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OPINION NO. 2000-02

TO: Janice L. Graziano, City Clerk
FROM: Stephen M. Kemp, City Attorney
DATE: April 11, 2000
SUBJECT: Payment of Costs for Publicity Pamphlet Arguments from Surplus Campaign Funds

QUESTION:

You have inquired as to the application of A.R.S. §16-901.8:

1. Does the statute mean that a candidate cannot pay for any arguments that they submit for or against an issue and must pay for their argument out of their personal funds?
2. Does this mean that any political committee – even those that were formed specifically for the purpose of supporting or opposing an issue on the ballot cannot pay for any argument that they submit out of the campaign funds they received.

OPINION:

Arizona law defines expenditures for political campaigns under A.R.S. §16-901.8 as follows:

"Expenditures" includes any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by a person for the purpose of influencing an election in this state including supporting or opposing the recall of a public officer or supporting or opposing the circulation of a petition for a ballot measure, question or proposition or the recall of a public officer and a contract, promise or agreement to make an expenditure resulting in an extension of credit and the value of any in-kind contribution received. Expenditure does not include any of the following:

....

Any deposit or other payment filed with the Secretary of State or any other similar officer to pay any portion of the cost of printing an argument in a publicity pamphlet advocating or opposing a ballot measure.

The disposition of left over campaign funds is addressed in A.R.S. §16-915.01, which provides:

16-915.01. Disposal of surplus monies; transfer of debt.

A. A political committee shall dispose of surplus monies only as follows:

1. Retain surplus monies for use in a subsequent election, which includes a transfer by an individual's exploratory committee or a candidate's campaign committee to that individual's subsequent exploratory committee or that candidate's campaign committee designated for a subsequent election.
2. Return surplus monies to the contributor to the extent records are available permitting such return.
3. Contribute surplus monies to the county, state or local committee of a political party.
4. Donate the surplus monies to a charitable organization that qualifies under section 501(c)(3) of the United States internal revenue code.
5. In the case of a political committee other than an individual's exploratory committee or a candidate's committee, contribute surplus monies to a candidate's campaign committee if the contribution is within the limitations of section 16-905.
6. Donate surplus monies to a political committee other than an individual's exploratory committee or to a candidate's campaign committee.
7. Dispose of the surplus monies in any other lawful manner.

Clearly, by the express language of A.R.S. §16-901, the costs incurred in submitting an argument for a ballot item to the City Clerk is not a campaign expenditure. A.R.S. §16-920 regulates expenditures on ballot items and provides:

Permitted expenditures by corporations and labor organizations.

A. Expenditures for the following purposes shall not be construed to be political contributions prohibited by law:

1. Communications by a corporation to its stockholders and executive or administrative personnel and their families, or by a labor organization to its members and their families, on any subject.

2. Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and their families.
3. The establishment, administration and solicitation of voluntary contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, trade association, cooperative or corporation without capital stock.
4. Contributions for use to support or oppose an initiative or referendum measure or amendment to the constitution.

For purposes of initiatives and referendums, a corporation or individual may contribute. To impose a requirement that a political candidate or issue campaign could not use left over funds for this purpose, without contributing them first to a political party would raise form over substance, imposing a requirement that the legislature chose not to impose. Williams v. Thude, 188 Ariz. 257, 934 P.2d 1349 (1987).

Further, when there is a question pertaining to the application of political contribution statutes, such statutes regulate protected speech under the First Amendment to the United States Constitution and the Arizona Constitution. The state may only engage in such regulation when it has a compelling state interest to do so. The application of such regulation will be regarded with strict scrutiny. Huerta v. Flood, 103 Ariz. 608, 447 P.2d 866 (App. 1968)

Based on the foregoing, it must be concluded that a political candidate may use funds left over from a political campaign for a contribution to an initiative or referendum campaign. Additionally, a prior initiative or referendum campaign may use funds to contribute to a subsequent initiative or referendum campaign. If you should have any further questions, please contact this office.

cc: Honorable Mayor and Council
Terry Ellis, City Manager