

Take the Pain Out of Contributing

Complexities of campaign finance laws can cause the unwary to stumble

BY MIKE B. WITTENWYLER

With the presidential primaries under way, the most competitive season in the United States is in full swing.

Admittedly, comparisons between politics and sports can go too far, but one thing they do have in common is the role money can play in the outcome. During campaign season, individuals and business entities can expect to be solicited for contributions by various candidates, political parties and political action committees.

Amid the growing complexity of campaign finance laws, attorneys representing companies and individuals should be prepared to assist clients in answering a variety of questions. The answers, like the responses to many legal queries, usually will begin with: "It depends ..."

The first thing to determine is the applicable campaign finance law. Regardless of who is soliciting, the identity of the ultimate contribution recipient determines the applicable law.

The complexity in such laws does not come from the basic regulatory structure. Put simply, states regulate financing for state and local candidates, parties and committees, while federal law governs presidential campaigns and races for seats in Congress. With only rare exceptions, there is no overlapping authority.

Things start to get complicated, however, because rules governing political contributions vary greatly between jurisdictions.

Corporate contributions are a case in point. Under federal law and some state statutes, such contributions to candidates are strictly prohibited—indeed, illegal corporate contributions can be a felony—and

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BEWARE VARYING RULES Mike Wittenwyler looks out for clients by tracking changes in applicable regulations.

candidate contributions may be made only by individuals or registered political committees. Other states, however, permit direct corporate contributions to candidates.

In jurisdictions where corporate contributions are prohibited, corporations are still free to give to groups that engage in political communication that doesn't expressly advocate election or defeat of a clearly identified candidate. This form of issue advocacy arose out of the express advocacy framework used by the U.S. Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976). Use of corporate funds for issue advocacy remains controversial, however, and the status of regulations must be monitored carefully and continuously.

Know Your Limits

Because state laws vary, it is essential to examine the specific campaign finance provisions that apply to a particular contribution.

Contribution limits differ by jurisdiction, and a limit may apply to a single calendar year or an entire election cycle. There also may be a restriction on when contribu-

tions can be made. A number of states bar contributions to certain candidates when the legislature is in session.

(The Supreme Court upheld the constitutionality of state statutes limiting campaign contributions in *Nixon v. Shrink Missouri Government PAC*, No. 98-963. [See "Lowering the Ceiling," March 2000 *ABA Journal*, page 38.]

Federal law and some states also impose an aggregate limit on political contributions by an individual in any calendar year, regardless of the recipient. These limits can be a trap for the unwary. Under federal law, all contributions made by an individual to influence federal elections may not exceed \$25,000 per calendar year.

While each campaign finance statute is unique, some provisions have become largely universal. Virtually every state prohibits an individual from transferring funds to another who in turn uses them to make a political contribution.

Similarly, federal law and many states require some disclosure of contributions in excess of a certain amount. A candidate for federal office, for example, must identify all individuals contributing more than \$200 in any year. And contributors should expect news reports about who gave money to various candidates or committees.

If a campaign finance violation occurs, the penalty is typically a civil forfeiture. Almost all statutes, however, include a provision imposing criminal penalties for intentional or egregious violations. Often the adverse publicity is more damaging than actual penalties. To avoid or temper negative news coverage, it is important to work with the regulator in resolving the matter.

Campaign finance law is complex, and compliance requires constant attention to detail. Given the possible legal and public relations consequences, it is important for a contributor—as well as counsel—to understand the rules to avoid a potentially embarrassing mistake. ■