ALBUQUERQUE BOARD OF ETHICS AND CAMPAIGN PRACTICES

ADVISORY OPINION #AV 02-2025

June 11, 2025

QUESTIONS: Part 18(B)(2) of the 2025 Rules for the Election Code and the Open and Ethical Election Code of the City Charter requires that "campaign materials produced for Independent Expenditures, Coordinated Expenditures, or Measure Finance Committees" must disclose the top five donors to the party issuing the campaign materials. In addition, such entities must disclose "Secondary Donor[s]" as follows:

> If any of the top five donors is a committee, organization, or other entity the disclaimer must also disclose the name of the top two donors of $1,000 or more to that committee.
>
> a. If the top five donors change due to a new Contribution, any print media shall include the updated list of donors at the next printing of materials.
>
> b. *Exception*: Short audio and video advertisements (30 seconds or less) are not required to disclose the secondary donors.

Eli Lee, on behalf of ABQ for All, a Measure Finance Committee, has requested an advisory opinion on the following questions:

1. Under the secondary donor requirement, how is "secondary donor" defined? For example, is a member of a labor union who provides $1,000 or more in membership dues a "secondary donor"? Is a customer of a private company who purchases a good or a service for $1,000 or more a "secondary donor"? Is a donor who provides non-earmarked, general operating support to a 501(c)(4) nonprofit organization of $1,000 or more a "secondary donor"?

2. Related, in the instance where a labor union, private company, or a 501(c)(4) organization is one of our top five donors; has sources of income that exceed $1,000; but has not had any income of $1,000 or more earmarked for the upcoming municipal election, would the secondary donor requirement apply to these entities at all?

3. Are there any entities, outside of individual donors, that fall outside of the broad definition of "a committee, organization, or other entity" and would therefore, be exempt from the secondary donor disclaimer requirement?

A fourth question was submitted, but the City Clerk determined that it was not valid, and the requester decided not to submit a revised version of the question.

CONCLUSION:

1. "Secondary donor" is intended to apply broadly, consistent with ordinary usage of both "secondary" and "donor." "Secondary" simply means a person that contributes to a

committee, organization, or other entity that is, in turn, one of the top five aggregate donors to the entity issuing the campaign materials in the 12 months preceding dissemination of the campaign materials. And "donor" means, e.g., "one that gives, donates, or presents." *See* Webster's 3d New Int'l Dictionary at 673 (1961). The particular hypotheticals submitted are discussed below.

2. If one or more of the top five donors to the entity issuing the campaign materials has received one or more donations of $1,000 from a single person (including nonnatural persons), then the requirement applies. The disclaimer requirement for secondary donors is triggered not by earmarking funds for campaign purposes, but by donation to one of the top 5 donors to the entity issuing the campaign materials.

3. To the extent that Question 3 is intended to seek guidance on whether particular secondary donors should be disclosed, the answer is no. The requirement that the disclaimer include the secondary donors to "a committee, organization, or other entity" is intentionally broad to avoid attempts to circumvent disclosure requirements.

ANALYSIS:

I. CONSTRUCTION OF "SECONDARY DONOR"

The "secondary donor" disclosure requirement in the donor rules is intended "to provide the electorate with information as to where political campaign money comes from and how it is spent . . . ." *See Buckley v. Valeo*, 424 U.S. 1, 66 (1976). "[D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity." *See id.* at 67. Moreover, "recordkeeping, reporting, and disclosure requirements are an essential means of gathering the data necessary to detect violations of . . . contribution limitations . . . ." *See id.* The "secondary donor" disclosure requirement is intended to further these interests by providing to the electorate information about who is funding a Measure Finance Committee or candidate and to assist the City in confirming that Independent Expenditures and Coordinated Expenditures are correctly disclosed.

The requirement is, however, narrowly tailored. It does not require disclosure of all secondary donors. It requires disclosure only of:

1. The top two donors of $1,000 or more, to
2. One of the top five donors to the entity issuing the campaign materials.

"Secondary," for purposes of the disclaimer rule, means "indirect," i.e., a secondary donor is one who donates not to a Measure Finance Committee, but instead donates to a "committee, organization, or other entity" that is one of the top five donors to a Measure Finance Committee. By its express terms, the rule does not contemplate a "tertiary" donor, but because New Mexico law "place[s] substance before form and . . . must examine in detail the nature of the transaction," *N.M. Life Ins. Guar. Ass'n v. Quinn & Co., Inc.*, 1991-NMSC-036, ¶ 15, the Board will take a dim view of, e.g., creation of an entity to conceal the identity of a secondary donor or other attempts to circumvent the disclaimer rule.

The term "donor," for purposes of the disclaimer rule, simply means as noted above, "one that gives, donates, or presents." The key is what is received by the putative donor in return for the putative donation. *See, e.g.*, *State ex rel. Bigney v. City of Rio Rancho*, ____-NMCA-___, ¶ 55 (A-1-CA-40664, Jan. 16, 2025) ("The Court has defined 'donation' as 'a gift, an allocation or appropriation of something of value, ***without consideration*** to a person, association or public or private corporation.") (quoting *Vill. of Deming v. Hosdreg Co.*, 1956-NMSC-111, ¶ 36, 63 N.M. 18); *Hernandez v. C.I.R.*, 490 U.S. 680, 690 (1989) ("The legislative history of the 'contribution or gift' limitation, though sparse, reveals that Congress intended to differentiate between unrequited payments to qualified recipients and payments made to such recipients in return for goods or services."); *cf. Romero v. Earl*, 1991-NMSC-042, ¶ 6, 111 N.M. 789 ("Consideration ***adequate to support a promise*** is essential to enforcement of the contract and must be bargained for by the parties.") (emphasis added).

This framework would help answer the hypotheticals posed by the requester. With respect to a labor union member who provides $1,000 or more in membership dues, the question would be what the member receives in return for those dues. With respect to a customer of a private company who purchases a good or service for $1,000, the question would be whether it was a fair transaction; a customer who "paid" $1,000 for a single peanut would likely be considered a donor, but a customer who paid $1,000 for 4,000 pounds of peanuts would not.[1] And donor to a 501(c)(4) nonprofit would be a donor, irrespective of whether the donation was earmarked for political purposes, as discussed in the next section.

II. THE STATED PURPOSE OF DONATIONS FROM A SECONDARY DONOR IS NOT RELEVANT.

Regarding the second question, the Rule does not require that a secondary donor's donation to one of the top five donors be earmarked for campaign purposes. There are three reasons for this. First, the absence of an earmark is not the same as a condition that funds not be used for campaign purposes. Second, even if funds are specifically earmarked for other purposes, they may free up other unrestricted funds of the donee, which can then be used for campaign purposes. Third, to serve the interest in informing the electorate, it is beneficial to voters to know where the money that funds a committee or candidate is coming from.

III. THE RULE IS INTENDED TO ENCOMPASS ALL DONORS TO A MEASURE FINANCE COMMITTEE.

Regarding the third question, as to whether there are types of primary donors that would be exempt from the secondary donor disclosure requirement, the answer is no. The rule intentionally and broadly applies to a donor to a committee that is itself "a committee, organization, ***or other entity***." (emphasis added). This is to prevent attempts to circumvent the disclosure requirements.

The Board is offering an advisory opinion on this question only to the extent that the requester is seeking advice on what must be included in the requester's disclaimers. To the

[1] This example is based on roughly 25 cents per pound paid to farmers for peanuts the week ending May 24, 2025. *See* Peanut Prices, U.S. Dep't of Agr., No. ISSN:1949-1891 (May 30, 2025), *available at* https://release.nass.usda.gov/reports/pnpr2225.pdf.

extent that the requester is seeking advice regarding the conduct of its donors or secondary donors, the request is improper. *See* Rules of the Board of Ethics & Campaign Practices, § 4(A)(3) ("A request for an advisory opinion shall only concern conduct in which the requester of the opinion intends to engage or regarding prospective matters. A candidate, official, or lobbyist may only request an advisory opinion regarding their own [prospective] conduct, a person may not request an advisory opinion regarding conduct of another."). And, of course, to the extent that the requester is asking the Board to advise on methods by which the requester may evade requirements imposed by the City Clerk's rules, the Board declines to do so.