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Robert R. Corbin

January 12, 1988

The Honorable Gary Giordano  
The Honorable Jim White  
Arizona State Representatives  
State Capitol - House Wing  
Phoenix, Arizona 85007

Re: I88-007 (R87-103)

Dear Representatives Giordano and White:

You requested our opinion regarding the application of the A.R.S. § 16-905 contribution limitations to monies received by members of the legislature to pay for periodic mailings of informational reports and newsletters to their constituents. We conclude that donations made solely to pay the expenses of producing and distributing constituent communications, incurred more than 60 days prior to an election, are not subject to the limitations of A.R.S. § 16-905.

The contribution limitations of A.R.S. § 16-905 apply to candidates and campaign committees. Criminal penalties attach to violations by individuals who make contributions in violation of this section as well as to violations by candidates and campaign committees who receive contributions in excess of the limitations.

Penal statutes must give adequate notice to ordinary people of what conduct may result in criminal prosecution. See Kolender v. Lawson, 461 U.S. 352, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983); Dunn v. United States, 442 U.S. 100, 112, 99 S.Ct. 2190, 2197, 60 L.Ed.2d 743, 754 (1979). Where, as here, criminal penalties are imposed in an area "permeated by First Amendment rights" close examination of "the specificity of the statutory limitation" is required. Buckley v. Valeo, 424 U.S. 1, 40-41, 96 S.Ct. 612, 645, 46 L.Ed.2d 659, 699-700 (1976). The Arizona Supreme Court has construed the campaign contributions and expenses statutes narrowly. Mechem Recall

The Honorable Gary Giordano  
January 12, 1987  
I88-007  
Page 2

Committee, Inc. v. Corbin, No. CV-87-0306-SA (Ariz. Sup. Ct., Oct. 1, 1987). <sup>1/</sup> Accordingly, the provisions of A.R.S. § 16-905 must be read narrowly.

A.R.S. § 16-905(O)(2) defines "contribution" for purposes of this section as follows:

"Contribution" means money or the fair market value of anything directly or indirectly given or loaned for the purpose of influencing an election of a candidate in this state except:

(a) Uncompensated personal services performed by volunteer campaign workers.

(b) Personal travel expenses incurred by an individual without direct or indirect reimbursement.

(c) Food and beverages donated by an individual and not exceeding one hundred dollars in value during a calendar year.

Contribution includes any expenditure made by an individual or campaign committee with the cooperation or consultation of a candidate, or in concert with or at the request or suggestion of a candidate.

(Emphasis added.)

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<sup>1/</sup>The court held that that because there is no specific reference to recall committees in the statutes, A.R.S. §§ 16-901 to -924 do not control recall committee activities. The court stated:

Since the statute does not mention recall committees, they are not included. State v. Miller, 100 Ariz. 288, 413 P.2d 757 (1966). If this is believed to be a serious omission then it is up to the legislature to cure the defect, not the courts. Mecham Recall Committee v. Corbin, Slip Op. at page 6.

The Honorable Gary Giordano  
January 12, 1987  
I88-007  
Page 3

A.R.S. § 16-901(3) provides, in part:

"Expenditures" does not include an expenditure for a written communication by an elected official with his constituents incurred before the sixtieth day preceding the election . . . .

Reading these provisions together, we conclude that amounts received by incumbent officeholders solely for the purposes of financing informational communications relating to their official duties, when the expenditure was incurred before the sixtieth day prior to their election, are not governed by the provisions of A.R.S. § 16-905. There is no limitation on the amounts that may be given for this purpose nor are these amounts to be counted against the annual two thousand dollar cumulative individual limit on "contributions" found in A.R.S. § 16-905(D).<sup>2/</sup>

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<sup>2/</sup>Of course, such funds may not be "used to discharge a prior campaign debt or to fund a future election."  
Ariz.Atty.Gen.Op. 187-111.

We also note that because A.R.S. § 16-901(3) provides that expenses incurred more than sixty days preceding an election for a written communication by an elected official with his constituents are not "expenditures" for purposes of Arizona's campaign contributions and expenditures statutes, they do not have to be reported on the statements of contributions and expenditures.

However, public officers who receive donations for the purpose of funding written communications with their constituents must disclose, in their annual A.R.S. § 38-542(A) financial disclosure statement, donations which exceed five hundred dollars.

A.R.S. § 38-542(A)(8) requires disclosure of:

Continued Next Page

The Honorable Gary Giordano  
January 12, 1987  
I88-007  
Page 4

Representative Giordano asked the additional question whether a business or corporation could make a donation for this type of written constituent communication. If the business were not incorporated there would be no specific prohibition against this type of activity. Corporations, however, are expressly prohibited by A.R.S. § 16-919 from making contributions for the purpose of influencing an election. The term "election" is defined in A.R.S. § 16-919(H) as follows:

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2/ Continued

The name of each source of any gift, or accumulated gifts from a single source, of more than five hundred dollars received by the public officer and members of his household in their own names during the preceding calendar year, or by any other person for the use or benefit of the public officer or any member of his household except gifts received by will or by virtue of intestate succession, or received by way of distribution from any inter vivos or testamentary trust established by a spouse or by an ancestor, or gifts received from any other member of the household or relatives to the second degree of consanguinity. Political campaign contributions shall not be construed as gifts if otherwise publicly reported as political campaign contributions as required by law.

(Emphasis added).

A.R.S. § 38-541(5) defines "gift" for purposes of financial disclosure by public officers as follows:

"Gift" includes any gratuity, special discount, favor, hospitality, service, economic opportunity, loan or other benefit received without equivalent consideration and not provided to members of the public at large.

The Honorable Gary Giordano  
January 12, 1987  
I88-007  
Page 5

For purposes of this section, "election" means any election to any political office, any election to any political convention or caucus, or any primary election held for the purpose of selecting any candidate, political committee or other person for any political office, convention or caucus.

Criminal penalties also attach to violations of this section. Therefore, it must also be given a narrow interpretation. Buckley v. Valeo.

The potential influence on a future election that may be caused by the goodwill or name identification generated among constituents by such written communications is not clearly encompassed within the language of A.R.S. § 16-919. See Mecham Recall Committee, Inc. v. Corbin.

Donations made solely for the purpose of funding constituent communications given to an officeholder cannot be construed to be contributions for the purpose of "influencing an election" within the meaning of A.R.S. § 16-919.

Therefore, corporations may make donations of this type to officeholders to fund constituent communications without violating this statute.<sup>3/</sup>

Sincerely,



BOB CORBIN  
Attorney General

BC:JBS:LTH:JGF:kp

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<sup>3/</sup>The same rule would apply to labor organizations.  
A.R.S. § 16-919.