

Number: AO 24-04-CD
Requested By: Amber Maltbie on behalf of the 907 Initiative
Prepared By: Heather Hebdon, Executive Director
Date Issued August 16, 2024
Subject: Request for an Advisory Opinion
Commission Decision:

I. QUESTIONS PRESENTED

1. Does “true source” reporting apply to ballot measures?¹
2. If true source reporting does apply to ballot measures and the 907 Initiative contributes to a ballot group funds it acquired from donations that were not specifically made for contribution to a ballot group, (a) may the 907 Initiative disclose only the source of the actual funds used to make the contribution and be in compliance with reporting requirements, and (b) if so, must the 907 Initiative set up a separate account from which ballot measure contributions will be made or can it use an internal accounting system to designate the donors whose funds comprise a contribution?
3. If the 907 Initiative must disclose certain donors when making a contribution to a ballot measure group, will those donors also be required to file a Form 15-5 if the amount of the contribution attributable to them is \$500 or more?
4. If the 907 Initiative makes its contributions exclusively from sources that are commonly understood as investment income, such as capital gains from the sale of appreciated stock that is donated to the organization or otherwise owned by the organization, dividends received on investments, and interest earned on depository accounts, and from no other source, is the organization itself the “true source” of the contribution for purposes of reporting?

II. SHORT ANSWERS

1. Yes. If an organization contributes \$500 or more to a ballot group, the organization must file a statement of contributions report identifying the true sources of its contribution under AS 15.13.040(k) and 2 AAC 50.352(b).
2. If the 907 Initiative does not set up a separate account from which ballot measure contributions will be made and instead commingles all its funds in one general account, 907 Initiative may not choose for itself which of its contributors or

¹ Exhibit 1, Advisory Opinion Request.

donors will be considered the true sources of its contributions. If it uses its general fund, it should identify all contributors or donors and the amount of their contributions or donations to its general fund in the immediately preceding 24-month period on its first report.

3. No. The organization must file a report and identify the true sources of funds because it is serving as an intermediary, but the donors to the organization do not have an independent reporting requirement.
4. With several qualifications, yes. An organization is the true source of contributed funds that derive from the organization's investments. It is not, however, the true source of contributed funds that derive from a donation or gift; income derived from donated investments is not a loophole in the campaign finance disclosure requirements.

III. **FACTS**

- The 907 Initiative is an Alaska-based 501(c)(4) nonprofit corporation that intends to make contributions to ballot measure groups. It has not made any previous contributions or funded independent expenditures related to any candidate or ballot measure election.
- The 907 Initiative derives funds from grants and donations, which it keeps in a general fund. Its existing donors did not give funds with an agreement or understanding that their donations would be used for ballot measures.
- Perceiving tension between a recent superior court order² and a prior APOC advisory opinion³ and informal APOC guidance, the 907 Initiative seeks guidance on its reporting requirements.

IV. **LAW AND ANALYSIS**

A. **True Source Reporting Applies to Contributors to Ballot Measure Groups.**

Alaska imposes campaign finance disclosure requirements to “inform the electorate” about “where political campaign money comes from and how it is spent,” to

² *Alaskans for Honest Elections v. Alaska Pub. Offices Comm’n*, No. 3AN-24-04508CI, 18–26 (Alaska Super. June 21, 2024) (holding in pertinent part that “Alaska’s true source reporting requirements apply to ballot initiatives in the signature-gathering phase and continue to apply once the petition is certified”).

³ AO 21-11-CD, *The Alaska Center*, 5 (approved June 20, 2022) (advising that certain independent expenditures to influence a ballot measure “would be subject to independent expenditure reporting,” but “would not be subject to the true source reporting requirements of AS 15.13.110(k)” because section .110(k) is triggered by independent expenditures for the purpose of influencing a candidate election). <https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=23802>

“deter actual corruption and avoid the appearance of corruption,” and to detect campaign finance violations.⁴ Where the applicable triggering conditions are met, individuals and organizations must file reports with APOC, detailing their contributions and expenditures to influence Alaska elections.⁵

To effectively meet these goals, campaign finance disclosures must accurately reflect the source of funds. A person cannot make expenditures or contributions anonymously, pseudonymously, or through an intermediary.⁶ This has come to be known as “true source” reporting.

True-source reporting applies to contributors to ballot measure groups. Along with the requirement that contributors give in their own names, under AS 15.13.040(k), “[e]very individual, person, nongroup entity, or group contributing a total of \$500 or more” to a ballot measure group “shall report the contribution or contributions on a form prescribed by [APOC] not later than 30 days after the contribution.” APOC regulations reinforce this point. 2 AAC 50.352(b) requires contributors to “file a statement of contributions in compliance with AS 15.13.040(k).” This regulation also mandates that contributors must “make the contribution in the name of the true source of the money or thing of value.”

Until recently, “true source” was not defined by statute. It was, however, clarified by regulation: 2 AAC 50.258(a) prohibits persons from contributing “using the name of another, or use a third-party conduit to obscure” where the funds derived from.

In 2020, Alaska voters approved Ballot Measure 2 (“BM2”). The measure was intended to further “increas[e] transparency,” “prohibit the use of dark money in [Alaska’s] candidate elections,” and “require[] the prompt, accessible, comprehensible, and public disclosure of the true and original sources of funds used to influence these elections.”⁷

As relevant here, BM2 made several amendments requiring the disclosure and certification of the “true source” of funds.⁸ BM2 also added a statutory definition of “true source”:

the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services; a person or legal entity who derived funds via contributions, donations, dues, or gifts is not

⁴ *Libertarian Party of Alaska, Inc. v. State*, 101 P.3d 616, 622–23 (Alaska 2004) (quoting *Messerli v. State*, 626 P.2d 81, 84–85 (Alaska 1980)).

⁵ See generally AS 15.13.040.

⁶ AS 15.13.074(b); AS 15.13.084; 2002 Alaska Laws Ch. 1 § 17 (adding requirement that a person may not make an expenditure “anonymously” or “using a fictitious name or using the name of another”); 2 AAC 50.352(b) (amended Dec. 22, 2011) (requiring a contribution to a ballot measure group to be “in the name of the true source of the money”).

⁷ 2020 Ballot Measure No. 2, § 1.

⁸ E.g., 2020 Ballot Measure No. 2, §§ 6–7, eff. Feb. 28, 2021.

the true source, but rather an intermediary for the true source; notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.⁹

Since its enactment in 2021, APOC has amended its regulations, including 2 AAC 50.352—the regulation that requires contributions to ballot measure groups to be made “in the name of the true source of the money.”¹⁰ APOC—which can be “presumed to know the laws in effect at the time it enacts or amends a [regulation]”—did not remove or alter the “true source” language.¹¹ In fact, APOC further clarified, through the amendment of 2 AAC 50.258 that any contribution “made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public...” was a contribution “in the name of another” and prohibited.¹²

In short, the answer to the 907 Initiative’s first question is yes: contributors to a ballot measure group are subject to “true source” disclosure requirements. In particular, AS 15.13.040(k) requires contributors of \$500 or more to a ballot measure group to report their contributions within 30 days. 2 AAC 50.352(b) requires that these contributions be made “in the name of the true source.” And with the enactment of BM2, “true source” is now statutorily defined. Accordingly, contributions must be in the name of “the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services” and not the “person or legal entity who derived funds via contributions, donations, dues, or gifts.”¹³

B. An Organization Must Disclose the True Sources of Its Contributions, Consistent with Past Commission Opinions and the Relevant Donation Limits.

This leads to the 907 Initiative’s next question about how true-source reporting works in practice when an organization commingles donations in a general fund. Must the organization disclose only the source of the actual funds used to make the contribution? If so, must the organization set up a political activities account, or can it use its own internal accounting system to designate the donors who are the true sources of a contribution?

⁹ Codified at AS 15.13.400(19).

¹⁰ Amended Sept. 25, 2022.

¹¹ *Cf. Mateo v. United States*, No. 8:03-cv-480-T-17MSS, 2005 WL 8160156, at *5 (M.D. Fla. Mar. 8, 2005) (citing *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991)).

¹² Amended Sept. 25, 2022.

¹³ AS 15.13.400(19). A “membership organization” that receives less than \$2,000 per person per year would still be the true source of these funds.

These questions are addressed by an advisory opinion approved last year.¹⁴ There, a PAC asked the Commission “to adopt a standard whereby a contributing intermediary can pick and choose its donors and contributors to be identified [as the true sources of funds] so long as the total contributed by them is equal to or exceeds the amount the intermediary contributes.”¹⁵ Specifically, the PAC made a contribution of \$30,000 from a general fund in which it commingled funds from donors and contributors. It picked two donors who had given more than \$30,000 combined to the PAC (in fact, one of them had given more than \$30,000 by himself) and reported them as the true sources of the contribution.

After discussing the purpose of BM2 and true source reporting, the Commission favorably cited 2 AAC 50.270(e), a regulation that allows organizations to use political activities accounts to protect the information of contributors or donors who did not intend to influence Alaska candidate elections. While this regulation “expressly applies to independent expenditure groups that are directly making expenditures to influence candidate elections in Alaska,” “it logically extends to intermediaries required to report the ‘true sources’ of contributions under AS 15.13.040(r).”¹⁶ Put directly, “[i]f the recipient group may avoid identifying the source of all its funds by keeping the funds that were not contributed to influence elections in Alaska separate, then an intermediary entity may do so as well by following the same method.”¹⁷

But because the PAC did not segregate political funds from its general funds, it could not “choose for itself which of its contributors or donors will be considered the true sources of its contributions using no uniform methodology.”¹⁸ Instead, to comply with the letter and spirit of BM2, the PAC would have to “identify all contributors or donors and the amount of their contributions or donations to its unrestricted general fund in the immediately preceding 24-month period . . . on its first Statement of Contributions Report.”¹⁹ This period “makes sense because statewide elections occur every two years, and so this period matches the election cycle for state races.”²⁰

This reasoning also logically extends to the true source disclosures required under AS 15.13.040(k). It should also be noted that if an organization has no normal sources of income—getting money only through gifts, dues, and donations—it can still report itself

¹⁴ AO 23-03-CD, *Unite America PAC* (approved Feb. 6, 2023).
<https://aws.state.ak.us/ApocReports/Paper/Download.aspx?ID=24452>

¹⁵ *Id.* at 4.

¹⁶ *Id.* at 6.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

as the true source, so long as it is passing money that it received in increments of less than \$2,000.²¹

If an organization does not segregate its funds, then it cannot choose for itself which of its contributors or donors is considered the true source of any ballot measure contributions using no uniform methodology.²² Instead, it should disclose all its donors who gave more than \$2,000 in a year from the previous 24 months. This approach best serves the letter and spirit of BM2.

Additionally, if an organization segregates its ballot measure contribution funds from its general fund, then donors to the general fund cannot be said to be the true source of any ballot measure contributions under the definition in AS 15.13.400(19). There is no nexus between the contribution and any donation to the general fund. Creating an account solely for donations that the organization intends to use to support a ballot group, would allow the organization to identify donors who give more than \$2,000 specifically to support those efforts.

C. The True Sources of Funds Do Not Have A Separate, Affirmative Reporting Requirement Independent of the Intermediary Organization.

The reporting requirement is imposed on the organization “contributing a total of \$500 or more to a [ballot measure] group.”²³ That is, the reporting requirement is not imposed on the “true sources”—it is imposed on the organization transmitting funds to a ballot measure group.

D. Whether an Organization Is the True Source of Investment Income Will Depend on the Circumstances.

The 907 Initiative’s final question concerns the “investment income” language in the “true source” definition. The 907 Initiative seeks clarification about the “true source” of various types of investment income. The definition of “true source” must be read in its entirety and whether an organization is the true source of its investment income will depend on how that income was derived. While an organization is usually the true source of its investment income, the organization is not the true source if it “derived funds via contributions, donations, dues, or gifts.”²⁴

²¹ AS 15.13.400(19) (“[T]o the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.”) Although this exception applies to a “membership organization,” that term is not defined, so an entity that amasses contributions of under \$2,000 per person could likely qualify.

²² Depending on the circumstances, a uniform methodology may obviate the need to disclose all an organization’s donors from the past 24 months. The Commission has not yet considered or approved an alternative methodology.

²³ AS 15.13.040(k).

²⁴ AS 15.13.400(19).

The 907 Initiative provides examples of three common types of investment income:

1. Capital gains from the sale of appreciated stock donated to or owned by an organization;
2. Dividends received on investments; and
3. Interest earned on (non-segregated) depository accounts.²⁵

Whether each of these sources of funds will be “investment income” and thus the true source of a contribution would depend on the circumstances. If an organization receives capital gains or dividends from its own investments, those capital gains and dividends likely will be the organization’s investment income. But if the capital gains are from the sale of stock that was donated in-kind to the organization, those capital gains likely will not be the organization’s investment income. Similarly, interest on an organization’s account may also be investment income, unless the account was funded entirely by donations that exceed \$2,000 per person per calendar year. Under AS 15.13.400(19), an organization is the true source only if it derived the funds itself and is not acting as an “intermediary” for another contributor.

Consider one version of the 907 Initiative’s first example: capital gains from the sale of appreciated stock that was donated to an organization. True, the capital gains are “investment income” from stock the organization possesses. Thus, the organization would appear to be “the person or legal entity whose contribution is funded from . . . investment income.”²⁶

But the second clause of the “true source” definition precludes this sort of end-run around the campaign finance transparency requirements. It requires a direct, causal connection between the organization and the funds, such that the organization is not the true source if it “derived [the] funds via contributions, donations, dues, or gifts,” in which case it is just “an intermediary for the true source.”

This sort of direct, causal connection between the funds and the organization is consistent with the laws governing the financial disclosures of public officials.²⁷ There, a public official’s “source of income” is the official’s employer.²⁸ And if the official is self-employed, the source of income is not the official himself or herself—it is official’s clients or customers.²⁹ In that way, officials cannot dodge their “source of income” disclosure requirements by simply listing themselves as self-employed. They must go a step further to be transparent about who pays them. This is analogous to the investment income

²⁵ Ex. 1.
²⁶ AS 15.13.400(19).
²⁷ See AS 15.13.030(9).
²⁸ AS 39.50.200(10).
²⁹ *Id.*

hypothetical that the 907 Initiative poses. Ultimately, the “true source” of a contribution is the person or entity that derived the funds from wages, making an investment, inheritance, or generating the funds from selling goods or services.

This reading of AS 15.13.400(19) is also consistent with other regulations and the intent of BM2. Under 2 AAC 50.258(a)(7), contributions are prohibited if they are “made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public at the time the contribution is made.” Alaska’s campaign finance disclosure requirements are intended to provide transparency about the source of money in Alaska’s elections. If “investment income” like capital gains, dividends, and interest were considered an organization’s investment income under any circumstances—without reference to how the funds that led to that income were derived—it would create a loophole that undercuts the transparency goals of the disclosure requirements.

V. CONCLUSIONS

If the relevant contribution limits are met, the 907 Initiative must report the true sources of its contributions, as required by AS 15.13.040(k) and 2 AAC 50.352(b).

An organization contributing to a ballot measure group must disclose the true source(s) of the funds used to make the contribution. So, if the organization does not set up a separate account from which ballot measure contributions will be made and instead commingles all its funds in one general account, the organization may not choose for itself which of its contributors or donors will be considered the true sources of its contributions. If it uses its unrestricted general fund, it should identify all its donors who gave more than \$2,000 in a year in the immediately preceding 24-month period on its first report.

The organization must file a report and identify the true sources of funds it contributes to a ballot group because it is serving as an intermediary, but the donors to the organization do not have an independent reporting requirement.

An organization is the true source of contributions made from investment income, provided that income derives from the organization’s investments and not from contributions, donations, or gifts made to the organization.

VI. COMMISSION DECISION

Only the Commission has the authority to approve an advisory opinion.³⁰ The Commission will rule on staff's proposed advice at its next regular meeting. The Commission may approve, disapprove, or modify the proposed advice. An advisory opinion must be approved by an affirmative vote of at least four members or it will be considered disapproved. Both staff's proposed advice and the Commission's final advisory opinion apply only to the specific facts and activity for which advice was requested.

If you rely on staff's proposed advisory opinion in good faith and the Commission subsequently rejects the proposed advice, staff will take no enforcement action on your activities up to that point if you acted under the specific facts described. If you have any additional questions or would like to discuss this proposed advice, please contact me at (907) 276-4176.

³⁰ 2 AAC 50.840.

APPLICABLE LAW

ALASKA STATUTES

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

(k) Every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of influencing the outcome of a proposition, and every individual, person, nongroup entity, or group contributing a total of \$500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020, shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

Sec. 15.13.400. Definitions

(19) “true source” means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services; a person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source; notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.

Sec. 39.50.200. Definitions

(10) “source of income” means the entity for which service is performed or that is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; but if the person is self-employed by means of a sole proprietorship, partnership, limited liability company, professional corporation, or a corporation in which the person, the person's spouse or domestic partner, or the person's dependent children, or a combination of them, hold a controlling interest, the “source” is the client or customer of the proprietorship, partnership, limited liability company, or corporation, but, if the entity that is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source.

ALASKA ADMINISTRATIVE CODE

2 AAC 50.258. Prohibited contributions.

(a) A contribution must be made in the name of the true source of the money or thing of value. A person may not make a contribution using the name of another, or use a third-party conduit to obscure the true source of any money or thing of value contributed to a campaign. A contribution in the name of another prohibited by this section includes any contribution

(1) made at the direction of another person, including a parent organization, subsidiary, division, department, branch, or local unit of a business, labor union, or group;

(2) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor lends, pays, or advances money or anything of value to the employee, agent, or other person to contribute in a name other than the true source of the money or thing of value;

(3) made by an employee, agent, or other person if an employer, principal, supervisor, or contractor reimburses the employee, agent, or other person for the contribution in money or anything of value;

(4) in a total amount exceeding the limitations in AS 15.13.070 if made to the same recipient by two or more groups or nongroup entities that

(A) share the majority of members of their boards of directors;

(B) share two or more corporate or organizational officers; in this subparagraph, “officer”

(i) has the meaning given in AS 15.13.040(r)(2); and

(ii) includes a chief executive officer;

(C) are owned or controlled by the same shareholders or members; or

(D) are in a parent-subsidiary relationship;

(5) made by a person who receives a gift of money or anything of value from a parent, spouse, or domestic partner for the purpose of making a contribution;

(6) made by check from a joint bank account in the name of any joint account holder who does not either sign the check or authorize the contribution in writing at the time the contribution is made; or

(7) made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public at the time the contribution is made.

2 AAC 50.270. Independent expenditures.

...

(e) A person required to report under AS 15.13.110(k) is not required to report donations that are not intended to influence the outcome of an election if the person

(1) establishes a political activities account as required by AS 15.13.052;

(2) makes no expenditures intended to influence the outcome of an election regulated under AS 15.13 from its general fund;

(3) establishes a written policy that all contributions to the person's political activities account must be from a contributor who has expressly indicated a desire that the contribution be used for political activities or has been expressly solicited for the purpose of making a contribution to the person's political activities account; and

(4) establishes a written policy that the contributor is the only person to decide whether a contribution goes to the person's general fund or the person's political activities account.

...

2 AAC 50.352. Ballot measure activity.

(a) Except for a foreign national as provided in AS 15.13.068, a person may make a contribution to a group that is organized for the principal purpose of

(1) filing an initiative proposal application with the lieutenant governor as provided in AS 15.45.020;

(2) sponsoring or circulating initiative petitions under AS 15.45.090 - 15.45.140 for the purpose of having an initiative measure placed on the ballot;

(3) supporting or opposing the efforts of any group that sponsors or circulates initiative petitions; or

(4) supporting or opposing the outcome of a ballot proposition election.

(b) A person contributing a total of \$500 or more to a group described in (a) of this section shall file a statement of contributions in compliance with AS 15.13.040(k), on a form prescribed by the commission. The statement of contributions must be filed no later than 30 days after the person's total contributions to the group exceed \$500. A person making a contribution to a group described in (a) of this section shall make the contribution in the name of the true source of the money or thing of value as required under 2 AAC 50.258.

(c) A corporation, company, partnership, firm, association, organization, business trust, labor union, or publicly funded entity that makes a contribution to a group described in (a) of this section, or makes an expenditure in support of, or in opposition to, a group described in (a) of this section, shall register in compliance with AS 15.13.050 and 2 AAC 50.290(a), and shall report the information required in AS 15.13.040(b) and (c) unless the entity

(1) makes each contribution and expenditure described in this section from the organization's general day-to-day operating account; and

(2) does not assess, collect, pool, or solicit money or anything of value for the purpose of making any contribution and expenditure described in this section.

(d) An individual who makes an expenditure to influence the outcome of a ballot proposition election or an initiative proposal application is not required to report the expenditure if the individual meets the criteria in AS 15.13.040(h).



ATTORNEYS AT LAW

777 South Figueroa Street
34th Floor
Los Angeles, CA 90017
T 213.612.7800

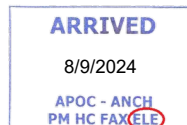
Amber Maltbie
D 213.612.7803
amaltbie@nossaman.com

Admitted only in California

Refer To File # 505133-0001

August 9, 2024

Heather Hebdon, Executive Director
Alaska Public Offices Commission
By email to heather.hebdon@alaska.gov



Re: Request for Advisory Opinion

AO 24-04-CD

Dear Ms. Hebdon:

My law firm represents the 907 Initiative, an Alaska-based 501(c)(4) nonprofit corporation working to increase public transparency for state and local government. By way of this letter, the 907 Initiative requests an advisory opinion on the questions set forth below.

Relevant Facts

The 907 Initiative is currently planning on making contributions totaling \$500 or more to one or more ballot measures in the current 2024 election and/or future election cycles. The 907 Initiative has not made contributions or funded independent expenditures in relation to any candidate or ballot measure election in the past and will not make independent expenditures to influence candidate elections in the future. Its sole anticipated activity is making contributions to ballot measure groups. The 907 Initiative is supported by grants and donations and does not receive funds that are earmarked for any political purpose. None of the existing donors gave with an agreement or understanding that their donations would be used for ballot measures, nor have 907 Initiative's fundraising solicitations been made in connection with supporting or opposing any ballot measures. The 907 Initiative has not received, and its general fund is not comprised of any "contributions" as that term is defined in A.S. § 15.13.400(4)(a).¹

Pursuant to A.S. § 15.13.040(k), the 907 Initiative will file the Statement of Contributions Form 15-5 (Form 15-5) within 30 days of making contributions of \$500 or more to a group formed to support or oppose a ballot proposition. In anticipation of completing this filing requirement, the 907 Initiative has familiarized itself with the Alaska Public Offices Commission's (APOC) Form 15-5 instructions and filing software. Per the instructions on page 5 of Form 15-5, disclosure of

1 "Contribution" is defined as "... a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party, and that is made for the purpose of (i) influencing the nomination or election of a candidate; (ii) influencing a ballot proposition or question; or (iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020..."

true sources is not required for this filing. The 907 Initiative has also familiarized itself with APOC Advisory Opinion (AO) No. 21-11-CD, which concluded that the “true source” reporting requirements contained in A.S. §15.13.110(k) do not apply to activity that would be for the purpose of influencing a ballot measure.

However, the 907 Initiative is also aware of the recently issued superior court ruling *Alaskans for Honest Elections v. APOC*, Case No. 3AN-24-04508 (“Order”). Relevant to this inquiry, the Order concluded generally that “true source” reporting applies to ballot measures.

Although the Order is not binding on the 907 Initiative, it nonetheless seeks to clarify the application of true source reporting to support or opposition of ballot measure groups prior to engaging in such activity to ensure that it is in full compliance with its obligations under the law.

Questions

1. Absent a binding decision by the Alaska Supreme Court that is contrary to APOC’s interpretation of “true source” reporting as applied to ballot measures, may the 907 Initiative rely on No. 21-11-CD and the Form 15-5 Instructions when completing the Form 15-5, such that it will satisfy its filing obligation by only disclosing the contributions it makes?
2. If the answer to Question No. 1 is no, and APOC determines that “true source” reporting currently applies to ballot measure contributions made by the 907 Initiative from funds comprised of non-earmarked donations, the 907 Initiative seeks to understand how to implement this requirement in its specific circumstances, which is that it has received no ‘contributions’ as defined by Alaska statute and no donor has knowledge that their funds may be used to make a contribution to a ballot group. Accordingly, please confirm the following:

(a) May the 907 Initiative disclose only the source of the actual funds used to make the contribution and be considered in compliance with reporting requirements?

The discussion that follows concludes that the answer to this question is yes. Please confirm whether APOC agrees with this conclusion.

(b) If the answer to Question 2(a) is yes, must the 907 Initiative set up a separate account, such as a political activities account, from which ballot measure contributions will be made, or may it use an internal accounting system to designate the donors whose funds comprise a contribution?

3. If the 907 Initiative must disclose certain donors when making a contribution to a ballot measure group, will those donors also be required to file a Form 15-5 if the amount of the contribution attributable to them is \$500 or more? If yes, does the 907 Initiative have an affirmative duty to notify its donors of this requirement?
4. If the 907 Initiative makes its contributions exclusively from sources that are commonly understood as investment income, such as capital gains from the sale of appreciated stock that is donated to the organization or otherwise owned by the organization,

dividends received on investments, and interest earned on depository accounts, and from no other source, is the organization itself the “true source” of the contribution for purposes of reporting?

The discussion that follows concludes that the answer to this question is yes. Please confirm whether APOC agrees with this conclusion.

Discussion

In 2021, voters approved Ballot Measure 2 (BM2), which among other things added new reporting and disclosure requirements for persons that have made or will be making independent expenditures supporting or opposing *candidates* in Alaska elections. These new reporting requirements are found primarily in A.S. § 15.13.110(k) and A.S. § 15.13.040(r). BM2 also added a new definition of true source for purposes of effectuating these reporting requirements, as follows:

“[t]rue source” means the person or legal entity whose contribution is funded from wages, investment income, inheritance, or revenue generated from selling goods or services; a person or legal entity who derived funds via contributions, donations, dues, or gifts is not the true source, but rather an intermediary for the true source; notwithstanding the foregoing, to the extent a membership organization receives dues or contributions of less than \$2,000 per person per year, the organization itself shall be considered the true source.” (A.S. § 15.13.400(19).)²

Separately, Alaska’s campaign finance statute and Administrative Code prohibit making contributions in the name of another. Specifically, “A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another.” (A.S. § 15.13.074(b).) A prohibited contribution in the name of another includes any contribution “made with funds derived from contributions, donations, gifts, or dues whose source is not disclosed to the public at the time the contribution is made.” (2 AAC § 50.258(a)(7).) Administrative Code section 50.352 (Ballot measure activity) provides that a person making a contribution to a ballot measure group shall make the contribution “in the name of the true source of the money or thing of value *as required under 2 AAC 50.258.*” (Emphasis added.)

Based on the above framework, if “true source” reporting does apply to ballot measure groups, the governing provision for implementation of that requirement is AAC 50.258. Notably, AAC 50.258 does not contain a clause requiring reporting pursuant to the definition of A.S. § 15.13.400(19).³ Accordingly, if APOC concludes that “true source” reporting applies to ballot measures, an organization that contributes to a ballot measure group complies by disclosing only

² Although the undefined phrase “true source” was contained in the Alaska statute prior to passage of BM2, only the new reporting provisions governing true source reporting for independent expenditures on candidates (i.e., A.S. § 15.13.110(k) and A.S. § 15.13.040(r)) invoke the definition added by BM2, which is indicative of the drafters’ intent that this specific “true source” reporting only applies to independent expenditures on candidates.

³ By contrast, A.S. § 15.13.1040(r) provides “For purposes of this subsection, the reporting contributor is required to report and certify the true sources of the contribution, and intermediaries, if any, as defined by A.S. § 15.13.400(19).” There is no such cross-reference in either A.S. § 15.13.1040(k) or 2 AAC § 50.258.

Heather Hebdon, Executive Director
Alaska Public Offices Commission
August 9, 2024
Page 4

the contributions, donations, gifts or dues that comprise the contribution being made. Similarly, an organization that contributes using only investment income as described above will be the true source of the contribution for reporting purposes.

Sincerely,



Amber Maltbie
Nossaman LLP

AM/am