



CITY OF COEUR D'ALENE

LEGAL DEPARTMENT

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March 11, 2010

Mr. Bill McCrory
Citizens for Honest & Responsible Government
PMB 119, 212 W. Ironwood Drive, Suite D
Coeur d'Alene, ID 83814

CDACHRG@gmail.com

Dear Mr. McCrory:

Enclosed please find a copy of a letter from the Idaho Secretary of State's office regarding political committee contributions and expenditures. Please govern yourself accordingly.

Very truly yours,

Michael C. Gridley
City Attorney

cc: Susan Weathers – City Clerk



STATE OF IDAHO
OFFICE OF THE SECRETARY OF STATE
BEN YSURSA

Michael C. Gridley
City of Coeur d'Alene
710 E Mullan Ave
Coeur d'Alene, ID 83814

RE: Campaign Contribution Use and Reporting

Mr. Gridley,

I am writing in response to your letter dated February 8, 2010, asking for guidance in the area of campaign contribution use and reporting.

The answer to your first question: "Are expenditures by a candidate incurred as part of a post-election lawsuit challenging or upholding the election results valid campaign expenditures under Idaho Code title 67, Chapter 66?" is yes. Idaho Code section 67-6602(d) defines contribution as anything of value in support of a candidate. Since the legal costs arise due to a challenge of the election results in which the candidate participated and arguably the candidacy serves as the basis for the legal challenge, then contributions may be received and reported for the purpose of election related legal expenses.

To help determine what valid campaign expenses are and are not prohibited under Idaho Code section 37-6610C, we use an irrespective or "but for" test that is used by the Federal Election Commission (FEC). Would the expense exist "but for" the conduct of the campaign? As in this case, an election challenge would likely not exist without a candidacy. But a lawsuit from a skiing accident for example, may not be directly connected to campaign events. This determination will need to be made on a case-by-case basis and analysis.

If the legal expenses are determined to be valid campaign expenditures, then contributions may be collected to pay them and those contributions are subject to Idaho Code section 67-6610A. Therefore, the answer to your second question is yes. Contributions received by or on behalf of a candidate to pay for a post-election lawsuit to challenge or uphold election the results are subject to reporting requirements and contribution limits.

In determining whether or not an organization that raises money and makes contributions to pay for legal expenses challenging or upholding election results is a political committee, we look at the definition in Idaho Code section 67-6602. Subsection (p) says that any entity receiving and making contributions in excess of \$500 in any calendar year for the purpose of supporting or opposing a candidate or measure is a political committee. As outlined above, an

entity that receives and makes such contributions are subject to Title 67, Chapter 66, and would be a PAC.

FEC regulations on personal use also address "third party payments" to candidates at 11 CFR 113.1(g)(6). Notwithstanding that the use of funds for a particular expense would be a personal use under 11 CFR Part 113, payment of that expense by any person other than the candidate or the campaign committee shall be a contribution unless the payment would have been made irrespective of the candidacy.

I hope you find this helpful.

Sincerely,



TIMOTHY A HURST
Chief Deputy
Secretary of State

TAH/bek