



250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

May 11, 2023

VIA E-MAIL elections@denvergov.org

Hon. Paul D. López
Clerk and Recorder of the City and County of Denver
201 W. Colfax Avenue
Department 101
Denver, CO 80202-5330

Re: Advisory Opinion Request–Legal Fees

Clerk and Recorder López:

I write on behalf of Sarah Parady and her campaign committee, Sarah Parady for Denver, to seek an advisory opinion under Denver’s Election and Campaign Finance Rule 3.6. The question is:

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?

Factual Background

Ms. Parady is a participant in Denver’s Fair Elections Fund. As such, she may not personally donate to her own campaign in aggregate amounts greater than the individual contribution limit of \$350. Denver Municipal Code § 15-54(g).

Ms. Parady has incurred legal expenses for advice on compliance with campaign laws and regulations, including the new Fair Elections Fund, and to represent her in a campaign finance complaint that was ultimately dismissed. These expenses exceed \$350. She would like to pay these expenses personally rather than with campaign committee funds if doing so would not exceed her personal contribution limit to her campaign.

Legal Analysis

Denver defines a “contribution” as “a gift, loan, pledge or advance of money; guarantee or endorsement of loan; or letter of credit or line of credit made by any person for the purpose of

influencing any election.” *Id.* § 15-32(d) The definition includes “[a] payment made after an election to meet any deficit or debt incurred during the course of a campaign.” *Id.* An “expenditure” is similarly limited to a “purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value, made by any person for the purpose of influencing an election.” *Id.* § 15-32(k). The Denver rules and regulations do not further define “for the purpose of influencing any election.”

However, Colorado state law, which similarly defines a contribution to include “[a]nything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate’s nomination, retention, recall, or election,” Colo. Const. art. XXVIII, § 2(5)(a)(IV), specifies that

“Contribution” does not 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. Such legal services are not undertaken “for the benefit of any candidate committee” or “for the purpose of promoting the candidate’s nomination, retention, recall, or election.”

Colo. Rev. Stat. § 1-45-103(6)(d).

As a home rule jurisdiction, Colorado’s campaign finance requirements do not apply to the extent that Denver’s charters, ordinances, or resolutions “address matters covered by” the state constitution and implementing statutes. Colo. Rev. Stat. § 1-45-116. Here, Denver’s rules do not specifically address the matter of whether 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 is “for the purpose of influencing an election” and therefore a contribution subject to contribution limits.

Given that Denver’s rules do not specifically address the matter of whether paying for such legal fees is “for the purpose of influencing” an election, it is reasonable to turn to the state law, which is clear that these legal fees are not for a candidate’s benefit nor for the purpose of promoting the candidate’s election—that is, influencing the election. Such an interpretation also supports the policy goals of encouraging candidates to seek legal advice and protecting donors who expect their funds to be used to support the candidate’s election rather than on compliance costs or defending against frivolous complaints.

The factors listed in Denver’s Election and Campaign Finance Rule 3.6 weigh in favor of issuing an advisory opinion in this case. First, an advisory opinion will terminate the uncertainty as to whether payments for legal services to advise on compliance with campaign laws or prepare a defense in a legal action are “for the purpose of influencing any election” and therefore subject to

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contribution limits. Second, there is no pending complaint on this issue. Third, this request is not hypothetical because there are outstanding legal bills that need to be paid either from the campaign or from the candidate's personal funds.

For these reasons, Ms. Parady respectfully requests an expedited advisory opinion so that she can make plans to pay her outstanding legal bills.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan Berkon", with a long horizontal flourish extending to the right.

Jonathan Berkon
Emily Hogin
Counsel to Sarah Parady and
Sarah Parady for Denver