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The Honorable Ken Hechler  
Secretary of State  
State Capitol  
Charleston, West Virginia 25305

Dear Secretary Hechler:

This is in response to your request for an opinion concerning reporting requirements for labor organizations under W. Va. Code §§ 3-8-1 through 3-8-13 (1990). You have outlined the following two factual situations.

The first situation involves a labor organization which deducts membership dues from each member on a monthly basis. Portions of these dues are then allocated to national, district and local organizations. In addition, a \$10.00 per year assessment is taken from each member of the labor organization and placed into the organization's national political action committee fund. This fund "employs staff, conducts lobbying activities and voter registration drives, publishes a newsletter for members, sponsors other educational activities, makes direct political contributions to candidates, and performs other activities to advocate or oppose candidates or issues." (Emphasis omitted.) A subdivision of the national political action committee active in West Virginia receives a budgeted amount, a portion of which is used for political purposes. In addition, some local and district organizations form separate political action committees and transfer a portion of their share of membership dues to that committee for political purposes.

The second situation involves a labor organization in which membership dues are paid to the local organization. This local organization is a member of a central body which organizes activities of the locals and runs an education fund. Monies from this fund are used for activities similar to those described in situation one above, which includes both political and non political purposes. The monies placed in the education fund represent a fixed rate portion of the dues of each individual member. This amount may not be the same for each member because they may not be paying the same amount in dues.

Specifically, you have asked us to address the following issues as they relate to the foregoing factual situations:

1. Whether a special assessment of \$10.00 a year, taken from each working member of a labor organization, is a "political contribution" as defined by State law since only a portion of that money is earmarked for political activity?

2. If the answer to number 1 is no, does lump sum reporting of all assessments from a particular labor organization fulfill the statute's reporting requirements?

3. If these monies are political contributions, should the amount reported reflect the entire \$10.00 assessment paid by each member or should it include only that portion used for political purposes?

4. If the monies are political contributions, may a national labor political action committee legally accept funds for political purposes which have not been itemized by the name of the member from whose pay the amount was originally deducted?

5. May a local organization transfer more than \$1,000.00 per election into its education fund?

6. Must the local organization form a registered political action committee in order to make any contribution to the central education fund? If so, must the local file reports detailing the amount of dues dedicated to this education fund?

Labor organizations have historically played a major role in the political process in this country. In recent years, many labor organizations have formed their own political action committees. The United Mine Workers of America (hereinafter UMWA) is a case in point. Since its inception in 1973, the Coal Miners' Political Action Committee (hereinafter COMPAC) has been the driving force behind political education and lobbying for the UMWA. COMPAC Coordinator Michael P. Burdiss described its role as follows:

The general goals of COMPAC are to conduct political educational programs to better inform UMWA members, to encourage participation by members of UMWA in the democratic process, including enhanced registration to vote, and the development and lobbying efforts necessary to effectuate public policy which will serve the needs of coal miners and their families. An additional function of COMPAC is to make political contributions to

candidates chosen through the democratic process of COMPAC for endorsement.

Letter from COMPAC Coordinator Michael P. Burdiss to Ken Hechler (Oct. 20, 1988) (discussing Coal Miners' Political Action Committee).

COMPAC funding is provided by each working member of the UMWA in the form of a \$10.00 annual assessment. Employers collect the assessment and send it to the International General Fund. A portion of the Fund is then allocated to each state's political action program. The amount given is generally in proportion to the number of active members in each state. West Virginia's COMPAC then:

meets annually to establish legislative goals, to formulate an organizing and educational program and to develop a specific concrete political action program. Specifically, the activities of West Virginia COMPAC include internal education of the membership, lobbying, research, servicing the eighteen (18) Area Councils, which have monthly meetings in their areas, and recommending contributions to political candidates.

Id.

Regulation and control of political contributions and reporting requirements are found in W. Va. Code §§ 3-8-1 through 3-8-13 and in Title 153, Legislative Rule, Secretary of State, Series 9, Regulation of Campaign Finance (hereinafter 153 CSR 9). To fully understand the issues we are discussing, we believe it important to begin with an examination of definitions.

"Contribution" has been defined by statute as:  
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. . . .

W. Va. Code § 3-8-5c (1990).

The definition of "contribution" set forth in 153 CSR 9, § 2.14 is analogous to the statutory definition:

"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 . . .

West Virginia Code § 3-8-4(d) (1990) defines "person" as "an individual, partnership, committee, association, corporation, and any other organization or group of persons."

The Campaign Finance Regulations define the term "political purposes" as:

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.

153 CSR 9, § 2.5.

The regulations describe a "political committee" as:

an association of persons, an organization of any kind, or any two (2) or more persons acting together, wholly or in part, to receive or expend money or other thing of value for political purposes.

This definition shall include but not be limited to political party executive committees, other committees operating in conjunction with a political party or using a political party name, political action committees and any other organizations, whether temporarily or permanently established, using any portion of their funds for political purposes.

153 CSR 9, § 2.6

All other words or terms used in the statutory and regulatory sections cited herein which are not specifically defined "will be given their common, ordinary, and accepted meaning." State ex rel. Cohen v. Manchin, \_\_\_ W. Va. \_\_\_, 336 S.E.2d 171, 180 (1984). Thus, where the statutory language is clear and unambiguous "the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 1, Courtney v. State Department of Health, \_\_\_ W. Va. \_\_\_, 388 S.E.2d 491, 492 (1988).

It is clear from both the statute and the regulations on campaign financing that the \$10.00 assessment falls within the definition of political "contribution." Both the statute and the regulations specifically include assessments as contributions. In addition, these assessments must be made to a "person" which embodies both committees and organizations in its definition. The assessment must be made for a "political purpose" which includes campaign contributions, advocating or opposing a ballot issue and supporting the administration or activities of a political committee. Finally, both the labor organization and its COMPAC fit the definition of a "political committee." Both include more than two persons acting together for political purposes, and regulations provide that political action committees that use any portion of their funds for political purposes are political committees. A portion of the assessment collected by the International Fund is returned to the West Virginia COMPAC and used by the organization for campaign contributions. Some of the money is also used for COMPAC salaries and the administration of the headquarters. Therefore, it is our opinion that the \$10.00 assessment is a political contribution for purposes of the Code and the CSR.

West Virginia Code § 3-8-2 (1990) states, in part:

[A]ll 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 provisions of this article.

West Virginia Code § 3-8-5 (1990) provides in pertinent part:

Every . . . person and association of persons, organization of any kind . . . directly or indirectly supporting a political committee 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 thing of value, and all expenditures and disbursements.

These provisions limit the reporting requirements to only those sums of money used for political purposes. Thus, only the portion of the \$10.00 assessment that is earmarked for political purposes must be reported by the labor organization. However, the burden clearly falls on the organization to determine what portion is set aside for political purposes and then report it accordingly.

Pursuant to W. Va. Code § 3-8-5a(c) (1990), COMPAC must list the names of the miners who pay an assessment. This statute requires, in part, that each financial statement show:

The first name, middle initial . . . and the last name in the case of a individual . . . and the amount of such contribution of such individual . . . and, if the aggregate of the sum or sums contributed by any one such individual . . . exceeds two hundred fifty dollars there shall also be reported the residence and mailing address and, in the case of an individual, the major business affiliation and occupation.

A similar situation occurs when labor organizations set aside a portion of their membership dues to finance an education fund and the monies are used for both political and non political purposes. Organizations that follow this method base a member's contribution on a fixed rate determined by the number of weeks worked and the amount of dues paid in a given year. Thus, a member who works 52 weeks would pay more in dues and have a larger contribution than someone who worked only 48 weeks in a given year.

The term "contribution" includes dues used for political purposes. W. Va. Code § 3-8-5c (1990). However, "political purposes" do not necessarily include educating one's membership. If the education is tied, for example, to the support or defeat of a candidate or ballot issue then it would fall within the definition of "political purposes" found in 153 CSR 9-2.5. Thus, any dues used for political purposes must be reported according to the guidelines set forth in W. Va. Code §§ 3-8-2, 3-8-5 and 3-8-5a(c). This means the local organization must keep detailed accounts of all sums of money contributed by its members that are used for political purposes. Also, the report must, at the very least, indicate the name of each contributor. The organization

must determine what portion of each member's dues is used for political purposes.

Because a fixed percentage of each member's dues is dedicated to the education fund, it is no different than the \$10.00 assessment previously discussed. Although the organization can place all monies dedicated to the education fund into that account, the portion of that account used for political purposes must be reported. Again, the burden falls upon the organization to determine what portion is used for political purposes, and then report it accordingly. Any member who pays dues, a portion which is placed in the education fund, must be listed in the report pursuant to W. Va. Code § 3-8-5a(c)(1990). The local organization may not, however, contribute more than \$1,000.00 from its education fund to any political candidate or cause per election. W. Va. Code § 3-8-12(f)(1990) provides, in pertinent part, as follows:

No person shall, directly or indirectly, make any contribution in excess of the value of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any statewide or national elective office, or in excess of the value of one thousand dollars, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the State or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaging in furthering, advancing or advocating the nomination or election of any candidate for any such office.

Because a local organization falls within the definition of "person" set forth in W. Va. Code § 3-8-4(d), it is precluded from making any campaign contributions in excess of \$1,000.00. To hold otherwise would give labor organizations and those similarly situated greater influence over the political process in West Virginia than that of the average citizen.

Constitutional ramifications invariably come into play when discussing reporting and disclosure requirements. Opponents often argue that these laws violate the freedom of speech and freedom of association. While both of these freedoms may be fundamental, they are not absolute. Buckley v. Valeo, 424 U.S. 1 (1976). Courts, faced with addressing the constitutionality of reporting and disclosure requirements, have traditionally utilized the strict scrutiny test in upholding the Statute's validity. See Buckley; Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987)(rehearing denied in 485 U.S. 1029 (1988)); Veco International, Inc. v. Alaska Public Offices Commission, 753 P.2d

703 (Alaska 1988); and Stoner v. Fortson, 370 F. Supp. 704 (N.D. Ga. 1974). In order for a reporting requirement to be upheld: (1) there must be a compelling state interest which outweighs any First Amendment rights; (2) the state must have used the least restrictive means in achieving this end; and (3) the means chosen must bear a substantial relation to the interest being served. Bemis, 731 S.W.2d 897, 903 (Tenn. 1987).

There are numerous public policy reasons for reporting and disclosure laws, including preserving the democratic process and guaranteeing fair elections.

First, disclosure provides information as to the sources of the candidate's funds and where he spends them thus, it permits the voter to evaluate the candidate's potential allegiances by being able to identify those who have contributed to his campaign, as well as those who have received money. Second, disclosure also exposes to the light of publicity the large contributions and expenditures, thus, deterring possible corruption and illegal expenditures. Finally, disclosure provides a means of detecting violations of contribution and expenditure limitations.

State ex rel. Cohen v. Manchin, \_\_\_ W. Va. \_\_\_, 336 S.E.2d 171 (1984). There is however, a minimum level of political activity "below which the government has no legitimate interest in regulating." Veco International at 713. The list includes parents affixing a 22¢ stamp to a letter expressing their political views to their 18-year-old son, friends discussing politics over lunch, and wearing buttons at work. Id.

Disclosure requirements also provide the least restrictive means for preserving the democratic process.

It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights, . . . in this process we note and agree . . . that disclosure requirements -- certainly in most applications -- appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption . . .

Buckley at 68.



Neither of the concerns expressed in Buckley is applicable in this situation. There is no indication that the reporting and disclosure requirements set forth in W. Va. Code §§ 3-8-1 through 3-8-13 will deter members from making contributions. There is also no threat of harassment or retaliation because of the check-off system utilized by the organization. Members merely provide the financial resources. It is the leaders who make the ultimate decisions about which candidate or ballot issue to support. Any threat of retaliation, therefore, falls on the leadership and not the individuals who simply provide financial support. This same analysis holds true for those who contribute through dues. It is evident from this constitutional analysis that the state's choice of disclosure bears a substantial nexus to the interest being served -- the preservation of the democratic process.

In conclusion, it is our opinion that:

1. A \$10.00 special assessment is a "political contribution" pursuant to state law even though only a portion of the money is earmarked for political activity;
2. Only that portion of the \$10.00 assessment used for political purposes must be reported;
3. COMPAC must itemize by name each miner who contributes through an assessment;
4. Because money placed by a local organization into its education fund is a fixed amount of the dues paid by each member, that portion contributed and utilized for political purposes must be reported and include the name of each member who contributed to the fund. Only that portion of the dues used for political purpose must be reported. However, a labor organization cannot contribute more than \$1,000.00 per election from its education fund to support a political candidate or cause;
5. A local organization's placement of money into its education fund pursuant to an established formula related to membership dues is not governed by provisions of the Code related to political contributions and, therefore, the organization would not be required to form a political action committee in these circumstances; and
6. West Virginia's reporting and disclosure requirements are constitutional.

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To the extent that our former opinion of July 6, 1988, is inconsistent with the conclusions expressed herein, this opinion shall control.

Very truly yours,

  
ROGER W. TOMPKINS  
ATTORNEY GENERAL

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