

## ADVISORY OPINION REQUEST

**Number:** AO 10-08-CD

**Requested By:** District 2 Democrats – Denton Pearson

**Prepared By:** Vullnet Greva, Campaign Disclosure, Administrator

**Date Issued:** June 10, 2010

**Subject:** The District 2 Democrats ask whether they can accept funds from the Nome Convention and Visitors Bureau for an advertisement in the 2010 Democratic State Convention Program.

**Commission Decision:** On June 10, 2010, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 5 to 0.

### **QUESTION PRESENTED**

Can the District 2 Democrats (“the party”) accept monies from Nome Convention and Visitors Bureau (“NCVB”) for an advertisement in the 2010 Alaska Democratic State Convention Program?

### **SHORT ANSWER**

Yes, the District 2 Democrats may accept money from NCVB to purchase ad space in the 2010 Alaska Democratic Party Convention Program. District 2 Democrats should separately account for these and other funds generated from Convention activity.

### **FACTS**

District 2 Democrats are a subdivision of the Alaska Democratic Party. The 2010 Alaska Democratic Party Convention is being held in Sitka next month and District 2 Democrats are publishing a Program to be distributed to Convention attendees.

District 2 Democrats are accepting ads from individuals and political campaigns interested in getting their message out to Convention attendees at specified rates for particular size ads. Fees paid for such ads are deposited to the District 2 Democrats’ checking account. The District 2 Democrats have only one checking account which is used both for campaign purposes and for operational purposes. It is from this account that funds will be disbursed to pay the Convention costs. Eventually, the District 2 Democrats will use this same account to support future candidates.

NCVB seeks to place an ad in the Convention Program promoting Nome as a site for the 2014 Alaska Democratic Convention. The District 2 Democrats propose a "paid for by" notation in the ad to remove any impropriety. This is unnecessary because the proposed ad is not a “communication” under AS 15.13.090 as defined by AS 15.13.400(3).

### **ANALYSIS**

The initial question presented is whether NCVB’s purchase of an advertisement somehow constitutes a contribution to the party. Because District 2 Democrats are a political party, their

purpose is to promote Democratic candidates. A contribution under AS 15.13.400 includes a purchase or payment made for the purpose of influencing the nomination or election of a candidate. The ad in question is not an ad to influence the outcome of an election nor does it have the intent to influence the election. The apparent intent of the ad is to advertise Nome as the location for an upcoming Democratic Convention. Therefore, the purchase of the ad by the NCVB is not a contribution, as defined in AS 15.13.400 and 2 AAC 50.250.

The proposed activity raises a secondary concern. The District 2 Democrats freely admit any surplus could be used to influence the outcome of future elections. APOC Staff takes a dim view of this practice. At some point, convention profit becomes a means to circumvent contribution limits. APOC Staff fully recognizes this is not the intent of the District 2 Democrats here. And APOC statutes and regulations do not specifically address whether a political party may provide advertising services to the general public then use that profit to eventually support candidates. But to avoid claims that this is an abusive practice, any revenue generated from the convention should be separated from contributions to the party. APOC Staff suggests that the party either:

1. create an alternate, non-campaigning account to which funds for services offered by the party can be deposited and used for purposes other than influencing the outcome of an election;
2. insure that the ad space provided to all is offered at cost, ensuring that there is no surplus; or
3. make sure that the funds generated from all ads purchased are carefully tracked by the party so it can be demonstrated to APOC that they are not used for purposes of influencing a subsequent election.

### **CONCLUSION**

The NCVB purchase for ad space on the 2010 Alaska Democratic Party Convention is not a contribution under AS 15.13. The NCVB is not prohibited from purchasing ad space on the 2010 Alaska Democratic Party Convention Program. Paid for by disclaimers are unnecessary. And District 2 Democrats should consider following the advice given above to avoid public scrutiny of this practice.

### **COMMISSION DECISION**

**On June 10, 2010, the Alaska Public Offices Commission heard and approved this advisory opinion request by a vote of 5 to 0.**

### **APPLICABLE LAW**

**Sec. 15.13.090. Identification of communication.** (a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the communication. In addition, candidates and groups may identify the name of their campaign chairperson.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(2) is made to influence the outcome of a ballot proposition as that term is defined by [AS 15.13.065\(c\)](#); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical. (§ 1 ch 76 SLA 1974; am § 22 ch 189 SLA 1975; am § 36 ch 100 SLA 1980; am § 15 ch 48 SLA 1996; am §§ 18, 19 ch 1 SLA 2002; am §5 ch 1 TSSLA 2002)

**Revisor's notes.** – In 2000, “chairperson” was substituted for “chairman” in (a) of this section in accordance with sec. 95(3), ch. 82, SLA 2000.

**Effect of amendments.** – The 1996 amendment, effective January 1, 1997, added subsection (b).

The first 2002 amendment, effective April 16, 2002, in subsection (a) and paragraph (b)(1) inserted references to nongroup entities.

The second 2002 amendment, effective June 26, 2002, rewrote subsection (a) and substituted "communication" for "advertisement" in the introductory language of subsection (b).

**Editor's notes.** – From April 16, 2002 through June 25, 2002, this section read as follows: "Identification of communication. (a) All advertisements, billboards, handbills, paid-for television and radio announcements, and other communications intended to influence the election of a candidate or outcome of a ballot proposition or question shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the advertising. In addition, candidates and groups must identify the name of their campaign chairperson.

"(b) The provisions of (a) of this section do not apply when the advertisement

**Sec. 15.13.374. Advisory opinion.** (a) Any person may request an advisory opinion from the commission concerning this chapter, AS 24.45, [AS 24.60.200](#) - 24.60.260, or AS 39.50.

(b) A request for an advisory opinion

(1) must be in writing or contained in a message submitted by electronic mail;

(2) must describe a specific transaction or activity that the requesting person is presently engaged in or intends to undertake in the future;

(3) must include a description of all relevant facts, including the identity of the person requesting the advisory opinion; and

(4) may not concern a hypothetical situation or the activity of a third party.

(c) Within seven days after receiving a request satisfying the requirements of (b) of this section, the executive director of the commission shall recommend a draft advisory opinion for the commission to consider at its next meeting.

(d) The approval of a draft advisory opinion requires the affirmative vote of four members of the commission. A draft advisory opinion failing to receive four affirmative votes of the members of the commission is disapproved.

(e) A complaint under [AS 15.13.380](#) may not be considered about a person involved in a transaction or activity that

(1) was described in an advisory opinion approved under (d) of this section;

(2) is indistinguishable from the description of an activity that was approved in an advisory opinion approved under (d) of this section; or

(3) was undertaken after the executive director of the commission recommended a draft advisory opinion under (c) of this section and before the commission acted on the draft advisory opinion under (d) of this section, if

(A) the draft advisory opinion would have approved the transaction or activity described; and

(B) the commission disapproved the draft advisory opinion.

(f) Advisory opinion requests and advisory opinions are public records subject to inspection and copying under AS 40.25. (§16 ch 108 SLA 2003)

Effective dates. – Section 16, ch. 108, SLA 2003, which enacted this section took effect on September 14, 2003.

**Sec. 15.13.400. Definitions.** In this chapter,

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing \$500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

## **REGULATIONS**

### **2 AAC 50.250. CONTRIBUTIONS**

(a) In AS 15.13 and this chapter, except as otherwise provided in this section, "contribution"

(1) has the meaning given in AS 15.13.400;

(2) includes a

(A) subscription, advance, transfer, forgiveness of all or part of a debt, relaxation of credit, or anything of value made or provided by a person, group, or nongroup entity for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; and

(B) personal contribution as described in 2 AAC 50.254; and

(3) does not include

(A) costs incurred in covering or carrying a news story, editorial, or commentary by a broadcasting station, newspaper, or periodical of regular publication, unless the media organization is owned or controlled by a political party, group, or candidate; if the media organization is owned or controlled by a political party, group, or candidate, the cost of the news story is a contribution, unless the news story is a bona fide news account and is part of a general pattern of campaign-related news accounts that gives reasonably equal coverage to all opposing candidates in the circulation or listening area;

(B) a non-monetary contribution or in-kind donation of a single item with a normal cost of \$50 or less;

- (C) a payment made by an individual for the individual's own travel expenses, if the payment is voluntary and is made without an understanding that the payment will be directly or indirectly repaid;
- (D) a payment made by a business, corporation, trade association, labor union, or other organization not organized primarily to influence elections to communicate directly with the organization's members or employees, or their families, on any subject, if the communication is of the same format used by the organization when it has communicated in the past on nonpolitical subjects, and does not solicit contributions or any action other than voting for or against a candidate or ballot proposition or question;
- (E) a gift, loan, advance, or deposit of money or anything of value made with respect to a recount of a state or municipal election;
- (F) costs incurred to provide necessary administrative services associated with a payroll withholding plan; these costs may not include expenses associated with soliciting contributions;
- (G) provision of a service or facility to a candidate, group, or nongroup entity, if the entity providing the service or facility is paid at a commercially reasonable rate within a commercially reasonable time or makes the service or facility available to all candidates for a particular office;
- (H) provision of an organization's membership or mailing list to the group or nongroup entity affiliated with the organization;
- (I) the use of personal money or credit by a campaign treasurer or deputy treasurer for an expenditure allowable under AS 15.13.112, if the amount
  - (i) does not exceed \$500; and
  - (ii) is repaid before the end of the report cycle in which the expenditure was made; or
- (J) the use of personal money or credit by a candidate for an authorized campaign expenditure, if the amount is repaid within three days after the date of the expenditure.

(b) As used in the definition of "contribution" in AS 15.13.400, a loan or loan guarantee includes an endorsement and any other form of security. A loan may not exceed the contribution limitations of AS 15.13.070, whether or not it is repaid. A loan is a contribution at the time it is made. A loan is a contribution by each endorser or guarantor. Each endorser or guarantor is considered to have contributed that portion of the total amount for which the endorser or guarantor agreed to be liable in an oral or written agreement. If the agreement does not indicate the portion of the loan for which each endorser or guarantor is liable, the loan is considered a loan by each endorser or guarantor in the same proportion that each endorser or guarantor bears to the total number of endorsers or guarantors.

(c) The provision of goods or services without charge, or at a charge that is less than the normal charge for the goods and services in the market, is a contribution unless a lower rate is extended to all campaigns. If goods or services are provided at less than the normal charge in the market, the amount of the non-monetary contribution is the difference between the normal charge for the goods or services at the time of the contribution and the amount charged.

(d) The entire amount paid to attend or participate in a fund-raising activity or other political event and the entire amount paid as the purchase price for a fund-raising item sold by a group, nongroup entity, or candidate is a contribution.

(e) The payment by a person of compensation for the personal services of an individual to a group, nongroup entity, or candidate for any purpose, except for legal and accounting services necessary to complete reports, is a contribution unless the individual works voluntarily and on personal time.

(f) The extension of credit by a person to a candidate, group, or nongroup entity, for a length of time beyond normal business practice is a contribution, unless the creditor has made a commercially

reasonable attempt to collect the debt using the methods that the creditor ordinarily uses in a manner similar in intensity to that employed by the creditor in pursuit of a debt unrelated to a campaign.

(g) A contribution to a subordinate unit of a political party is a contribution to the political party.

(Eff. 1/1/2001, Register 156; am Eff. 2/20/2005, Register 173; am 2/20/2005, Register 173)

Authority: AS 15.13.030 AS 15.13.070 AS 15.13.400 AS 15.13.040 AS 15.13.078

**Editor's note:** The substance of 2 AAC 50.250 was formerly located at 2 AAC 50.313. The history note does not reflect the history of the earlier regulation.

## **2 AAC 50.905. ADVISORY OPINIONS.**

(a) The commission staff shall review all requests for advisory opinions submitted under AS 15.13.374. If the commission staff determines that a request does not satisfy the requirements in AS 15.13.374, the commission staff shall reject the request and notify the person, group, or nongroup entity making the request of the deficiencies. A rejected request may be refiled.

(b) If the commission staff determines that the request satisfies the requirements in AS 15.13.374, the executive director or the executive director's designee shall prepare a recommended advisory opinion within seven days after receipt of the opinion request for the commission to consider at its next regular meeting.

(c) The commission will approve, disapprove, or modify the recommended advisory opinion.

(d) The commission may reconsider an advisory opinion at any time upon the motion of a member who voted with the majority that originally approved the opinion, and if the commission adopts the motion to reconsider by the affirmative vote of at least four members. Adoption of a motion to reconsider vacates the advisory opinion to which it relates. Action by the requesting party in good faith reliance on the advisory opinion before the party has notice of reconsideration may not be the subject of an investigation under 2 AAC 50.460, 2 AAC 50.507, 2 AAC 50.810, or 2 AAC 50.815. (Eff. 1/4/86, Register 97; am 7/20/95, Register 135; am 1/1/2001, Register 156; am 2/20/2005, Register 173)

Authority: AS 15.13.030 AS 24.45.021 AS 39.50.050

AS 15.13.374 AS 24.60.220