

ALBUQUERQUE BOARD OF ETHICS AND CAMPAIGN PRACTICES

ADVISORY OPINION #AV 03-2025

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.

This requirement was discussed in Advisory Opinion #AV 02-2025. Miguel Tittmann, on behalf of ABQ FirePAC, a Measure Finance Committee, has requested an advisory opinion seeking further clarification as follows:

1. **Part 1: Disclosure of Top Five Donors:** It is understood that Advisory Opinion #AV 02-2025 requires Multi-Funded Committees (MFCs) to disclose the top five donors to the party issuing the campaign materials. In our case, compliance with this requirement is straightforward, as we, the Labor Union, are the sole donor contributing toward campaign materials. Therefore, our organization is identified as the top donor, fulfilling this requirement without ambiguity.
2. **Part 2: Clarification on Secondary Donor Disclosure:** The opinion also stipulates that entities must disclose Secondary Donors. However, clarification is required regarding whether membership dues qualify as donations for secondary donor disclosure purposes. We do not consider our membership dues – which are uniformly paid by all members to support the operating costs of our organization – as donations. Accordingly, we do not believe it is necessary or appropriate to disclose individual members’ names under this rule. Additionally, membership dues are not ‘deposited’ or ‘collected’ from each member individually; rather, they are pulled from their payroll and deposited into our general operating account by the City of Albuquerque & Bernalillo County. All accounting shows deposits made by these two entities, not by individual members. Lastly, membership dues are a set amount, and no member contributes more than any other member. Further, the only additional entities that could potentially be classified as Secondary Donors would be those contributing to our benefits program account, such as the “Survivors Fund” (offsetting unexpected medical bills due to serious illnesses or

injuries) and the Membership Assistance Program (behavioral health support). The primary contributors to these funds are the City of Albuquerque and Bernalillo County. However, disclosing these entities as Secondary Donors in campaign materials seems contradictory to the spirit and intention of the stated rule. Such disclosure could confuse the public or misrepresent the nature of their contributions, as these funds are unrelated to political campaigns and are guided by Collective Bargaining Agreements as well as our Constitution & Bylaws. [emphasis in original].

3. Part 3: Request for Clarification: We respectfully request clarification on the interpretation and application of the rule regarding Secondary Donor disclosure. Specifically, we seek to understand:

- Whether our organization’s membership dues, paid uniformly by all members, and deposited by the City of Albuquerque & Bernalillo County should be considered donations requiring disclosure under this rule.
- If so, would this disclosure be based on the actual “donor . . . that gives, donates or presents” the funds; the person or entity that makes the deposit (i.e. City of Albuquerque)?
- Whether the funding to non-political benefits programs with separate accounts (some of which are governed by the Collective Bargaining Agreements), such as the Survivors Fund and Membership Assistance Program, should be classified as Secondary Donors for campaign material disclosure purposes.
- How to address the potential confusion that could arise from identifying our organization’s two employers, the City of Albuquerque and Bernalillo County, as Secondary Donors in campaign materials.

CONCLUSION:

Parts 1 and 2 of the request do not appear to seek clarification on specific issues and instead present factual assertions and arguments for the questions posed in Part 3.¹ The Board thus does not opine directly on Parts 1 and 2 but uses the materials presented in those parts to provide the following opinion with respect to Part 3:

1. Where membership dues are a uniform amount paid by all members (whether directly or via paycheck deduction) in exchange for the benefits provided by collective bargaining, the membership dues are not donations for the purposes of the campaign disclosure rules for the reasons set forth in Advisory Opinion #AV 02-2025.

¹ The Board does, however, discourage the use of the term “Multi-Funded Committees,” which does not appear in the Election Code, the 2025 Rules for the Election Code and the Open and Ethical Code of the City Charter, or Advisory Opinion #AV 02-2025, as that term, particularly when abbreviated as “MFC,” poses a risk of confusion with the term “Measure Finance Committee” as used in the Election Code and its implementing rules.

2. Because the previous question is answered in the negative, the Board does not opine regarding the second question.
3. Payments by the City of Albuquerque and Bernalillo County into the Member Assistance Program are contractual obligations, not donations, under the Election Code and its implementing rules. The request does not provide sufficient information to evaluate whether payments to the Survivors' Fund or any other fund or program are donations under the Election Code and its implementing rules. The Board directs the requester to the Board's discussion in Advisory Opinion #AV 02-2025 that donations are gifts, allocations, or appropriations of something of value, without consideration from the recipient.
4. Regarding any potential confusion that could arise from identifying the City of Albuquerque or Bernalillo County as Secondary Donors in campaign materials, as set forth above, it is not an issue with respect to either union dues or the Member Assistance Programs because those are not donations. With respect to the Survivors' fund or other programs, the request provides inadequate information for the Board to opine; however, the Board notes that public expenditures are (or should be) vetted for compliance with the Anti-Donation Clause, which generally prohibits counties and municipalities from lending or pledging their credit or making donations in aid of any person, association or public or private corporation.

ANALYSIS:

I. UNION MEMBERSHIP DUES ARE NOT DONATIONS UNDER THE FACTS PRESENTED.

As discussed in Advisory Opinion #AV 02-2025:

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.

Id. at 3. Under the fact scenario presented by the request, union membership dues are “uniformly paid by all members to support the operating costs of” the union – operating costs that benefit the dues-paying members. Because the dues are uniform, and because the members receive benefits in exchange for those dues, the dues are not donations. Thus, union members are not secondary donors solely by virtue of paying membership dues.

II. BECAUSE DISCLOSURE OF UNION DUES IS NOT REQUIRED, THE QUESTION OF GOVERNMENT CONTRIBUTIONS DOES NOT ARISE.

Because, under the factual scenario presented, union members are not secondary donors solely by virtue of paying membership dues, the Board does not opine on who the secondary donor would be in a scenario where dues could be considered donations. Moreover, to the extent that payments (e.g., union membership dues) are paid directly to the union and funded by deductions from members’ pay, 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. Thus, the City or the County, although the nominal payors, are not properly regarded as the payors of those dues. *See, e.g.*, Agreement between City of Albuquerque and IAFF Local 244, City Chapter, art. 1 (providing for payroll deduction for dues); 2024-20626 Labor Mgmt. Agreement between Bernalillo Cnty. & IAFF Local 244, Bernalillo Cnty., art. 5 (same).

III. FUNDING TO BENEFITS PROGRAMS IS A FACT-BOUND QUESTION.

Whether payments to union benefit programs would require the payor to be disclosed as a secondary donor depends on the nature and organization of the benefit programs and the nature of the payments. The request identified two specific programs but suggested that there may be more such programs. Because the information available with respect to the two identified programs is different, the answer with respect to the two identified programs is also different.

With respect to the Member Assistance Program, payments by the City of Albuquerque and Bernalillo County into that program are a matter of contract, negotiated for at arms’ length and for consideration. *See* 2024-20626 Labor Mgmt. Agreement between Bernalillo Cnty. & IAFF Local 244, Bernalillo Cnty., art. 40 (providing that firefighters are eligible to participate in the County’s Employee Assistance Program and specifying that the County shall “pay the local \$3,000 per fiscal quarter for an in house Employee Assistance Program.”); Agreement between City of Albuquerque and IAFF Local 244, City Chapter, art. 27 (providing that firefighters are eligible to participate in the City’s Employee Assistance Program and specifying that the County shall “pay the local \$20,000 per fiscal quarter . . . to provide for an in-house Employee Assistance Program.”). Because the respective governments’ payments into the Membership Assistance Program are contractual obligations supported by consideration, they are not donations. The City and the County are thus not secondary donors for purposes of the disclaimer rule.

There is not similar readily available information regarding the Survivors’ Fund (or other programs). To the extent that the request refers to the firefighters’ survivors fund created under NMSA 1978, § 10-11B-4 (2007), that fund is a creature of statute and not tied to any particular fire department or firefighters’ union, and thus would not require disclosure. However, on the

information provided, it is not clear that the request refers to that statutory fund. If the request refers to another fund, then the request does not provide sufficient information to determine whether payments to the fund are donations (potentially requiring disclosure) or payments for consideration (not requiring disclosure).

To the extent that there are donations to the union for the purposes of these programs, the Board stands by its previous guidance that “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.” Advisory Opinion #AV 02-2025 at 3.

IV. GOVERNMENT PAYMENTS ARE LIKELY NOT DONATIONS.

Finally, the Board notes that payments from the County or City to the union are not likely to be donations. Indeed, as discussed above with respect to the Member Assistance Programs, government payments are contractual benefits supported by consideration. More broadly, the New Mexico Constitution expressly provides:

Neither the state nor any *county*, school district or *municipality*, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or *make any donation to* or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through H of this section.

N.M. Const. art. IX, § 14 (emphasis added). To the extent that the County or City has appropriated monies for payment to the union’s benefit programs, those enactments are entitled to a presumption of regularity. *See, e.g., City of Albuquerque v. Jones*, 1975-NMSC-025, ¶ 6, 87 N.M. 486 (“There is a presumption that all legislative acts are legal and valid, and their provisions presumed constitutional. . . . This presumption extends to municipal ordinances”) (internal citations omitted); *see also City of Lovington v. Hall*, 1961-NMSC-021, ¶ 4, 68 N.M. 143 (“It is *fundamental* that an ordinance as well as a statute, is presumed to be valid and that one who attacks it has the burden of establishing its invalidity.”) (emphasis added). Thus, such expenditures are not likely to be donations for purposes of the disclaimer rule.

On the factual scenario presented, the Board is unable to determine whether payments to the Survivors’ Fund (or other programs apart from the Membership Assistance Program) are payments for consideration, payments resulting from government action falling within an exception to the Anti-Donation Clause, or potential violations of the Anti-Donation Clause. The Board will not speculate that either the City or the County has violated the Anti-Donation Clause, but reiterates that based on the Anti-Donation Clause, government payments are unlikely to be donations that would trigger the secondary donor disclosure requirement.