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Re: Elections Questions
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MEMORANDUM

DATE: FEBRUARY 19, 2004

TO: ALEX RUIZ, CITY MANAGER,
CYNTHIA SALCIDO, DEPUTY CITY CLERK

RE: ELECTIONS QUESTIONS

This memo is being written as a result of our conversations of yesterday and today. Some questions have arisen regarding the meaning and application of the provisions of ARS §16-912. This section provides, in pertinent part, as follows:

“16-912. Candidates and independent expenditures; campaign literature and advertisement sponsors; identification; civil penalty

A. A political committee that makes an expenditure for campaign literature or advertisements that expressly advocate the election or defeat of any candidate or that make any solicitation of contributions to any political committee shall be registered pursuant to this chapter at the time of distribution, placement or solicitation and shall include on the literature or advertisement the words "paid for by" followed by the name of the committee that appears on its statement of organization or five hundred dollar exemption statement.

C. The provisions of subsection A of this section do not apply to bumper stickers, pins, buttons, pens and similar small items on which the statements required in subsection A of this section cannot be conveniently printed or to signs paid for by a candidate with campaign monies or by a candidate's campaign committee or to a solicitation of contributions by a separate segregated fund from those persons it may solicit pursuant to sections 16-920 and 16-921.

D. The disclosures required pursuant to this section shall be printed clearly and legibly in a conspicuous manner or, if the advertisement is broadcast on a telecommunications system, the disclosure shall be spoken.

E. A person who violates this section is subject to a civil penalty of up to three times the cost of producing and distributing the literature or advertisement. This civil penalty shall be imposed as prescribed in section 16-924.”

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ARS §16-912, in its most basic application, stands for the requirement that in candidate based elections all promotional or advertising efforts must disclose who paid for the advertising unless the matter falls within the exceptions of subsection C. This means that if an ad for a candidate appears in a newspaper, the radio, television, or a billboard, or if signs are made, t-shirts are printed, etc., the item or broadcast must include the words "paid for by" followed by the full name of the political committee who paid for the broadcast or item. Only if the matter falls within one of three exceptions of subsection C does an item avoid having to make this disclosure.

The three exceptions are: 1) The item is a normal size bumper sticker, or campaign pin, pen, or other SMALL item wherein the print of the disclosure would end up so small it is not easily read; 2) it is a sign paid for by the candidate with the candidates own campaign funds or the candidates political committee using its campaign funds; or 3) it is a solicitation of funds by a union or corporate political action committee.

Two questions have arisen regarding the meaning and intent of the second exception. The first is that apparently some signs have been erected advocating the election of more than one candidate on the sign. A question has arisen as to whether a disclosure needs to be made on that type of sign, and what the disclosure must say, if it needs to be made. The second is that a billboard or electronic sign is being put up, and paid for by a third party as a donation to a campaign committee. Does a disclosure need to be made on this sign, and, if so, what does it need to say?

To answer these questions I have consulted an elections official in Maricopa County of more than twenty years experience and Nancy Reed, who heads the Finance section of the Elections Department of the Secretary of State's Office. The approach taken by the Secretary of State with respect to ARS §16-912 is that disclosure is the rule and non-disclosure the exception. As a result, non-disclosure is not favored. For the small item exception to exist, for example, the item must not only be a bumper sticker or a button or a pen, it must also be small. A 5 foot by 8 foot bumper sticker would have to have the disclosure.

With respect to an election campaign, there may be more than a single campaign committee. Therefore the second exception is confined to either the candidate spending the candidates own campaign funds or the political committee that the candidate has designated as the one which is his or her own campaign committee. See definition at ARS §16-901. The problem is that with respect to a sign advocating the election of multiple candidates is, at all times, it cannot meet the requirements of the exception. It will always involve advocating the election of a candidate where all or a portion of the expense is paid by either another candidate or another committee.

To illustrate this point lets assume a sign advocates the election of candidate Brown and candidate Green with pictures of both candidates appearing on the sign. If the sign was paid for by candidate Brown or candidate Brown's campaign committee, this

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means that a sign advocating the election of Green was not paid either by Green or Green's committee. Therefore the sign must say paid for by the Committee to Elect Brown. If it was paid for partly by Brown's campaign committee and partly by Green's, this means that a sign advocating the election of Brown was partly paid for by another committee (Green's) and a sign advocating the election of Green was partly paid for by another committee (Brown's).

Therefore, a sign advocating the election of more than one candidate must always disclose who paid for it. With respect to the above example, a disclosure which simply says "Paid for by Candidate" will be insufficient. Which candidate? One of them? Both of them? For the disclosure to be correct, if only paid for by one committee it must say which one. For example, "Paid for by the Committee for a Green City." If paid for by both it must disclose that it was paid for by both committees.

With respect to a sign paid for by a third person as a donation to a committee, Nancy Reed of the Secretary of State's Office was very clear. For the exception to disclosure to exist the sign must be paid for directly by the candidate or the candidate's campaign committee, **and the candidate or the committee must be able to prove it!** Just saying that one paid for it in cash does not work. Ms. Reed emphasized with me at least three times the need for a candidate or the candidates committee to absolutely prove that the payment falls within the narrow exception. If it is paid for by a third person as a donation, it is not paid for by the candidate or a candidate's campaign committee and must bear a disclosure of who paid for it. If it is a donation to a committee that committee's finance reports must list this with specificity. Please understand when an individual is making a donation, the individual must be careful. If they are working in conjunction with other people, then that person must also file a disclosure as a political committee, meet those requirements, and file appropriate finance reports. This is why the law makes a distinction between a "political committee" and a "candidate's campaign committee." It is possible for many committees to exist, and depending on the circumstances, the law may require them to exist. As you are aware there are limitations on donations, such as who may donate, and the amount that may be donated. It is only the candidate's committee that is entitled to the exception of ARS §16-912.C. Hence the analysis behind why a sign advocating the election of multiple candidates must always make such a disclosure.

I hope that this answers the questions that have been posed.