

Advisory Opinion

IECDB AO 2015-10

November 19, 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 a proposed planned giving program from the estates of contributors. 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"). The IDP is developing a planned giving program. The party anticipates contributions coming from will bequests (specific or residual), beneficiary designations on assets (such as being listed as a beneficiary on financial accounts, retirement accounts or life insurance), and testamentary trusts (trusts that are created in a will). The contributions would be funded through estates or trusts of individuals who are legally qualified to make contributions to the IDP at the time of their deaths.<sup>i</sup> The contributions would be reported by the IDP.

Under this planned giving program, the IDP may receive a contribution that exceeds federal campaign contribution limits. In order to comply with federal election law

contribution limits, the IDP may use an independent escrow agent to distribute the contribution over several years as outlined in the Federal Election Commission's (hereafter "FEC") Advisory Opinion 2015-05. As noted by the FEC, continuing to administer an estate or trust over several years may cause the estate or trust to incur ongoing fees and expenses, such as tax filings, that would adversely impact the IDP's contribution. The FEC opinion authorizes the full contribution to be distributed to an independent escrow agent in order to avoid these administrative expenses. In this scenario, the IDP would not have any control over the escrow agent or funds. The escrow agent would distribute the funds annually to the IDP only up to the allowed federal contribution limit and maintain the remaining funds until they are exhausted.

The IDP seeks guidance on whether this planned giving program would also comply with Iowa law.

#### QUESTIONS:

- (1) Does Iowa law allow state parties to receive contributions through a planned giving program from the estates or testamentary trusts of contributors?
- (2) Would an estate or trust have reporting obligations, particularly if it uses an independent escrow agent to distribute a contribution over several years?

#### OPINION:

Chapter 68A of the Code of Iowa pertains to campaign finance. It broadly defines a "person" to mean "without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, *estate*, *trust*, partnership or association, labor union, or any other legal entity." <sup>ii</sup> (Emphasis added.) Except for the "prohibited contributors" listed in section 68A.503<sup>iii</sup> and government bodies in section 68A.505,<sup>iv</sup> chapter 68A does not prohibit any person from contributing to a state party committee. Thus, we are of the opinion that the state parties may accept

planned contributions from estates and testamentary trusts. An independent escrow agent would not be necessary to comply with state law because Iowa does not have campaign contribution limits. However, we will address the use of an escrow agent because there may be circumstances where a contribution is held by an escrow agent and distributed over a period of years to a state party's federal and state accounts.

We now turn to whether the IDP's planned giving program would trigger any campaign disclosure reporting requirements by the contributor. The answer to that question hinges on whether the contributor meets the definition of a "political committee" (hereafter "PAC").

A PAC is a committee that raises or spends more than \$1,000 in a calendar year to expressly advocate in favor or against candidates or ballot issues.<sup>v</sup> "Express advocacy" includes "political speech made in the form of a contribution."<sup>vi</sup> A PAC is required to periodically report its financial activity to the Board<sup>vii</sup> until it files a statement of dissolution.<sup>viii</sup>

We have previously opined that any trust that contributes in excess of the PAC threshold (currently \$1,000 in a calendar year) must register as a PAC and comply with all of the requirements found in chapter 68A.<sup>ix</sup> In that opinion, we reasoned a trust met the definition of a "permanent organization" temporarily engaging in PAC activity.<sup>x</sup> Thus, a trust (including a testamentary trust) contributing more than \$1,000 in a calendar year to a state party must register as a PAC and comply with all reporting requirements found in chapter 68A. Alternatively, the Board's rules allow a permanent organization making one contribution in a calendar year to file Form DR-OTC in lieu of filing a PAC statement of organization, disclosure reports, and a statement of dissolution.<sup>xi</sup> In the event a contribution from a trust is made over several years, the contributing trust would be required to file periodic PAC disclosure reports or an annual Form DR-OTC until all of the contribution is distributed to the

state party. The Board's rules establish the date of the contribution is the date the contribution is physically received by the committee.<sup>xii</sup> Thus, each distribution from the trust must be separately disclosed by the trust via PAC reports or Form DR-OTC. If an independent escrow agent is used, the contributor is still the trust and not the agent because we view the agent as merely a conduit for the contribution from the trust.

We have never formally addressed whether a decedent's estate is a "permanent organization" temporarily engaging in PAC activity in the event a contribution to a state party is made by a will bequest. A "permanent organization" is "an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities."<sup>xiii</sup> We do not believe an estate falls within that definition. While an estate is established for non-political purposes, it is not intended to be "continuing" or "enduring." An estate is typically open only as long as necessary to transfer assets to the decedents' beneficiaries and pay the decedent's debts. Moreover, unlike a trust which can be funded by more than one person or entity, an estate is comprised solely of the decedent's assets. Therefore, besides not satisfying the definition of a "permanent organization," we do not have concerns about an estate being used to make a contribution in the name of another like we do with trusts.<sup>xiv</sup> Thus, an estate is not a PAC and a contribution by will bequest shall be simply reported as a contribution from the decedent. If the contribution made through a will is held by an independent escrow agent and distributed over a period of years, no PAC registration is required because we view the agent as merely a conduit for the contribution from the decedent's estate.

Finally, we do not believe a contribution made by a beneficiary designation on an asset such as a bank account would necessitate the registration of a PAC. In that case, the asset would automatically transfer from the decedent to the designated party, bypassing any will or trust established by the decedent. Thus, a contribution

to a state party by way of a beneficiary designation on an asset should be reported by the state party simply as a contribution from the decedent.

CONCLUSION:

A state party may receive contributions through a planned giving program from the estates and trusts of contributors. A contribution from a trust would necessitate the registration of a PAC and periodic disclosure reports or the filing of Form DR-OTC. If the contribution from a trust is made over several years, each distribution to the state party must be disclosed by the PAC or via Form DR-OTC. A contribution made by a will bequest or a beneficiary designation on an asset is a contribution from the decedent and does not require the establishment of a PAC or the filing of Form DR-OTC, regardless of whether an independent escrow agent is utilized.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair

Jonathan Roos, Vice Chair

John Walsh

Saima Zafar

Carole Tillotson

Mary Rueter

Submitted by Megan Tooker

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<sup>i</sup> See Iowa Admin. Code r. 351—4.28 (prohibiting contributions from “foreign nationals”).

<sup>ii</sup> Iowa Code § 68A.102(17).

<sup>iii</sup> Iowa Code section 68A.503, subsection 1, prohibits “an insurance company, savings and loan association, bank, credit union, or corporation” from making “a monetary or in-kind contribution to a candidate or committee except for a ballot issue committee.”

<sup>iv</sup> Iowa Code section 68A.505 prohibits the “state and the governing body of a county, city, or other political subdivision of the state” from “expend[ing] or permit[ting] the expenditure of public moneys for political purposes.”

<sup>v</sup> *Id.* § 68A.102(18).

<sup>vi</sup> *Id.* § 68A.102(14)(a).

<sup>vii</sup> *See id.* § 68A.402(8).

<sup>viii</sup> *See* Iowa Code § 68A.402(1).

<sup>ix</sup> *See* IECDB AO 2001-11.

<sup>x</sup> *See* Iowa Code § 68A.402(9); *see also* Iowa Admin. Code r. 351—4.31 (setting out the information required for a trust to avoid a contribution in the name of another person).

<sup>xi</sup> *See* Iowa Admin. Code r. 351—4.35 (setting out the requirements for using the form DR-OTC).

<sup>xii</sup> *See id.* r 351—4.14(2).

<sup>xiii</sup> Iowa Code § 68A.402(9).

<sup>xiv</sup> *See* Iowa Code § 68A.502 (prohibiting contributions in the name of another) and IECDB AO 2001-11 (expressing concerns about transparency if a trust were not deemed a “permanent organization” temporarily engaged in political activity).