

## **James Van Bramer, CD #26 (2009)**

### **1. Accepting an over-the-limit contribution**

**No Penalty**

Campaigns may not accept contributions from a single source that, when added together, exceed the applicable contribution limit for the entire election cycle. See Admin. Code §§ 3-702(8), 3-703(1)(f), (11), (12); Board Rules 1-04(c)(1), 1-04(h), 1-07(c). When a Campaign receives a contribution in excess of the contribution limit, it must return the excess portion to the contributor. See Board Rule 1-04(c)(1).

The Campaign accepted aggregate contributions from its Treasurer that, when added together, exceeded the contribution limit by \$471. CFB staff notified the Campaign of the overage on September 25, 2009 and the Campaign promptly returned the over-the-limit portion to the Treasurer on September 28, 2009.

The Board did not assess a penalty for this violation.

### **2. Making improper post-election expenditures**

**\$100**

After an election and before repaying leftover campaign funds to the Board, Program participants may spend campaign funds only to pay campaign-related expenses incurred in the preceding election and for “routine activities involving nominal cost associated with winding up a campaign and responding to the post-election audit.” See Admin. Code §§ 3-702(21), 3-710; Board Rules 1-03(a), 5-03(e)(2). Further, “an expenditure for goods or services is made when the goods or services are received, used, or rendered, regardless when payment is made.” Board Rule 1-08(b).

The Campaign made three expenditures totaling \$336.16 that appear to be impermissible post-election expenditures based on their timing, amount and/or purpose.

The Board assessed a penalty of \$100 for this violation.

### **3. Failing to report an in-kind contribution**

**\$5,000**

Campaigns are required to report all in-kind contributions they receive. See Admin. Code §3-703(6) and Board Rule 3-03. In-kind contributions are goods or services provided to a campaign for free, paid by a third party, or provided at a discount not available to others. The amount of the in-kind contribution is the difference between the fair market value of the goods or services and the amount paid. See Admin. Code §3-702(8); Board Rules 1-02, 1-04(g). An in-kind contribution is both a contribution and expenditure subject to both the contribution and expenditure limits. See *id.*; Board Rule 1-04(g). Campaigns are required to maintain and provide the CFB with documentation demonstrating the fair market value of each in-kind contribution. See Admin. Code §§ 3-702(8) and 3-703(1)(d) and (g); Board Rules 1-04(g)(2), 4-01(c).

Additionally, campaigns must account for and report non-independent activity conducted on the campaign’s behalf. A campaign that engages in campaign-related activity with another party must compensate that party for the non-independent activity it performs on the campaign’s

behalf. If the campaign does not compensate the third party, the campaign will have received an “in-kind” contribution from the other party equal to the other party’s share of the costs of the activity. *See* CFB Advisory Op. 2009-7 (Aug. 6, 2009) (“A.O. 2009-7”). “Independent” activity is that which a candidate or a candidate’s committee “did not authorize, request, suggest, foster or cooperate in.” *Id.*; *see also* Admin. Code § 3-702(8). If not independent, expenditures are in-kind contributions, which are considered both contributions and expenditures, subject to the contribution and expenditure limits. *See* Board Rule 1-08(f)(2), (3). The factors for determining whether an expenditure is independent are set forth in Board Rule 1-08(f).

Because the Board is not privy to the communications that campaigns have with third parties, information about whether campaign-related activity has been discussed or otherwise coordinated between a campaign and a third party is uniquely within the campaign’s possession. For this reason, “each campaign bears the burden of demonstrating that any third party activity conducted on the campaign’s behalf is indeed independent.” *See* A.O. 2009-7 (emphasis added).

A review of documents submitted by the Campaign indicated that an employee, who served as SEIU 32BJ’s Assistant Political Director during the 2009 election, participated in Campaign conference calls preceding the election. The Campaign submitted an affidavit in which she testified that she “was in communication” with the Campaign about “logistics – that is, how many volunteers we expected would appear, the location and time for volunteers to show up, and whether food would be provided by the campaign to the volunteers.”

Based on the extensive record of communications between staff of 32BJ and the Campaign, these expenditures were not independent. The Campaign failed to report any expenditures to 32BJ for the Assistant Political Director’s assembling of volunteers, and disregarded the Draft Audit Report’s instructions to “describe the process by which 32BJ provided canvassers to the Campaign” and to identify “whether there were any recruitment or transportation costs.” Because 32BJ provided such services without charge, these services constitute unreported in-kind contributions. Violations related to coordinated activity are serious and the penalty assessed by the Board reflects that.

The Board assessed a penalty of \$5,000 for this violation.