

## Advisory Opinion

IECDB AO 2015-05

March 26, 2015

Shayla McCormally  
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2501 Grand Avenue, Suite B  
Des Moines, Iowa 50312

Dear Ms. McCormally:

This opinion is in response to your request for an advisory opinion regarding to contributions from corporations, insurance companies and financial institutions for use in presidential caucus activities. We note at the outset the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

### BACKGROUND FACTS:

We understand you request this opinion in your capacity as attorney for the Iowa Democratic Party (hereafter "IDP"). IDP is interested in soliciting monetary and in-kind contributions from corporations, insurance companies and financial institutions to be used for presidential caucus activities that do not include the "express advocacy" of any candidates for state or local office in Iowa. <sup>i</sup> IDP is willing to report those contributions to the Board and is seeking guidance on how to do so.

### QUESTION:

How do state parties report to the Board contributions raised from restricted donors for costs associated with presidential caucus activities?

How does the Board define the term "costs associated with a presidential caucus"?

### OPINION:

Iowa Code section 68A.503 prohibits corporations, insurance companies and financial institutions from making "a monetary or in-kind contribution to a candidate or committee except for a ballot issue committee."<sup>ii</sup> This prohibition applies to the state parties. However, a state party is permitted to accept contributions from otherwise prohibited contributors under section 68A.503 for the party's building fund.<sup>iii</sup> In 2006, we reiterated that no moneys from a state party building fund may

be used to “expressly advocate” for or against clearly identified candidates.<sup>iv</sup>We opined that the following expenses may be paid out of a building fund:

3. Costs such as property taxes, furnishings, utilities, pest control, lawn care, security and trash services, lease payments of satellite offices, mortgage payments, major and minor repairs to the building, Internet and cable television services are all examples of permissible expenditures from the state party building fund. Other costs directly attributable to the maintenance, upkeep, and overhead of a state party building are also permissible.

4. The portion of computer equipment, telephones, and general office supplies that are not used for contributions as discussed above or “express advocacy” communications may be paid for through the building fund.<sup>v</sup>

In 2007, IDP and the Republican Party of Iowa jointly asked the Board to issue an advisory opinion as to whether it is permissible for the parties to solicit and accept contributions from corporations, insurance companies and financial institutions for costs associated with presidential caucus activities.<sup>vi</sup> In response, we opined that some expenses for presidential caucus activities, such as “computer equipment, telephones, and general office supplies” are already permissible under the building fund.<sup>vii</sup>For those expenses that are not covered by IECDB Advisory Opinion 2006-07, we stated “we do not believe they may be paid for out of the building fund.”<sup>viii</sup>We did, however, opine that it would be permissible for the state parties to establish a “separate fund” to obtain contributions from corporations, insurance companies and financial institutions “to pay for costs associated with a presidential caucus so long as those [contributions] are not used for the express advocacy of any state or local candidates.”<sup>ix</sup>We closed our 2007 advisory opinion by stating that while reporting the transactions in any separate non-express advocacy fund, except for the building fund, may not be required under Iowa law, it would nevertheless be in the public’s interest if the parties voluntarily reported such transactions.<sup>x</sup>

Presently, IDP asks for guidance on how to voluntarily report to the Board transactions from a “separate fund” established for presidential caucus activities. In order to ensure contributions from corporations, insurance companies and financial institutions are not used for express advocacy, the parties should establish a separate bank account used solely for presidential caucus activities. The Board will create a voluntary report, similar to the building fund report, for the parties to use to report transactions from a separate fund established for presidential caucus activities. This report will allow the reporting of monetary and in-kind contributions as well as expenditures. Similarly, the building fund report will be updated to allow for in-kind contributions. The building fund report covers a calendar year and is due on or before January 31st of the following year.<sup>xi</sup>We suggest the parties use the same time frame to voluntarily report transactions from a separate presidential caucus fund as permitted in IECDB AO 2007-10.

Secondly, IDP asks for guidance on what are permissible “costs associated with a presidential caucus.” Specifically, IDP asks whether the following items could be paid out of a separate presidential caucus:

1. Developing software for a reporting system to tabulate results from precinct caucuses;
2. Developing and building a website for online results publication for campaign staff, media and the general public to access results of the precinct caucuses;
3. Purchasing hardware for the implementation and execution of the reporting system;
4. Developing software and applications for online caucus check in;
5. A temporary facility rented for caucus night helpline and associated hardware (e.g. phones and/or a phone system);
6. A temporary facility rented for caucus night results reporting;
7. Training for staff and volunteers on reporting system and precinct caucuses execution (e.g. travel and facility rental);
8. Printing of physical materials for caucus publicity, training and execution of precinct caucuses;

All of these items would be permissible expenditures from a separate fund established for presidential caucus activities. As we noted in our 2007 opinion, some costs associated with a presidential caucus would also qualify as a permissible expense from the building fund.<sup>xiii</sup> In reviewing this list, we find that items 1 through 4 could be paid out of either a state party building fund or a separate presidential caucus fund. The phones and phone system in item 5 could be paid out of either fund but the renting of a temporary facility for a caucus night helpline would not be an appropriate state party building fund expense. Items 6 through 8 are not appropriate state building fund expenses.

#### CONCLUSION:

A State Party desiring to establish a separate presidential caucus fund as outlined in IECDB AO 2007-10 should open a separate bank account for such fund. Contributions from corporations, insurance companies and financial institutions may be placed in a separate presidential caucus fund established by a state party provided that no money or anything of value is used for the express advocacy of any candidates for state or local office in Iowa. The Board will create a report similar to the building fund report for a state party to disclose transactions

from its separate presidential caucus fund. This report is voluntary and the Board suggests filing this report at the same time as the mandatory building fund report.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

John Walsh, Vice Chair

Saima Zafar

Carole Tillotson

Jonathan Roos

Mary Rueter

Submitted by Megan Tooker, Board Legal Counsel

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<sup>i</sup> See Iowa Code §68A.102(14) (2015) (defining “express advocacy”).

<sup>ii</sup> Iowa Code § 8A.503(1).

<sup>iii</sup> Iowa Admin. Code r. 351—4.24 (allowing the establishment of a state party building fund).

<sup>iv</sup> IECDB AO 2006-07

<sup>v</sup> *Id*

<sup>vi</sup> IECDB AO 2007-10.

<sup>vii</sup> *Id*

<sup>viii</sup> *Id*

<sup>ix</sup> *Id*

<sup>x</sup> *Id*

<sup>xi</sup> Iowa Admin. Code r. 351—4.24(1), (4)

<sup>xii</sup> IECDB AO 2007-10.