditures made within the preceding five years. The specific information required to be included in such statement is provided for in section five-a of this article.

"Not less than five nor more than ten days before each primary or other election, and again within thirty days after each primary or other election, ever candidate for nomination or election, and every financial agent, person, the treasurer or equivalent officer of any association or organization of any kind advocating or opposing the passage or defeat of any issue, thing or item to be voted upon or pertaining to the holding or conducting of any election, and the treasurer of every political party committee shall file with the officers hereinafter prescribed a detailed itemized financial statement subscribed and sworn to before an officer authorized to administer oaths, setting forth all financial transactions which have taken place by the date of such report in connection with such primary or other election as provided for in section five-a of this article.

"Every person who shall announce as a write-in candidate for any elective office and his financial agent or election organization of any kind, shall comply with all of the requirements of this section after public announcement of such person's candidacy has been made."

Code 3-8-5a provides in pertinent part as follows:

"Each financial statement as required by this article shall show the following information:

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"(i) The total expenditure for the nomination, election or defeat of a candidate or any person or organization advocating or opposing the nomination, election or defeat of any candidate, or the passage or defeat of any issue, thing or item to be voted upon, in whose behalf an expenditure was made or a contribution was given for the primary or other election.

"(j) The total amount of expenditures made during the period covered by the financial statement."



Words used in a statute are to be given their plain meaning. Black's Law Dictionary 5th ed., 1979, defines expenditure as follows:

"Expenditure.

"Spending or payment of money; the act of expending, disbursing, or laying out of money; payment. Compare Appropriation. See also Expense. As regards 'Capital expenditure' se Capital."

The state may properly require disclosure of election financing. State v. Proto, supra. A state may properly require the reporting of election expenditures. Friends of Governor Kean v. N. J. Election Law Enforcement Commission, supra. The state has a valid purpose of opening all activities intended to affect political processes in the state to public scrutiny in requiring disclosure of all aspects of election financing. New Jersey Election Law Enforcement Commission v. Citizens to Make Mayor-Council Government Work, 107 N.J. 380, 526 A.2d 1069 (1987); Falcon v. Alaska Public Offices Commission, 570 P.2d 409 (Alaska 1977).

"There are substantial public policy reasons for requiring candidates and other persons engaged in political process to file financial reporting forms, including that disclosure provides information as to sources of candidate's funds and where he spends them, thus permitting voter to evaluate candidate's potential allegiances, that disclosure exposes to light of publicity large contributions and expenditures, thus deterring possible corruption and illegal expenditures, and that disclosure provides means of detecting violations of contribution and expenditure limitations." Syllabus point 11, State ex rel. Cohen v. Manchin, \_\_\_ W. Va. \_\_\_, 336 S.E.2d 171 (1984).

An agency regulating elections may properly require an itemized statement of expenditures generated by dues to labor organizations, made upon activities or causes of a political nature. See Public Employees Federation v. Public Employment Relators Board, 461 N.Y.S. 2d 924, 93 A.2d 910 (1983).

Accordingly, it is the advice of the Attorney General that expenditures made by a labor organization in communicating to its

members for a political purpose including the nomination, election or defeat of a candidate or the passage or defeat of any issue, thing or item to be voted upon must be itemized in a financial statement.

Very truly yours,

CHARLES G. BROWN  
ATTORNEY GENERAL

By



Solicitor

STEPHEN D. HERNDON

SDH/mlk