



CANDIDATES, COMMITTEES, AND CAMPAIGN CONTRIBUTIONS

IN NOVEMBER 2002, COLORADO voters approved Amendment 27, an initiated measure that added campaign and political finance provisions to the Colorado Constitution as a new Article XXVIII. These constitutional provisions work in tandem with statutory provisions (Article 45 of Title 1 Colorado Revised Statutes) known as the Fair Campaign Practices Act (FCPA). Together, these provisions impose campaign reporting deadlines to track and other requirements with which candidates must comply.

Who is regulated

The FCPA is concerned primarily with public disclosure of the sources and uses of campaign funds from candidate committees, political committees, issue committees, small donor committees, and political parties. The FCPA does not regulate the amount of money that can be spent on a municipal campaign, nor the amount that can be contributed to such a campaign (although some local ordinances and charter provisions may regulate this). The focus is disclosure; thus, the starting point is to determine who is required to make disclosures. Several key definitions help to answer this question.

In municipal elections, disclosures are required primarily from candidate committees and issue committees. A “candidate committee” is any person or persons receiving contributions and making expenditures under the authority of a candidate. The FCPA provides that “a person is a candidate for election if the person has publicly announced an intention to seek election to public office.” Any candidate who receives contributions or spends money (even their own personal funds) during his/her candidacy must create a candidate

committee, and each candidate can have only one committee. Although the term “committee” implies that more than one person is involved, a candidate committee may consist of the candidate only. An “issue committee,” in summary, is a group that collects or makes contributions or expenditures of more than \$200 to support or oppose any ballot issue or ballot question.

In other instances, disclosures are required from individual donors. A “person” means a natural person, partnership, committee, labor organization, political party, or other organization or group of people. An “independent expenditure” is defined by the FCPA as a payment of money to support or defeat the election of a candidate that is not coordinated with the candidate or his or her agents. A person making an “independent expenditure” of more than \$1,000 must report the expenditure.

What, when, and where

Candidate affidavit

The FCPA requires an individual to file a candidate affidavit within 10 days of becoming a “candidate” with the municipal clerk to “certify ... that the candidate is familiar with the provisions of th[e FCPA],” so candidates should read the campaign finance laws and regulations before signing the candidate affidavit. Failure to file the candidate affidavit can result in disqualification of the individual as a candidate for the office sought if the individual does not file the affidavit within five days of receipt of a written notice following the initial failure to do so.

Committee registration form

If a candidate receives contributions, including in-kind, he must file a committee registration form before

accepting or spending any contributions.

Contribution and expenditure reports

Campaign committees must report their “contributions” and “expenditures.” The FCPA requires that contribution and expenditure reports are due 21 days before the election, the Friday before the election, 30 days after the election, and annually on the first day of the month in which the anniversary of the election occurs. *(Note: Recall elections have their own special reporting requirements.)*

Statement of nonreceipt of contributions or nonexpenditure of funds

Candidates may choose to file statements of nonreceipt or nonexpenditure if they did not receive contributions and did not spend any of their own money on campaigns. There is no requirement to file if no contributions are being accepted and no expenditures are being made for the campaign, but in the interest of full disclosure to the public, a candidate may file.

Statement of personal expenditures

The statement of personal expenditures form is used if the candidate spent her own money on her campaign, but did not receive any contributions. Standalone candidates must report all expenditures.

Any contribution of more than \$20 must be itemized and include the contributor’s name and address on the candidate’s campaign and expenditure reports. For those contributing \$100 or more, occupation and employer additionally must be disclosed. In-kind donations of goods or services must also be reported, but volunteer services by an individual are not considered contributions.

Be aware that there are other filings necessary for the following situations.



These situations are not common, and this list is not inclusive of all reporting requirements:

- If any single expenditure is in excess of \$1,000
- If a committee receives a contribution of \$1,000 or more
- If a contribution (including in-kind) is received from an LLC
- If a candidate spends in excess of \$1,000 on “electioneering communication”

Reports must be filed on the twenty-first day before the election and the Friday before the election. Additional filings must be made 30 days after the election in election years. Further filings are required, where applicable, in off-election years annually on the first day of the month in which the anniversary of the election occurs.

All documents required to be filed by municipal candidates must be filed with the municipal clerk of the applicable municipality. The FCPA requires that reports and statements filed under the FCPA be available for public inspection and copying no later than the end of the next business day after filing.

If reports are not made

The fine for late filings is \$50 per day. Therefore, each candidate should personally oversee and review the activities of his committee because this vicarious liability could be costly.

Anyone with a complaint alleging a violation of the FCPA is to file the complaint with the secretary of state within 180 days of the alleged violation. The secretary of state is required to hold a hearing before an administrative law judge on every complaint. If the administrative law judge finds a violation, the matter is referred to the

attorney general and the appropriate district attorney. If the attorney general does not institute a civil action for relief within 90 days of the date on which the complaint was filed with the secretary of state, the complainant can sue on his or her own. The winner gets attorney fees.

Other concerns

Funds administration and record keeping

If contributions are received, they are to be deposited in a separate account in a financial institution. There is no requirement that the account be a checking account; however, the law does require that contributions be deposited in a financial institution in a separate account in the name of the committee. These account records are subject to inspection in certain circumstances.

The FCPA expands permitted uses of unexpended local campaign funds. Such funds may be donated to a charity, returned to contributors, used in the same candidate’s next campaign, or contributed to a political party.

Contributions to candidate committees or committees supporting/opposing local ballot measures are not tax deductible as charitable contributions on federal income tax returns. Check with the Internal Revenue Service if additional information is desired.

Secretary of state’s assistance

The secretary of state is the official principally charged with the enforcement of the FCPA. The secretary of state is required to “prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this article [the FCPA] and make such forms and instructions available to the public, municipal clerks,

and county clerks and recorders free of charge.” The secretary of state’s elections division has developed substantial reporting regulations and FCPA reporting forms (available by contacting the elections division at 303-894-2200, ext. 6383, or cpfhelp@sos.state.co.us.)

Conclusion

Every incumbent, would-be candidate, and issue advocate should be familiar with the FCPA reporting requirements to keep and file records of each of the items that they are required to report. As a practical matter, many local government candidates and some local issue advocates or opponents do not accept contributions, set up committees, or otherwise engage in activities that the FCPA is designed to regulate. For these individuals, it is likely that the reporting and disclosure requirements simply will not apply. However, in those instances where contributions or expenditures occur, local candidates, as well as issue advocates and opponents, will find themselves having to produce more reports and engage in more detailed record-keeping.

This article is a summary of key points for municipal candidates and does not replace legal advice. Local charter or ordinance provisions may also bear on these issues, so consult your municipal attorney as to your situation.

For statute citation, CML members can log on to www.cml.org and look under Information > Publications > Periodicals > Colorado Municipalities. For detailed information, refer to the Fair Campaign Practices Act and Colorado Constitution Article XXVIII, as well as the secretary of state’s website, www.sos.state.co.us and The Colorado Campaign and Political Finance Manual.