ALBUQUERQUE BOAD OF ETHICS AND CAMPAIGN PRACTICES

ADVISORY OPINION #AV 08-2025

October 24, 2025

QUESTION:

Kyle Maichle has requested an advisory opinion from the Board as follows:

I am requesting an advisory opinion relating to if a larger allied organization can in-kind an advertisement buy to a measure finance committee. This has been a long-standing practice in partisan campaigns where larger allied groups have in-kinded campaign advertising buys (full production) for candidates and other allied PAC's all over the nation.

Per Cristobal, there seems to be no relevant statute in the City Charter. An advisory opinion would help [answer] this question given the construction of the definition of a Measure Finance Committee in City of Albuquerque Charter § Article XIII 2(Y) and (6). The other issue at play is top five and secondary donor disclosure as provided in the City Charter. By asking this question, this is a matter of fair play for all candidates and MFC's.

CONCLUSION:

Yes, an organization may purchase or develop advertising as an In-Kind Contribution to a Measure Finance Committee. The Measure Finance Committee would then be obligated to report it as such. No specific facts are offered, but depending on the circumstances, such a purchase or development may also trigger additional disclosure obligations, potentially including an obligation on the part of the organization itself to register as a Measure Finance Committee.

RELEVANT CHARTER PROVISIONS AND RULES:

In-Kind Contributions

The Charter defines In-Kind Contributions as follows:

"In-Kind Contribution" means a good or service, other than money, having monetary value not to exceed the limits set in Section 4 of Article XIII, but not including an individual who volunteers his own personal service. Professional services, including legal services, accounting services, consulting services and similar services provided directly from the professional to the Candidate are permitted, provided no single In-Kind Contributor exceeds the limits set in Section 4 of Article XIII. Notwithstanding the foregoing, a Candidate may accept unlimited In-Kind Contributions in the following areas:

* * *

(2) professional services provided directly from the professional, including attorneys, experts and consultants, for the sole purpose of participating in a proceeding under Section 8 of the Code of Ethics, Section 10 of the Election Code, and Sections 20 and 21 of the Open and Ethical Elections Code . . . .

Such In-Kind Contributions shall be reported on the next statement filed with the Clerk or within 30 days of receiving the goods or services.

City Charter art. XIII, § 2(aa). The reference to the limit on In-Kind Contributions in Section 4 applies not to Measure Finance Committees, but to privately financed candidates. City Charter art. XIII § 4(e) ("No privately financed candidate shall, for any one election, allow total contributions, including in-kind contributions, from any one person with the exception of contributions from the candidate themselves of more than $2,000 for Council Candidates and $6,000 for Mayoral Candidates" and applying an escalator beginning in January 2027).

The 2025 Rules by the Albuquerque City Clerk for the Election Code and the Open and Ethical Election Code of the City Charter ("Election Rules") provide additional guidance on In-Kind Contributions, including examples:

A. "In-Kind Contributions:"

1. Are goods and services, other than money, donated or provided to a campaign **at no cost or at a discount of 20% or more from fair market value**. The following are **examples** of In-Kind Contributions and are **not an exhaustive list**:

   a. A person purchases campaign signs for distribution by the campaign and is not reimbursed by the campaign;

   b. A person pays for some of the candidate's advertising in a community newspaper and is not reimbursed by the campaign;

   c. A copy shop owner provides the campaign with a 20% discount on printing services;

   d. **A volunteer buys paint and plywood** to make signs for a candidate and is not reimbursed by the campaign;

   e. The owner of a local business provides the campaign, free of charge, some labor of their paid staff members to work for the campaign on company time;

   f. A commercial vendor **extends credit to the campaign** under terms that are not substantially similar to the terms extended in the ordinary course of business to nonpolitical customers.

* * *

C. **Report Fair Market Value**. If a campaign or MFC receives an In-Kind Contribution, the campaign must **report the fair market value** of the Contribution, which is what the goods or services would have cost the campaign if it had paid cash for the donated goods or services. If the campaign received a discount of **20% or more** on goods or services, the discount **is the amount of the In-Kind Contribution**.

* * *

H. **Other In-Kind Contributions – Additional Examples**

1. ***Food, Drink, and Office Supplies***. Contributions of food, drinks, and/or office supplies that have a cumulative fair market value of one hundred dollars **($100.00) or more** per election cycle, must be reported as In-Kind Contributions.

2. ***Volunteer Services vs. Paid Assistance***. Individuals are permitted to provide their services for free to the campaign as volunteers, except that professional services must be reported as In-Kind Contributions. However, if the volunteer provides their services with the knowledge of their employer during their paid work-time, then the employer has contributed to the campaign and that time must be reported as an In-Kind Contribution from the employer in the amount that the volunteer would have been **paid by their employer** for that time.

3. ***Polling and Research***. If an individual or organization provides a campaign or MFC with polling and research at no cost, or at a **discount of 20% or more**, that is an In-Kind Contribution that must be disclosed.

4. ***Services Contributed Through a Candidate's Business Entity***. If a candidate has a **business entity**, and that **entity provides goods or services** to the campaign without charge, or at a 20% or more discount, those Contributions are In-Kind Contributions that must be disclosed.

5. ***Coordinated Expenditures***. Coordinated Expenditures must be reported as In-Kind Contributions. Rules by the City Clerk for the Election Code and the Open and Ethical Election Code Page 10 of 45

6. ***Professional services***, such as accounting, attorney, consulting, and similar services provided directly from the professional to the candidate, are permitted but must be disclosed.

   a. **If a professional provides professional services** within the scope of their profession free of charge or at a 20% or more discount, that is an In-Kind Contribution. However, if a professional volunteers their time providing services outside of the scope of their profession, that is not an In-Kind Contribution. By way of example only:

i. If a **graphic designer** provides a campaign with **free design** services, that is an In-Kind Contribution that must be reported and will **count against In-Kind** Contribution limits.

ii. If a **graphic designer** volunteers their time assisting a **candidate with speech** preparation, that is volunteer work, it **does not need** to be reported, and **does not count** against In-Kind Contribution limits.

Election Rules, Part 4 (emphasis in original). Note that Coordinated Expenditures are In-Kind Contributions. *See* Election Rules, Part 4(H)(5). Coordinated Expenditures are those that are made:

1. by a person other than the candidate or campaign committee;

2. at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, campaign committee or political party or any agent or representative of a candidate, campaign committee or political party; and

3. for the purpose of:

   A. supporting or opposing the nomination or election of a candidate; or

   B. paying for an advertisement that refers to a clearly identified candidate and is published and disseminated to the relevant electorate in New Mexico within thirty days before the primary election or sixty days before the general election in which the candidate is on the ballot.

City Charter art. XIII, § 2(i); *see also* Election Rules, Part 6 (discussing Coordinated Expenditures).

> **Measure Finance Committees**
>
> "Measure Finance Committee" means a political committee or any person or combination of two or more persons acting jointly in aid of or in opposition to the effort of anyone seeking to have their name placed on the ballot for city office, a petition to place a measure on the ballot pursuant to Article III of this Charter, voter approval or disapproval of one or more measures on the ballot and/or the election to, or recall from, office of one or more candidates for office when such person or people have accepted contributions in excess of $250 or make expenditures in excess of $250 for any of the purposes listed heretofore.

City Charter art. XIII § 2(y).

> Any person or group which has contributed in excess of thirty percent of the Mayor's salary to support or oppose a measure or candidate shall have the name of such person or group inserted into the name of the Measure Campaign Committee

> to which the funds were contributed or shall create a new committee with the name of the contributor in the committee name. It is the obligation of the Measure Finance Committee to immediately inform the Clerk of the Committee's required name change by forming a new committee with the funds, or updating the committee name with the City Clerk's Office and on the campaign finance website; the Committee shall simultaneously report the amount of the contribution which triggers the name change. For the purposes of this subsection, "Mayor's salary" means the salary paid by the City of Albuquerque as of the date of the contribution; support or oppose a measure or candidate covers qualification for the ballot plus voter approval or disapproval of a given measure.

City Charter art. XIII, § 4(n).

Despite the suggestion in the opinion request Measure Finance Committees are not defined in Section 6 of the Election Code; rather, that provision sets forth the requirements for registering a Measure Finance Committee, imposes a duty of awareness of the Election Code on the officials of Measure Finance Committees, and states that Measure Finance Committees expire at the end of each year (and may be renewed). *See* City Charter art. XIII, § 6. As with In-Kind Contributions, the Election Rules provide additional guidance:

> A. An MFC includes:
>
> 1. Any separate or segregated fund established by any corporation, membership organization, cooperative, labor organization, or other organization **whose purpose is to initiate or influence a campaign** or election; and
>
> 2. Any organization, including any corporation or association, whose major purpose is **initiating or influencing a campaign** or election and that receives Contributions or makes **Expenditures aggregating more than $250** for that purpose;
>
> 3. Any organization whose major purpose is not influencing candidate or ballot measure elections but that receives Contributions or makes Expenditures aggregating **more than $250** for the purpose of influencing the **nomination or election of any candidate or political office**.
>
> B. **Requirements for Advocacy or Charitable Organizations**. Advocacy, charitable, or other organizations that are interested in **raising and spending money** to influence the election of a candidate, a ballot question or referendum are required to form an MFC for that purpose, and file campaign finance disclosure reports with the City Clerk.
>
> C. **Financial Activity Exemption**. If an organization's only **financial activity** is to contribute to an MFC that will disclose the Contribution in a campaign finance disclosure report, the organization **does not** have to register with the City Clerk as an MFC. However, if the organization raises funds for the purpose of contributing

to an MFC, **rather than** from the organization's general treasury, it has received Contributions and must file as an MFC **if the Contributions exceed $250**.

D. **Individual Registration Requirement**. An individual who raises or spends more than **$250** to initiate or influence an election, ballot question, or referendum **must register** as an MFC.

1. Exception: if an individual uses ***their own funds*** to contribute to an MFC, they **do not qualify** as an MFC, provided that the funds used to make the Contribution were not themselves, a Contribution from another source.

E. Registration and Reporting Requirements. MFCs are required to:

1. File campaign finance disclosure reports in accordance with EC, Section 4.

2. Register as an MFC with the Office of the City Clerk, **once $250 has been raised or spent to support or oppose a candidate or ballot measure**.

   a. All campaign activity leading up to the $250 threshold must be reported on the initial report.

F. **Bank Account Requirement**: MFCs are required to maintain **one, and only one** bank account in accordance with the requirements in EC, Section 4. If applicable, this account must be **separate** from any general account of the organization.

G. **Contributions and Expenditures**. The MFC is required to report Contributions and Expenditures made for the purpose of initiating or influencing a candidate's election, a ballot question, or a referendum. If funds are **used from the organization's general treasury**, those amounts must be reported as a Contribution from the organization to the MFC.

H. **Content of Campaign Finance Disclosure Reports**. Campaign finance disclosure reports, must include:

1. **An itemized account** of all Contributions, including the name and address of each contributor, and the contributor's occupation and employer.

2. Every Expenditure made to support or oppose a candidate or ballot question or referendum must be reported including Expenditures for the collection of signatures for a direct initiative.

I. **Staff Compensation and In-Kind Contributions**. If the MFC uses paid staff to influence a candidate's election, a ballot question, or a referendum. The amount of compensation for their staff's time must be reported as an Expenditure. Goods or services, including **donated staff time**, the MFC receives from other organizations or individuals must be reported as **In-Kind Contributions**.

Election Rules, Part 8 (emphasis in original).

ANALYSIS:

The principal question presented is whether an organization may "in-kind an advertisement buy to a measure finance committee." The Charter does not place any limits on what may be contributed to a campaign or committee in-kind. *See* City Charter, art. XIII, § 2(aa). Indeed, the Rules contemplate In-Kind Contributions related to advertising. *See* Election Rules, Part 4(A)(1)(a) (purchasing campaign signs); Part 4(A)(1)(b) (purchasing advertising for a candidate), Part 4(A)(1)(c) (discounted printing services), Part 4(A)(a)(1)(d) (provision of supplies for signs); *see also* Election Rules, Part 4(H)(6)(a)(i) (provision of graphic design services).

The secondary question is what disclosure requirements attach to such an In-Kind Contribution. As an initial matter, the Measure Finance Committee receiving the In-Kind Contribution must report the fair market value of the Contribution. Election Rules, Part 4(C).

The Board has concerns that the requester has not provided enough factual information of the disclosure to provide thorough factual guidance. However, the Board indicates as follows:

If the organization is "a political committee or any person or combination of two or more persons acting jointly and in aid of or in opposition to . . . approval or disapproval of one or measures on the ballot and/or the election to, or recall from, office of one or more candidates for office" and "make[s] expenditures in excess of $250" for those purposes, then the organization is a Measure Finance Committee and must register as such. *See* City Charter art. XIII, § 2(y) (defining "Measure Finance Committee"); Election Rules, Part 8(A) (further explaining what constitutes a Measure Finance Committee); *see also* City Charter art. XIII, § 6 (setting forth requirements for Measure Finance Committees).

If the organization's purchase or development would trigger the requirements to register as (or form) a Measure Finance Committee, then the organization would be subject to additional disclosure requirements. *See* City Charter art. XIII, § 4(d) (general disclosure requirements); City Charter art. XIII, § 4(n) (imposing naming requirements when a contribution exceeds thirty percent of the Mayor's salary); City Charter art. XIII, § 6 (registration requirements) Election Rules, Part 8(E)-(I) (Measure Finance Committee disclosure requirements).

Any campaign materials "broadly distributed in support or opposition of a candidate or ballot measure" must comply with the disclaimer requirements set forth in Part 18(A)(1) of the Election Rules. Depending upon the facts, such materials may also require the disclaimers set forth in Part 18(B), i.e., if the advertising purchase is a Coordinated Expenditure or requires the organization to register as a Measure Finance Committee. Those requirements include the "Top Five Donors" and "Secondary Donor" requirements. Election Rules, Part 18(B)(1)(b), Part 18(B)(2).