



May 25, 2023

**By email**

Emily Hogin  
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Jonathan Berkon  
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**Re: Your request for an advisory opinion**

Dear Ms. Hogin and Mr. Berkon:

The Denver Clerk and Recorder’s Office received your request for an advisory opinion on May 11, 2023. Having reviewed your request and considered the factors in Election Rule 3.6.1, I decline to issue an advisory opinion on this matter. My reasoning follows.

In your request you asked:

“Does Denver’s definition of ‘contribution’ include the payment of legal fees to advise a candidate on compliance with campaign laws or regulations or to represent a candidate or candidate committee in any action in which the candidate or committee has been named as a defendant?”

The initial factor the Clerk and Recorder considers when deciding whether to issue an advisory opinion is whether “the advisory opinion will terminate a controversy or remove uncertainties as to the application of the requestor of any law.”<sup>1</sup> I have concluded that an advisory opinion on this matter would not remove uncertainty as to the application of Denver’s campaign contribution regulations to Ms. Parady.

As you point out, Denver’s definition of “contribution” does not specifically address whether the payment of a candidate’s or candidate committee’s legal fees is “for the purpose of influencing any election.” Because it does not, you suggest that we should refer to the state’s definition of “contribution,” which explicitly exempts payments of legal fees, to provide clarity on this issue. But I cannot rely on the state’s definition to interpret Denver’s law because Denver has enacted its own independent definition of “contribution,” making the state law inapplicable.

The state’s campaign finance laws do not apply to the City and County of Denver to the extent that Denver’s home rule charter and ordinances address the matters covered in state law.<sup>2</sup> Here, Denver has clearly addressed campaign contributions by enacting its own comprehensive campaign finance code, which includes its unique definition of “contribution” that differs from the state’s. The fact that Denver’s definition does not include a specific exemption for legal fees does not mean that Denver has not addressed the matter and that we should look

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<sup>1</sup> Denver Election Rule 3.6.1 A.

<sup>2</sup> Colo. Rev. Stat. § 1-45-116.

to state law. Because the state law does not apply, and because the state’s definition of “contribution” differs from Denver’s, the state’s exemption offers little probative value to the interpretation of Denver’s code.

Furthermore, because Denver’s ordinance defines “contribution” differently than Colorado law, in the absence of judicial guidance on the interpretation and application of Denver’s provision, my office cannot offer an opinion that would be sufficiently certain to terminate a controversy or remove uncertainty on the question. I am aware of no such guidance from courts regarding Denver’s definition of “contribution.” In 2018, the Colorado Supreme Court did consider whether the payment of legal fees amounted to a contribution under Colorado law.<sup>3</sup> But that case does not provide guidance here because the Court analyzed the state’s definition of “contribution,” which does not include the phrase “for the purpose of influencing any election.”

Given the lack of applicable state law or relevant judicial guidance, any opinion from my office on this matter would be speculative at best and would not offer the certainty that Ms. Parady seeks. Therefore, I decline to issue an advisory opinion.

Sincerely,



Hon. Paul D. Lopez,  
Clerk and Recorder of the City and County of Denver

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<sup>3</sup> In *Campaign Integrity Watchdog v. Alliance for a Safe and Independent Woodmen Hills*, 409 P.3d. 357 (Colo. 2018), the Court held that a third party's payments of a political committee's post-election legal expenses were “contributions” under state law. Shortly after that decision, the Colorado General Assembly enacted HB 18-1047, which exempted the payment of legal fees from Colorado’s definition of “contribution.”