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July 11, 2016

FU02-004
By U.S. Mail and Email

The Honorable Brad Winter
New Mexico Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, New Mexico 87501
Brad.Winter@state.nm.us

Re: *Rep. Zach Cook complaint regarding Maggie Toulouse Oliver*

Dear Secretary Winter:

This law firm represents Maggie Toulouse Oliver regarding a complaint filed against her by Representative Zach Cook (R-HD56). We received notice of Rep. Cook's complaint by your letter dated June 28, 2016, requesting a response within 15 days of that date. This response is timely.

Rep. Cook's allegations are frivolous and are clearly politically motivated. He alleges that during the 2014 General Election, Verde Voters made a campaign contribution to Ms. Toulouse Oliver in excess of the statutory limits and that she violated the Campaign Reporting Act by failing to report the contribution. For the reasons stated in this Response, Rep. Cook's complaint is baseless.

As an initial matter, Rep. Cook's complaint must be dismissed on the ground that it is not timely. The Campaign Reporting Act ("Act") requires that any written complaint of an alleged violation of the Act must be filed with the Secretary of State "prior to ninety days after an election." *See* NMSA 1978, § 1-19-34.4(B). The 2014 general election was held on November 4, 2014. Thus, any complaint had to have been filed no later than February 2, 2015. Rep. Cook's complaint is dated June 22, 2016. It is not timely and must be dismissed.

Further, the ground upon which Rep. Cook bases his complaint is absurd. His complaint demonstrates that he is ignorant of established policies and the law regarding the difference between an independent expenditure and a coordinated communication. Or it demonstrates that he is feigning ignorance for the sole purpose of generating negative publicity about Ms. Toulouse Oliver.

In a case brought in New Mexico by Rep. Cook's own party, the Tenth Circuit Court of Appeals addressed the difference between communications that are coordinated with a candidate and independent expenditures. *See Republican Party of New Mexico, et al v. Gary King, et al,* 741 F.3d 1089, 1093 (10th Cir. 2013). The Tenth Circuit observed that the United States Supreme Court has consistently stricken dollar limits on independent expenditures. *Id.* And it held that as such, limits imposed by the State of New Mexico on independent political action committees are unconstitutional. *Id.*, p. 1103.

The 2014 draft *Guide to Campaign Finance for Political Committees* ("Campaign Finance Guide") produced by this Office acknowledges the authority of the *Republican Party of New Mexico* decision and recognizes that political action committees in New Mexico may legally make independent expenditures. A copy of the Campaign Finance Guide is attached as Exhibit A. It states that the Campaign Reporting Act "does not define 'coordinated communications' or 'independent expenditures,' but judicial rulings hold that these terms must be applied in New Mexico in relation to the Act." Campaign Finance Guide, p. 20.

This Office distinguishes independent expenditures and coordinated communications. It instructs, "An independent expenditure is an expenditure for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party or its agents." Campaign Finance Guide, p. 21. Conversely, "a communication that is coordinated with a candidate or campaign committee ... is considered an in-kind contribution to the candidate or campaign committee and is subject to the limits, prohibitions and reporting requirements of the New Mexico Campaign Reporting Act." *Id.*

Verde Voters PAC is "an Independent Expenditure Committee to conduct 'I.E.s' in state (non-federal) elections." *See* Verde Voters 2012 Political Committee Registration Form filed with the office of the New Mexico Secretary of State on April 2, 2012, attached as Exhibit B. "I.E.s" means independent expenditures.

The Verde Voters' 3rd General Report 2014, which Rep. Cook relies upon, reports its expenditure to another independent expenditure PAC, SoS for Democracy. The Verde Voters Report demonstrates that the expenditure is to be used to "expressly advocat[e] the election ... of a clearly identified candidate." Campaign Finance Guide, p. 21. But nothing in the Verde Voters report demonstrates that its expenditure was coordinated with

the Toulouse Oliver Campaign. To the contrary, the Toulouse Oliver Campaign verifies that no expenditure by Verde Voters was paid for by or made in cooperation, consultation or concert with the Campaign or any representative of the Campaign. *See* Affidavit of Alan Packman, attached as Exhibit C. Nor was any Verde Voters expenditure made at the request or suggestion of the Toulouse Oliver Campaign or its agents. *Id.*

Only if a communication is coordinated with a campaign can the communication be treated as "an in-kind contribution to the candidate or campaign committee and ... subject to the limits, prohibitions and reporting requirements of the New Mexico Campaign Reporting Act." Campaign Finance Guide, p. 21. As established here, Verde Voters reported an independent expenditure from one independent expenditure PAC to another. Because the Verde Voters expenditure is an independent expenditure and not a contribution to a candidate, contribution limits do not apply. Rep. Cook's first contention fails.

Rep. Cook's second contention is that Candidate Toulouse Oliver did not report a contribution by Verde Voters. Rep. Cook contends that the Verde Voters expenditure to SoS for Democracy is an "earmarked" contribution. But the expenditure isn't a contribution at all. The Campaign Finance Guide recognizes that in order for a communication to be coordinated and thus an in-kind contribution, all prongs of a three-prong test must be met. These prongs are payment, content and conduct. Campaign Finance Guide, p. 22. As described in the paragraph above, none of the three prongs are met.

Thus, although Section 1-19-34.7(B) of the Act requires that candidates report contributions, we have demonstrated here that the Verde Voters expenditure to SoS For Democracy was not coordinated and thus not a contribution – earmarked or otherwise – to Candidate Toulouse Oliver. Accordingly, Candidate Toulouse Oliver did not violate Section 1-19-34.7(B) or any other provision of the Act. Rep. Cook's second contention fails.

Finally, Rep. Cook raises false alarms of "dark money." The term "dark money" refers to politically active entities that are not required to disclose their funding sources, such as trade associations like the Chamber of Commerce, or private entities like the Koch brothers' Americans for Prosperity Foundation. On the other hand, political action committees like Verde Voters are required to disclose their contributors; Verde Voters discloses its contributors. *See e.g.,* Verde Voters 3rd General Report at Form B1, "Monetary Contributions." Again, either Rep. Cook is misusing provocative terms for an improper political purpose or he is ignorant of the facts.

In closing, I am confident that this letter adequately responds to any questions you might have regarding Rep. Cook's complaint. His complaint is time barred. And even if it was not time barred, it relies on a misunderstanding or misstatement of the policies issued by

this Office and of the law. We are confident that no violation has occurred and that the information we have provided will put this matter to rest. However, if you would like additional information, please let us know.

Sincerely,

Karen S. Mendenhall

KSM/kcj

cc: Attorney General Hector Balderas (by U.S. Mail with exhibits)

2014

New Mexico Secretary of State's Office

Dianna J. Duran
Secretary of State

Guide to Campaign Finance for Political Committees

POLITICAL COMMITTEES

EXHIBIT
A

When financing communications in connection with New Mexico elections, it is important to understand that the rules differ significantly depending on whether the communication is made by a candidate or campaign committee; coordinated with a candidate or party committee; or is produced and distributed independently. In general, amounts contributed to candidates and political committees who are not making independent expenditures are limited. Amounts spent for coordinated communications are also limited, but independent expenditures are unlimited.

The New Mexico Campaign Reporting Act (the Act) places monetary limits on contributions to support candidates for offices covered by the Act and prohibits contributions from certain sources. This brochure discusses contribution limits, describes the various prohibitions on contributions and explains how a committee should handle contributions that appear to be illegal.

The reader should not rely solely on this brochure but should also consult the Campaign Reporting Act, the Election Code and case law from the New Mexico state and federal courts. Citations refer to the New Mexico Election Code. If you have any questions after reading this brochure, please call the Bureau of Elections, Ethics Division at (505) 827-3600, (505) 827-3617 or (505) 476-0354.

(Editing Note: The Secretary of State's Advisory Committee recommended additions identified in blue to the original compilation of material)

Guidelines for Political Committees

Who is covered by the Campaign Reporting Act (CRA) as a Political Committee?

"Political Committee" means two or more persons, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose; and "political committee" includes: (1-19-26(L) NMSA 1979)

1. *political parties,*

2. *political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;*

3. *a single individual whose actions represent that the individual is a political committee; and*

4. *a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars ($500) to conduct an advertising campaign for a political purpose;*

   "political committee" does not include:

   1. *members of a candidate's immediate family or campaign committee;*
   2. *a husband and wife who make a contribution out of a joint account;*

Other definitions under the CRA:

1. *"Candidate" means an individual who seeks or considers an office in an election covered by the Act including a public official, who has either:*

   a. *Filed a declaration of candidacy or nominating petition; or*

   b. *For a **non-statewide** office, has received contributions or expenditures of **$1,000** for the purpose of seeking election to office or authorized another person or campaign committee to receive or make expenditures of $1,000 or more for the purpose of seeking election to the office; or*

   c. *For a **statewide** office, has received contributions or made expenditures of **$2,500** or more or authorized another person or campaign committee to receive contributions or make expenditures of*

$2,500 or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of election. (1-19-26(E) NMSA 1979)

2. *"Campaign Committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing the candidate to office. (1-19-26(D) NMSA 1979)*

   For information concerning candidate and candidate committees-see the Secretary of State's Guidelines for Candidates and Candidate Committees.

3. *"Election" means any primary, general, or statewide special election in New Mexico and includes county and judicial retention elections but excludes, municipal, school board and special district elections (1-19-26(H) NMSA 1979)*

4. *"Person" means an individual or entity (1-19-26(K) NMSA 1979)*

5. *"Proper Filing Officer" means either the secretary of state (1-19-26(O) NMSA 1979)*

6. *"Public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act. (1-19-26(P) NMSA 1979)*

7. *"Reporting Individual" means every public official, candidate, or treasurer of a campaign committee and every treasurer of a political committee(1-19-26(Q) NMSA 1979)*

   There are penalties associated with failure to file reports, late filing or false filing by reporting individuals. (1-19-35 NMSA 1979)

~~What kind of entity meets the definition of a political committee?~~

~~"Political committee" is two or more persons, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose;~~

~~"political committee" includes:~~

~~(1) political parties,~~

~~(2) political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;~~

~~(3) a single individual whose actions represent that the individual is a political committee; and~~

~~(4) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars ($500) to conduct an advertising campaign for a political purpose;~~

~~(5) a committee that makes independent expenditures (note: committees making independent expenditures are subject to the reporting and disclosure requirements of the Campaign Reporting Act, but are not subject to the contribution limits).~~

~~A "political committee" does not include:~~

~~(1) members of a candidate's immediate family or campaign committee;~~
~~(2) a husband and wife who make a contribution out of a joint account;~~
~~(1-19-26 NMSA 1978)~~

When does a political committee have to begin reporting to the Office of Secretary of State?

Any political committee that receives, contributes or expends in excess of $500 in any calendar year must appoint a treasurer, open a bank account and register with the Office of Secretary of State within 10 days of receiving or expending $500 in any calendar year.
(1-19-26.1 (B) NMSA 1978)

What is the first step for a political committee to register and begin reporting to the Secretary of State's Office?

A treasurer must be appointed and the committee must open a separate bank account. This information will be required when the committee files the Political Committee registration form provided by the Office of Secretary of State, pays the filing fee of $50.00 and obtains a User ID and password from the Office of Secretary Of State.

The Statement of Organization must be:

(1) notarized under oath;

Showing:

(1) the full name of the political committee, fairly and accurately reflecting the identity of the committee, including any sponsoring organization, and

(2) its address;

(3) a statement of the purpose for which the political committee was organized; Under this section, the committee should specify whether it will be making exclusively independent expenditures, or whether it will make non-independent expenditures, such as contributions to candidates and coordinating expenditures.

(4) the name, address and relationship of any connected or associated organization or entity; A connected or associated organization or entity means a related corporation, union or trade organization through which the political committee receives more than 50% of its funding.

(5) the names and addresses of the officers of the committee; and

(6) an identification of the bank used by the committee for all expenditures or contributions made or received. This shall include the name of the bank, business address of the branch office where the account was opened, and a telephone number for the bank.

The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the political committee reports with the FEC all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico. (1-19-26.1 (C) NMSA 1978)

If a political committee is located in another state, but is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures.

What is political committee's treasurer's responsibility?

The political committee's treasurer is personally responsible for carrying out the duties described in the Act and should understand the responsibilities and potential liabilities associated with said duties. Under the Act, the treasurer is a reporting individual who can be named in a complaint or official action against the candidate by the SOS office. Additionally, a treasurer may be found personally liable if he or she knowingly and willfully violates the Act. (1-19-35; 1-19-36)

For purposes of civil actions against candidates or public officials, it shall be presumed that they have authorized and approved each solicitation for campaign contributions made by their respective campaign committees or persons authorized by the campaign to solicit campaign contributions. (1-19-34.5(A)

What if the political committee has vacancy in the position of treasurer?

In the event that there is a vacancy in the position of treasurer for a campaign committee, a candidate may act as his or her own treasurer, but in any event, must maintain a treasurer in order to raise or spend campaign funds. **If a change has been made to a treasurer of a campaign committee the update may be made directly by entering the new information in the CFIS, or by submitting the change to the Ethics Division staff.** (1-19-34(A)(1))

When are a Political Committee's reports due?

In a non-election year (an odd numbered year), political committees with open accounts must file two reports, one on the second Monday in April, and one on the second Monday in October.

In election years (even numbered years), political committees must file at least 8 reports - 4 during the primary cycle and 4 during the general election cycle.

Primary Election Cycle Reports

1-19-29(A) and (B) NMSA 1978

2nd Monday in April (April 14, 2014)	**Report all transactions through April 7, and not previously reported**
2nd Monday in May (May 12, 2014)	**Report all transactions from April 8 through May 5, 2014**
Thursday before the Primary election (May 29, 2014)	**Report all transactions from May 6 through May 27, 2014**
30th day after the Primary Election (July 3, 2014).	**Report all transactions from May 28 through June 28, 2014**

General Election Cycle Reports

1-19-29(A) and (B) NMSA 1978

2nd Monday in September (September 8, 2014)	**Report all transactions from June 29 through September 1, 2014**
2nd Monday in October (October 13, 2014)	**Report all transactions from September 2 through October 6, 2014**
Thursday before the General Election (October 30, 2014)	**Report all transactions from October 7 through October 28, 2014**
30 days after the General Election (December 4, 2014)	**Report all transactions from October 29 through November 29, 2014**

What is required to be reported by political committees?

Each required report of expenditures and contributions shall be filed electronically utilizing the Campaign Finance Information System (CFIS) and shall include:

1. The name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name unless that is the complete legal name;

2. the occupation or type of business of any person or entity making contributions of two hundred fifty dollars ($250) or more in the aggregate per election;

3. the amount of the expenditure or contribution or value thereof;

4. the purpose of the expenditure; and

5. the date the expenditure was made or the contribution was received. For further guidance on the date for reporting, see page 15 below.

Each report shall contain an opening and closing cash balance for the bank account maintained by the reporting individual during the reporting period and the name of the financial institution.

Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed. (1-19-31)

What if you forget to report a contribution or expenditure?

You may either amend the report for the period covering the omitted transaction, OR you may report it on the most current report as a previously unreported transaction.

However, the failure to timely report transactions may still subject the committee to fines and/or penalties under the Campaign Reporting Act.

What if you have no transactions to report?

If a committee does not receive any contributions or expend any funds since the last report was filed, a statement of no activity ~~must~~ may be filed in lieu of a campaign report.

Who is required to file campaign reports?

Except for political committees who file a statement of no activity, each treasurer of a political committee shall file a report of expenditures and contributions pursuant to the filing schedule. Reports are required until the reporting committee delivers a report to the filing officer stating:

1. there are no outstanding campaign debts;
2. all money has been expended in accordance with 1-19-29.1 NMSA 1978
3. the committee has dissolved; and
4. the bank account has been closed. (1-19-29(F) NMSA 1978)

What if a report is not filed or filed late?

The failure to timely report transactions may still subject the political committee to fines and/or penalties under the Campaign Reporting Act.

The Office of Secretary of State, at all times, will seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act.

If it is determined that a provision of the Act has been violated, a written notice will be sent to the treasurer explaining the violation and fine imposed. The treasurer has ten working days from the date of the letter to correct the violation and provide written explanation stating the reason why the violation occurred. If a timely explanation is filed and it is determined that good cause exists to waive the fine imposed, the Office of Secretary of State may by written notice partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception.

A committee may protest the Office of Secretary of State's determination and any penalty imposed by a notice of final action by completing and signing the Request for Arbitration sheet and submitting it for filing within ten working days of the date of the notice of final action. See Appendix "A" to this Guide.

The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the Office of Secretary of State is authorized to impose. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the Office of Secretary of State within thirty days of the conclusion of the hearing.
(1-19-34.4 NMSA 1978)

For a civil injunctive or other appropriate order or for criminal enforcement, the Office of Secretary of State may refer a matter to the attorney general or a district attorney.

What qualifies as a "contribution"?

A "contribution" is a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution that is made or received for a political purpose, including payment of a debt incurred in an election campaign.

A "contribution" does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee; (1-19-26(F) NMSA 1978)

Categories of Contributions

Gifts of Money

The Campaign Reporting Act does not define a gift. However a gift is defined under the Gift Act, 10-16B-1 NMSA 1978. The Gift Act is not administered by the Secretary of State's office, but instead is administered by the Attorney General's office.

A contribution of money may be made by check, cash, credit card or other written instrument including electronic transfer.

Loans

A person or political committee may loan money to a candidate, but the amount of the loan is considered a contribution to the extent that it remains outstanding. Thus, a loan is subject to the same contribution limits as a gift of money, though repayments on the loan reduce the outstanding amount of the contribution. Once repaid in full, a loan no longer counts against the lender's limit. (A loan that exceeds the contribution limit is unlawful even if it is repaid in full.)

Bank loans are not considered contributions if made in the ordinary course of business and on a basis that assures repayment. An endorsement or guarantee of a loan counts as a contribution to the extent of the outstanding balance of the loan. Once the loan is repaid, the endorsement or guarantees no longer counts against the guarantor's contribution limit.

Advance or Deposit of Money or Other Things of Value

An extension of credit outside a creditor's ordinary course of business is considered a contribution.

In-Kind Contributions

The Campaign Reporting Act does not define in-kind contributions. The Office of Secretary of State has looked to the Federal Election Commission Campaign Guide on this issue and is of the opinion that in-kind contributions are defined as: goods or services offered for free or at less than the usual charge.

Similarly, when a person pays for services on the committee's behalf, the payment is an in-kind contribution. An expenditure made by a person in cooperation or consultation with, or at the request of a candidate is also an in-kind contribution. In-kind contributions include gifts of goods and services. For example, an organization may make an in-kind contribution by hosting a fundraising event for a candidate.

A political committee may make an in-kind contribution by donating the goods and services directly to the candidate or campaign committee or by paying a third party to provide them. The value of an in-kind contribution is subject to the same limit as a gift of money.

Notifying the Recipient

The donor should advise the committee of the value of an in-kind contribution at the time it is made so that the committee can disclose it properly and monitor the donor's aggregate contributions.

Allocation of In-Kind Contributions

When a political committee makes an in-kind contribution on behalf of more than one candidate, the expenses associated with that activity must be allocated among the candidates to determine the amount of the contribution made to each.

Contribution Limits and In-Kind Contributions

The value of an in-kind contribution- the usual and normal charge- counts against the contribution limit as a gift of money does.

Value

Goods, such as facilities, equipment, supplies or mailing lists, are valued at the price the item or facility would cost if purchased or rented at the time the contribution is made. For example, if someone donates a personal computer to the committee, the contribution equals the ordinary market price of the computer at the time of the contribution.

Services, such as advertising, printing or consultant services are valued at the prevailing commercial rate at the time the services are rendered.

Proceeds from Sales

The entire amount paid to attend a political fundraiser or other political event or to purchase a fundraising item sold by a political committee is a contribution and counts against the individual's contribution limit, except for special events.

Cash contributions received at special events that are unidentifiable as to specific contributions but identifiable as to the special event are not subject to the anonymous contribution limits so long as no single special event raises more than $1000 in unidentifiable cash contributions. For those unidentifiable contributions, due diligence and best efforts shall be made to disclose (1) the sponsor of the event (2) the date (3) the total amount received (4) the expenses incurred; (5) the estimated number of persons in attendance; and (6) any other identifiable facts that describe the special event.

A "special event" includes an event such as a barbeque or similar fundraiser when tickets costing fifteen dollars ($15.00) or less are sold or an event such as a coffee, tea or similar reception. (1-19-34(C) NMSA 1978)

Under the statute, if tickets costing more than $15.00 are sold, or the event raises more than $1000, then the committee must report the names and addresses of the contributors. It cannot report such events as "special events".

Anonymous Contributions

An anonymous contribution is a contribution that is received but it is unknown to the political committee as to who has made the contribution. There are limitations on amount of anonymous contributions that may be accepted within each election cycle.

No single anonymous contribution may be accepted in the excess of $100.
(1-19-34(B) NMSA 1978)

Volunteering

Volunteering time on behalf of a political committee is not considered a contribution.

Personal Services

An individual may volunteer his or her own personal services to a political committee. A few examples of "personal services" that could be volunteered are word processing, entertaining or making phone calls or deliveries.

To qualify as a volunteer activity, however, personal services may not be compensated by the political committee or by anyone else. If a third party pays an individual for services rendered to

a local party organization, that person is making an in-kind contribution to the political committee.

Activities in Home, Community Facilities or Community Room

Individuals may use their homes or the recreation room of their apartment complex to conduct volunteer activities. Individuals may also use a church or community room for volunteer activities, as long as the room is used on a regular basis by members of the community without regard to political affiliation. Nominal fees paid to use these rooms are not contributions or expenditures.

~~Food, Drinks and Invitations for Home Event~~

~~Individuals may volunteer to host a fundraising event, reception or other type of activity in their own homes (or in one of the other rooms described in the previous paragraph) to support all committees of a political party. A single host may spend up to $2,000 per calendar year on food, beverages and invitations for such events. If two persons live together and host an event, they may spend up to $4,000 per year. Amounts spent in excess of these limits result in contributions.~~

~~Note that if an individual co-hosts an event held in someone else's home, any expenses paid by the nonresident co-host are considered in-kind contributions to the political committee or candidate.~~

Contributions in the Name of Another

It is unlawful for a person to make a contribution in the name of another person, and no committee shall knowingly accept a contribution made by one person in the name of another person.

What is "earmarking"?

Earmarking is not defined in the Campaign Reporting Act. Under federal law, an earmarked contribution is one which the contributor directs (either orally or in writing) to a clearly identified candidate through an intermediary or conduit.

Key Terms

The term "solicit" means, "to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether [it] is to be made or provided directly, or through a conduit or intermediary."

~~Suggested Procedures: Good Faith~~ Handling of ~~Illegal~~ Questionable Contributions

The treasurer of a committee is responsible for ensuring that all contributions are lawful. If the treasurer has reason to suspect that a contribution is excessive or prohibited, he or she must, within 10 days of receiving the contribution, contact the Secretary of State's Office to voluntarily report and correct the discrepancy. ~~return the contribution to the donor or deposit the contribution. If the contribution is deposited, the treasurer must:~~

- ~~Maintain sufficient funds in the account to refund the contribution should it prove to be illegal or place the contribution in a separate account for this purpose;~~
- ~~Keep written records noting the basis for the appearance of illegality;~~
- ~~Note that the legality of the contribution is in question when reporting the receipt of the contribution; and~~
- ~~Comply with appropriate deadlines.~~

Excessive Contributions

The treasurer must check committee records regularly to make sure that successive contributions from one contributor remain within the limits. If the committee receives an excessive contribution (i.e., one that is excessive on its face or that exceeds the limits when added to previous contributions made by the same donor), the committee may deposit it and:

Seek the contributor's reattribution of the excessive portion of the contribution to a joint contributor; and/or

In the case of a contribution to a candidate committee, seek the contributor's redesignation of the excessive portion for a different election for which the contributor has not yet exceeded the limits.

Generally, within 60 days of receiving an excessive contribution, the committee must:

Either receive a written reattribution and/or redesignation from the contributor so that the contribution is no longer excessive; or

Refund the excessive portion of the contribution to the donor.

Under certain circumstances, a political committee may reattribute and/or redesignate an undesignated, excessive contribution without obtaining advance authorization from the contributor(s). Committees may only make such presumptive redesignations or reattributions within one election cycle.

Presumptive Reattributions

When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion will be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

Political committees employing this presumption must notify all contributors by paper mail, e-mail, fax or other written method within 60 days of the committee treasurer's receipt of the check. At the time of notification, the committee must offer the contributor who signed the check a refund of the excessive portion.

Deliver and Receipt of Contributions:

Date Contribution is Made vs. Date of Receipt

The date a contribution is made by the contributor and the date the contribution is received by the committee are significant for purposes of the contribution limits.

A contribution is "made" by the contributor when the contributor relinquishes control over it.

If the contributor hand delivers a contribution to a campaign, the contribution is made on the delivery date.

If mailed, a contribution is made on the date of the postmark.

An in-kind contribution is made on the date that the goods or services are provided by the contributor.

A contribution made via the Internet is considered made on the date the contributor electronically confirms the transaction.

The Date a Contribution is Received

The date of receipt is the date the committee (or a person acting on the committee's behalf) actually receives the contribution. This is the date the committee should use to report the contribution. The date of deposit is not used for reporting or contribution limit purposes.

When the committee receives contributions through credit card charges, the date of receipt is the date on which the committee receives the contributor's signed authorization to charge the contribution. The date of receipt of in-kind contributions is the date the goods or services are provided to the committee.

Are there restrictions on the timeframe when contributions from political committees can be solicited by candidates?

It is unlawful during the prohibited period for a state legislator or candidate for state legislature, or any agent on behalf of either, to knowingly solicit a contribution for a political purpose.

For legislators and legislative candidates, "Prohibited period" means that period beginning January 1 prior to any regular session of the legislature, or in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

It is unlawful during the prohibited period for the governor, or any agent on the governor's behalf, to knowingly solicit a contribution for a political purpose. For purposes of this section, the "prohibited period" means the period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the 20th day after adjournment of the regular or special session. (1-19-34.2)

Regulated Industry Contributions are Prohibited

It is unlawful for an elected state official, public officer or employee who works for a regulatory office or a candidate who seeks election to a regulatory office or anyone authorized by a candidate to solicit funds on his or her behalf to knowingly solicit a contribution from an entity or its officers or employees or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the regulatory office or when a license to do business in the state is determined by the regulatory office. (1-19-34.2)

Contribution Limits

Are there restrictions on the amounts of contributions that can be given to a candidate or campaign committee?

Under the Act, individuals and groups are limited in the amounts they may contribute to candidates for offices covered by the Act and to political committees which make contributions to candidates or engage in coordinated expenditures with candidates. The limitations do not apply to political committees making independent expenditures.

The limitations apply to any type of contribution, including contributions of money, contributions of goods or services, loans, endorsements of loans, etc.

Political committees may not retain contributions that exceed the donor's contribution limit.

	To each political committee during an election cycle
Individual may give	$5,200*
PAC may give	$5,200*

* These contribution limits are indexed for inflation.

A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the political committee.

Are there restrictions on the amounts of **contributions that can be** received by a political committee?

Under the Act, individuals and groups are limited in the amounts they may contribute to political committees (committees that make contributions to candidates or engage in coordinated expenditures with candidates). The limitations do not apply to entities making independent expenditures.

Political committees may not retain contributions that exceed the donor's contribution limit.

	To each political committee during any election cycle
Individual may give	$5,200*
Political committee may give	$5,200*

* These contribution limits are indexed for inflation.

A contribution earmarked for a candidate through a political committee counts against the original contributor's limit for that candidate. In certain circumstances, the contribution may also count against the contributor's limit to the political committee.

Expenditures

What qualifies as an expenditure?

An "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including

payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

Are there restrictions on expenditures that can be made?

Political committees do not have restrictions on the types of expenditures that can be made, except for the limitations on contributions to candidates and campaign committees, and for coordinated expenditures.

What is the Primary Election Cycle?

The primary election cycle for political committees begins on the date after each general election and ends on the day of the next primary.

What is the General Election Cycle?

The general election cycle begins on the day after the primary and ends on the day of the general election.

Important Note: the primary election cycle for candidates ends on the day of the primary for that office. For instance, the primary election cycle for State House legislative candidates runs from the day after each general election until the next primary, just as it does for political committees.

However, the primary election cycle for State Senators and statewide office holders, as well the Public Regulation Commission candidates, runs from the day after the General election in which they were elected, until the next primary election in which they run.

Likewise, State Senators and statewide office holders, as well Public Regulation Commission candidates, only have a general election cycle during the years in which they are candidates.

Election Cycles

For All Political Committees, State Representatives and any other two year office holder.	
Primary Election Cycle	November 7, 2012 through June 3, 2014
General Election Cycle	June 4, 2014 through November 4, 2014
For Governor, Lt. Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, State Senators, Judicial Candidates running in 2014, and any 4 year office holder running in 2014.	
Primary Election Cycle	November 2, 2010 through June 3, 2014
General Election Cycle	June 4, 2014 through November 4, 2014

For any four year office holder who runs in 2016 (county offices, district attorneys, public education commission, public regulation candidates and judicial candidates)	
Primary Election Cycle	November 7, 2012 through June 7, 2016
General Election Cycle	June 8, 2016 through November 8, 2016

Political committees should be aware of the different election cycles for candidates in order to avoid violating the contribution limits.

The CRA defines the primary and general election cycles as beginning and ending on the date of the primary and general elections "for the applicable office." For political committees, the primary election cycle begins the day after any general election and ends on the date of any primary election. Additionally, for political committees, the general election cycle begins on the day after any primary election and ends on the day of any general election.

Election Limits

The limits on contributions to a candidate committee apply separately to each election in which the candidate participates. (Primary and general elections are considered separate elections, with separate contribution limits. To avoid making an inadvertent excessive contribution, the Secretary of State strongly encourages contributors to designate their contributions to a candidate by writing the name of the specific election on the check or by attaching a signed statement with the same information.

Any undesignated contribution automatically applies to the candidate's upcoming election. For example, an undesignated contribution made after the candidate's primary but before the general election counts against an individual's limit for the general election. An undesignated contribution made after the general election counts against the limit for the next primary election in which the candidate runs for an office covered by the Act.

Designating Contributions:

If a contributor wants a contribution to count against an election other than the candidate's upcoming election, the donor should designate the election on the check or in an accompanying signed note.

Certain Contributions Prohibited

Corporations, Labor Organizations and National Banks

National banks and federally chartered corporations are prohibited under federal law from making contributions in connection with any election, including state and local elections. Contributions may, however, be made from separate segregated funds (also called political

action committees or PACs) established by corporations, labor organizations, national banks, and incorporated membership organizations.

Foreign Nationals

Under federal law, contributions and donations may not be solicited, accepted, or received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States (i.e., those without green cards). This prohibition encompasses all US elections; including federal, state and local elections.

What are the civil penalties if a violation of the Campaign Reporting Act occurs?

If the Secretary of State reasonably believes that a violation has been committed or a political committee is about to commit a violation of the Campaign Reporting Act, the Secretary of State shall refer the matter to the attorney general or a district attorney for enforcement.

The attorney general or district attorney may file a civil action in district court for any violation or to prevent a violation of the act involving an unlawful solicitation or making or accepting an unlawful contribution.

An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars ($250) for each violation not to exceed five thousand dollars ($5,000), and forfeiture of any contribution received as a result of an unlawful solicitation or contribution. Each unlawful solicitation and contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

The attorney general or district attorney may file a civil action in district court if a violation has occurred or to prevent a violation of the Campaign Reporting. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars ($50.00) for each violation not to exceed five thousand dollars ($5,000).

Expenditures Made By Other Entities that May Affect Political Committees

Coordinated Communications and Independent Expenditures:

The New Mexico Campaign Reporting Act does not define "coordinated communications" or "independent expenditures", but judicial rulings hold that these terms must be applied in New Mexico in relation to the Act. Therefore, these rules define the terms "coordinated

communication" and "independent expenditure," and explain reporting and other requirements that apply to each.

Coordinated Expenditures- Reporting by the Political Committee is Required:

When an individual or political committee pays for a communication that is coordinated with a candidate or campaign committee, the communication is considered an in-kind contribution to that candidate or campaign committee and is subject to the limits, prohibitions and reporting requirements of the New Mexico Campaign Reporting Act.

In general, a payment for a communication is "coordinated" if it is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or their agents. (These rules also apply to candidates and campaign committees, but the Guidelines set forth here pertain to political committees. For guidance on independent expenditures and coordinated expenditures between political committees and other entities, see the Guidelines for Candidates and Campaign Committees)

To be an "agent" of a candidate, candidate's committee or political party committee for the purposes of determining whether a communication is coordinated, a person must have actual authorization, either express or implied, from a specific principal to engage in specific activities, and then engage in those activities on behalf of that specific principal. Such activities would also result in a coordinated communication if carried out directly by the candidate, authorized committee staff or a political party official.

Independent Expenditures- Reporting by the Political Committee is Not Required

An independent expenditure is an expenditure for a communication "expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents."

Some entities are permitted to make expenditures that, by operation of case law rather than statute, are not required to be reported under the Campaign Reporting Act. Those expenditures are ones that are not coordinated with a candidate or campaign. They do not constitute contributions to the candidate. The following Guidelines attempt to assist candidates in determining whether they are affected by certain expenditures, and whether they are required to report various expenditures by entities other than their campaign committees.

Candidate-Prepared Material

Generally, an expenditure made to distribute or republish campaign material produced or prepared by a candidate's campaign is an in-kind contribution to that candidate, and not an independent expenditure.

Three-Prong Coordination Test

These Guidelines offer a three-prong test to determine whether a communication is coordinated. All three prongs of the test—payment, content and conduct—must be met for a communication to be deemed coordinated and thus an in-kind contribution.

1. Payment Prong

In order to satisfy the payment prong, the communication need only be paid for, in whole or in part, by someone other than a candidate, a candidate's authorized committee, a political party committee or an agent of the above.

2. Content Prong

The content prong relates to the subject matter and timing of the communication. A communication that meets **any one** of these four standards satisfies this part of the test:

1. A public communication that expressly advocates the election or defeat of a clearly identified candidate;
2. A communication that is an "electioneering communication" (i.e. a broadcast communication that mentions a covered candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election);
3. A public communication that republishes, disseminates or distributes in whole or in part campaign materials prepared by a candidate or a candidate's campaign committee; or
4. A public communication that is:

   a. Made within 90 days before an election and:

   - Refers to a clearly identified candidate covered by the Campaign Reporting Act and is publicly distributed in that candidate's jurisdiction; or
   - Refers to a political party, is coordinated with a candidate covered by the Campaign Reporting Act, and is publicly distributed in that candidate's jurisdiction; or
   - Refers to a political party, is coordinated with a political party, and is publicly distributed during the primary election cycle

3. Conduct Prong

The conduct prong examines the interactions between the person paying for the communication and the candidate, authorized committee or political party committee, or their agents. A communication satisfies this part of the test if it meets any one of the five standards

regarding the conduct of the person paying for the communication and the candidate, the candidate's committee, a political party committee or agents of the above:

1. If the communication is created, produced or distributed at the request or suggestion of the candidate, candidate's committee, a party committee or agents of the above; or the communication is created, produced or distributed at the suggestion of the person paying for the communication and the candidate, authorized committee, political party committee or agent of any of the foregoing assents to the suggestion.
2. If the candidate, the candidate's authorized committee or party committee is materially involved in decisions regarding the content, intended audience, means or mode of the communication, specific media outlet used, the timing or frequency or size or prominence of a communication.
3. If the communication is created, produced or distributed after one or more substantial discussions about the communication between the person paying for the communication or the employees or agents of that person and the candidate, the candidate's committee, the candidate's opponent or opponent's committee, a political party committee or agents of the above.
4. If the person paying for the communication employs a common vendor to create, produce or distribute the communication, and that vendor:
    - Is currently providing services or provided services within the previous 120 days with the candidate or party committee that puts the vendor in a position to acquire information about the campaign plans, projects, activities or needs of the candidate or political party committee; and
    - Uses or conveys information about the plans or needs of the candidate or political party, or information previously used by the vendor in serving the candidate or party, and that information is material to the creation, production or distribution of the communication.
5. If a person who has previously been an employee or independent contractor of a candidate's campaign committee or a party committee during the previous 120 days uses or conveys information about the plans or needs of the candidate or political party committee to the person paying for the communication, and that information is material to the creation, production or distribution of the communication.

Formal agreement or collaboration between the person paying for the communication and the candidate, authorized committee or political party committee, or their agents, is not required.

Safe Harbors

Several safe harbors exist that exempt certain communications from the coordinated communications regulations. Please note that these safe harbors only address whether or not communications are coordinated.

Endorsements and Solicitations:

Candidates for office may endorse other candidates without running afoul of the coordination rules. They may also solicit funds for other candidates and political committees. Such endorsements or solicitations are not coordinated communications (i.e., in-kind contributions) with respect to the endorsing or soliciting candidate unless the communication promotes his or her candidacy or attacks his or her opponent. This safe harbor applies no matter when the endorsement or solicitation communication is distributed.

Legislative Inquiries:

A candidate's or political party committee's response to an inquiry about that candidate's or party's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not satisfy any of the conduct standards.

Publicly Available Information:

Persons may use publicly available information in creating, producing or distributing a communication, and such use does not, in and of itself, satisfy four of the five conduct standards above. This safe harbor does not apply to the "request or suggestion" conduct standard. To qualify, the person paying for the communication must demonstrate that the information used in creating, producing or distributing the communication was obtained from a publicly available source.

Establishment and Use of a Firewall:

When a commercial vendor, former employee or political committee establishes and uses a firewall to prevent the sharing of information about the candidate or political party's plans, projects, activities or needs, the conduct standards above will not be satisfied. To qualify for the safe harbor, the firewall must be described in a written policy that is distributed to all relevant employees, consultants and clients affected by the policy. The firewall must be designed and implemented to prohibit the flow of information between:

1. Employees or consultants providing services for the person paying for the communication; and
2. Those currently or previously providing services to the candidate, the authorized committee, the candidate's opponent, the opponent's authorized committee or a political party committee.

The Office of Secretary of State does not require firewalls and will not draw a negative inference from the lack of such a screening policy.

Who May Make Coordinated Communications

Any entity that can make a political contribution in New Mexico can make a coordinated contribution. If a communication is coordinated it is considered an in-kind contribution subject to the Act's contribution limits and limited source prohibitions.

Reporting Requirements for Coordinated Communications

Coordinated communications are reported as in-kind contributions by the candidate. Political committees making the expenditure must report the expenditure as an in-kind contribution to the candidate.

Candidates and campaign committees must report the receipt of the in-kind contribution.

Political committees that make disbursements for coordinated party communications on behalf of a candidate may report them as in-kind contributions.

Individuals do not have reporting requirements for contributions they make.

Independent Expenditures

An independent expenditure is an expenditure for a communication "expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents."

Who May Make Independent Expenditures

Persons permitted to make contributions in connection with New Mexico elections governed by the Campaign Reporting Act (such as individuals and political committees) may make independent expenditures.

Certain Nonprofit Corporations May Make Independent Expenditures

In *Federal Election Commission v. Massachusetts Citizens for Life, Inc.* (MCFL), the Supreme Court outlined a limited exception to the general prohibition on corporate expenditures. The Court said that MCFL, a nonprofit corporation, could make independent expenditures because it had certain essential features. These features are included in the Office of Secretary of State regulatory definition of Qualified Nonprofit Corporations (QNCs). A QNC is a corporation that has all of the following five characteristics:

1. It is a nonprofit, social welfare organization described in 26 U.S.C. § 501(c)(4);
2. It was formed for the express purpose of promoting political ideas;
3. It does not engage in business activities;

4. It has no shareholders or other persons affiliated so as to have a claim on its assets or earnings; and
5. It was not established by a business corporation or a labor union and does not accept contributions from such entities.

DISCLAIMERS

New Mexico has three statutes that specifically cover disclosures in political advertising.

Section 1-19-16 provides that it is "unlawful" for "any person, organization or political committee" to "publish or print" any "campaign advertising or communication" which does not specify the name of the "sponsor or the name of a responsible officer who authorized the printing or publication of such material, in any election, special election, school district election or an election authorizing a bond issue". That section states that it applies "only to handbills, petitions, circulars, letters or similar written material."

Section 1-19-17 provides that it is "unlawful" for any "person, organization, or political committee" to "circulate or distribute" any "campaign advertising or communication" which does not specify the "name of the sponsor of such material, in any election, special election, school district election or an election authorizing a bond issue." That prohibition applies to "handbills, petitions, circulars, or similar written material."

In Attorney General Opinion 97-01, the A.G. opined that these two statutes are unconstitutional and unenforceable. The Attorney General cited The Supreme Court the U.S. Supreme Court holding in McIntyre v. Elections Committee, stating:

> **Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent. Anonymity is a shield from the tyranny of the majority....It thus exemplifies the purpose behind the Bill of Rights and of the First Amendment in particular: to protect unpopular individuals from retaliation-and their ideas from suppression-at the hand of an intolerant society. The right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse.**

However, after 1997, the Campaign Reporting Act was amended to place contribution limits on candidates and political committees. Judicial decisions have created categories of expenditures – independent expenditures and coordinated expenditures- which are not defined in the Act.

The requirement that candidates, campaign committees and political committees must identify the sponsor of the material serves an important purpose in allowing the voters and the general public to discern whether political advertisements are sponsored by the candidates, political parties, or independent expenditure committees.

The Secretary of State's office will require that candidates, campaign committees and political committees, including independent expenditure committees, disclose the name of the sponsor on any campaign advertising that they "circulate or distribute", and will request enforcement of that provision by the Attorney General or any district attorney pursuant to 1-19-17 NMSA 1978, and the provisions of the Campaign Reporting Act.

Specific Statutory Disclaimers in Telephone Calls Supporting or Opposing a Candidate or Ballot Measure

Under NMSA 1978, 1-19-26.3, a campaign committee or political committee (including a committee making independent expenditures) shall not expend campaign or political committee funds to directly or indirectly pay for a telephone call without disclosing to the recipient the name of the organization that authorized or paid for the call if the call:

(1) is one of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means; and

(2) advocates support for, or opposition to, a candidate for public office or ballot measure.

The campaign committee or political committee that pays for a call shall be disclosed in the call unless the committee that authorized the call and the name announced in the call is either:

(1) the full name by which the organization or individual is identified in any statement or report required to be filed pursuant to the Campaign Reporting Act; or

(2) the name by which the organization or individual is commonly known.

A campaign committee or political committee that pays directly or indirectly for telephone calls as described above shall maintain a record of the script of the calls for at least 90 days following election day. If any of the calls are recorded messages, a copy of the recording shall also be maintained for that period.

A campaign committee or political committee may not contract with a phone bank vendor that does not disclose the information required to be disclosed above.

Disclaimer Requirements for Coordinated Communications

The following types of communications require a "disclaimer" statement identifying the person paying for the communication:

1. Any public communication made by a political committee;
2. Electronic mail of more than 500 substantially similar communications when sent by a political committee;
3. A political committee web site available to the general public; or
4. Any public communication made by any person that contains express advocacy, solicits a contribution or qualifies as an "electioneering communication" under 11 CFR 100.29.

A disclaimer statement must be clear and conspicuous, cannot be difficult to read or hear or placed in such a way that it is easily overlooked. Additional requirements apply to print, radio and television advertisements.

For messages that are authorized, but not financed by a candidate or a candidate committee, the disclaimer statement must:

1. State that the communication was authorized by the candidate or the candidate's committee; and
2. Identify who paid for the communication.

Here is an example of a disclaimer notice for a printed coordinated communication paid for by XYZ Political Action Committee (PAC):

Paid for by the XYZ PAC and authorized by the Sheridan for Congress Committee

Best Practices for Political Committee Management

The Secretary of State's office has encountered a number of cases of where political committee staff members were accused of misappropriating funds by subsequent officers. In addition to the difficulties committees face in discovering that funds are missing, misappropriations are often accompanied by the filing of inaccurate disclosure reports with the Secretary of State leaving committees vulnerable to enforcement action and potential liability for those reporting errors.

To help protect committees, the Secretary of State has created a safe harbor rule for political committees that have certain internal controls in place to prevent misappropriations and associated misreporting. Under this provision, if these internal controls are in place at the time of a misappropriation, and the committee follows the post-discovery steps described below, the Secretary of State will not seek a civil penalty against the political committee for filing incorrect reports due to the misappropriation of committee funds.

What are the minimum internal controls required for the safe harbor?

In order to avail itself of the safe harbor, a political committee must implement these minimum internal controls:

1. All bank accounts must be opened in the name of the committee using the committee's Employer Identification Number. Bank accounts for political committees should not be opened in the name of an individual using an individual's Social Security Number.
2. Bank statements must be reviewed for unauthorized transactions and reconciled with the accounting records each month. Further, bank records must be reconciled with disclosure reports prior to filing. The reconciliations must be done by someone other than a check signer or an individual responsible for handling the committee's accounting.
3. Checks in excess of $1,000 must be authorized in writing and/or signed by two individuals. Further, all wire transfers must be authorized in writing by two individuals. The individuals who authorize disbursements or sign checks should be identified in writing in the committee's internal policies.
4. An individual who does not handle the committee's accounting or have banking authority receives incoming checks and monitors all other incoming receipts. This individual makes a list of all committee receipts and places a restrictive endorsement, such as "For Deposit Only to the Account of the Payee," on all checks.
5. The committee must use an imprest system for petty cash funds, and the value of the petty cash fund should be no more than $500. An imprest system is one in which the sum of the disbursements recorded in the petty cash log since the last replenishment and the remaining cash always equals the stated amount of the fund. When the fund is replenished, the amount of the replenishment equals the amounts recorded since the prior replenishment and should bring the cash balance back to the stated amount. Only one person should be in charge of the fund.

What should the committee do if it discovers a misappropriation?

As soon as a misappropriation is discovered, the political committee must notify law enforcement. The committee also must notify the Secretary of State and file amended reports to correct any reporting errors due to the misappropriation.

Is there anything else the committee can do to prevent misappropriations?

The Secretary of State's office recommends that political committees implement additional internal controls to help prevent misappropriation of funds and the filing of inaccurate disclosure reports. The recommended controls include:

1. Limiting the number of people authorized to sign checks. In addition, checks in excess of a certain dollar amount should require the signature of two responsible individuals. The recommended threshold is $1,000. Facsimile signatures should be prohibited unless controlled by a check-signing machine with a numerical sequence counter. No signature stamps should be allowed.
2. Carefully controlling committee debit and credit cards since they represent easy access to committee assets. Ask the committee's bank or credit card issuer about placing dollar restrictions and prohibitions on withdrawals.
3. Recording receipts as mail is opened. A responsible official should periodically compare the list with the recorded amount for the deposit and the amount on the bank statement. Consider using a lockbox service to process receipts.
4. Mailing checks promptly and directly to the payees. The person mailing the check should be independent of those requesting, writing and signing it. Also, require that the person taking control of the checks sign for them.
5. Implementing a daily back-up system for the committee's electronic data to avoid a loss of data that can interfere with the committee's ability to file timely and accurate disclosure reports.

Office of the Secretary of State
State of New Mexico
Ethics Administration
325 Don Gaspar Suite 300
Santa Fe, NM 87503
Telephone: 800.477.3632 or 505.827.3600
Fax: 505.827.4954

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POLITICAL COMMITTEE REGISTRATION FORM

The *Campaign Reporting Act* defines a political committee, in general, to mean two or more persons other than a candidate's campaign committee who are selected, appointed, chosen, associated, organized or operated **primarily** for a political purpose that is, to influence or attempt to influence an election. The term ***political committee*** includes political action committees and similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose.

The law also requires that political committees register with the Secretary of State **within ten days of receiving or spending more than $500.00 in a calendar year**. **A onetime registration fee of $50.00** is required. If the political committee **does not receive or spend more than $500.00 in a calendar year**, then **it is not required** to register or file reports of contributions and expenditures.

1. a. Verde Voters [redacted] PAC
   (Full name of Political Committee)
   b. 507 Webber St
   (P.O. Box or Street Address)
   c. Santa Fe NM 87505 505-992-8683 info@cvnm.org
   (City, State, Zip) (Telephone #) (Email Address)

2. Statement of Purpose *(Provide specific purpose for which the Political Committee was organized)*
   an Independent Expenditure Committee,
   to conduct "I.E.s" in State (non-federal) elections

3. Associated organization or entity:
   a. Conservation Voters NM
   (Full name or associated entity or organization, if any)
   b. 507 Webber St
   (P.O. Box or Street Address)
   c. Santa Fe NM 87505 505-992-8683 info@cvnm.org
   (City, State, Zip) (Telephone #) (Email Address)
   d. 501c4 Connected organization
   (Relationship of this entity to Political Committee)

EXHIBIT
tabbies
B

4. Bank Information: (NOTE: Financial institution must be located in the State of New Mexico)

a. Community Bank
(Full name of bank and/or financial institution)

b. 549 S. Guadalupe
(P.O. Box or Street Address)

c. Santa Fe NM 87501
(City, State, Zip) (Telephone #)

5. Officers: Marla Painter, Treasurer
Full name of officer and position held)

507 Webber St
(P.O. Box or Street Address)

Santa Fe NM 87505 992-8683 info@cnm.org
(City, State, Zip) (Telephone #) (Email Address)

(Full name of officer and position held)

(P.O. Box or Street Address)

(City, State, Zip) (Telephone #) (Email Address)

(Full name of officer and position held)

(P.O. Box or Street Address)

(City, State, Zip) (Telephone #) (Email Address)

CERTIFICATION

I hereby swear or affirm under penalty of law that all the information on this form is true, correct and complete to the best of my knowledge.

Attested this 27 day of March, 2012. [signature] (Signature of treasurer)

NOTARY INFORMATION

State of New Mexico

County of Bernalillo

Signed or attested before me this 27th day of March, 2012, by Maria G Painter

SEAL)

OFFICIAL SEAL
Liudmila Macrail
Notary Public
State of New Mexico
My Comm. Expires 01-03-15

[signature]
Notary Public
(Signature of notarial officer)

My commission expires: 01-03-15

IN THE MATTER OF
REPRESENTATIVE ZACH COOK'S COMPLAINT
REGARDING MAGGIE TOULOUSE OLIVER

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

AFFIDAVIT OF ALAN PACKMAN

Alan Packman, being first duly sworn, states as follows:

1. I am over the age of 18 and competent to make this Affidavit.

2. The statements in this Affidavit are based on my personal knowledge.

3. Maggie Toulouse Oliver was a candidate for the office of New Mexico Secretary of State in 2014.

4. I was the manager for that campaign. For purposes of this Affidavit, I use the term "Campaign" to mean Maggie Toulouse Oliver, the election committee, and its agents.

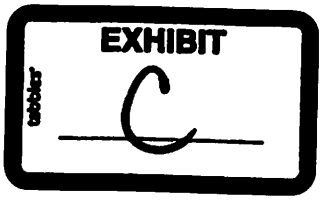
5. In my capacity as campaign manager, I am knowledgeable about all aspects of the Campaign's communications, communication strategies, and media buys.

6. As to communications prepared by, or paid for by Verde Voters Political Committee or the SoS For Democracy Political Committee regarding the election of Maggie Toulouse Oliver or the defeat of Dianna Duran for the office of Secretary of State in the 2014 election cycle:

   a. The Campaign did not pay for, in whole or in part, any such communication.

   b. No such communication was created, produced or distributed at the request or suggestion of the Campaign.

   c. The Campaign was not involved in decisions regarding the content, intended audience, or the means or mode of such communication.



d. The Campaign was not involved in decisions regarding the specific media outlet(s) used, the timing or frequency, or the size or prominence of such communication.

e. The Campaign was not involved in discussions about such communications with Verde Voters or SoS For Democracy or any of their agents or employees.

f. To the best of my knowledge, the Campaign did not employ a vendor used by Verde Voters or SoS For Democracy to create such communication.

g. To the best of my knowledge, no former employee or independent contractor of the Campaign used or conveyed information about the Campaign's plans or needs to Verde Voters or SoS For Democracy.

7. In my capacity as campaign manager, I was knowledgeable about contributions received by the Campaign and about the CFIS reports filed by the Campaign.

8. The Campaign did not receive any contributions from Verde Voters or SoS for Democracy during the 2014 election cycle.

9. The Campaign accurately reported all contributions it received for the 2014 election cycle.

Alan Packman

Subscribed to and sworn before me by Alan Packman, this 8th day of July, 2016.

OFFICIAL SEAL
KATY CORNETT
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 7/31/2017

Notary Public

My Commission Expires:

7/31/2017