

## **Title 4 - Nebraska Accountability and Disclosure Commission**

### **Chapter 10 - Rules and Regulations governing campaign practices under the Nebraska Political Accountability and Disclosure Act** (Adopted October 27, 2006, Amended October 25, 2013, Amended October 16, 2015)

#### **Statutory Authority**

This rule is adopted pursuant to the provisions of §49-14,123(1) of the Nebraska Political Accountability and Disclosure Act.

001. **Scope and Application.** This rule interprets the provisions of the Nebraska Political Accountability and Disclosure Act as it pertains to the campaign practices of candidates, political committees and corporations, labor organizations, limited liability companies, limited partnerships and industry, trade, or professional associations.

002. **Definitions.** For purposes of this rule, unless the context otherwise requires, the definitions found in the following subsections shall be used.

01. Contribution shall mean a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. (§49-1415(1))

01A. Contribution shall include the purchase of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and similar fundraising events; an individual's own money or property other than the individual's homestead used on behalf of that individual's candidacy; and the granting of discounts or rebates by broadcast media and newspapers not extended on an equal basis to all candidates for the same office. (§49-1415(2))

01B. Contribution shall not include: (a) volunteer personal services provided without compensation, or payments of costs incurred of less than two hundred fifty dollars (\$250) in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid; (b) amounts received pursuant to a pledge or promise to the extent that the amounts were previously reported as a contribution; or (c) food and beverages, not to exceed fifty dollars (\$50) in value during a calendar year, which are donated by an individual and for which reimbursement is not given. (§49-1415(3))

02. Election shall mean a primary, general, special, or other election held in this state or a convention or caucus of a political party held in this state to nominate a candidate. Election shall

include a vote on a ballot question. (§49-1416)

03. Election period means the calendar year of the election. (§49-1455(2))

04. Primary election period means the period beginning with the first day of the election period through the thirty-fifth day following the primary election.

05. General election period means the period beginning with the day following the end of the primary election period through the end of the election period.

06. Expenditure shall mean a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question. An offer or tender of an expenditure is not an expenditure if expressly or unconditionally rejected or returned. (§49-1419(1))

06A. Expenditure shall include a contribution or a transfer of anything of ascertainable monetary value for the purposes of influencing the nomination or election of any candidate or the qualification, passage, or defeat of a ballot question. (§49-1419(2))

06Ai. The use by an individual of paid union leave for the purpose of supporting or opposing the nomination or election of a candidate or for the purpose of supporting or opposing the qualification, passage or defeat of a ballot question is an expenditure by the union.

06B. Expenditure shall not include: (a) An amount paid pursuant to a pledge or promise to the extent the amount was previously reported as an expenditure; (b) An expenditure for communication by a person strictly with person's paid members or shareholders; (c) An expenditure for communication on a subject or issue if the communication does not support or oppose a ballot issue or candidate by name or clear inference; (d) An expenditure by a broadcasting station, newspaper, magazine, or other periodical or publication for any news story, commentary, or editorial in support of or opposition to a candidate for elective office or a ballot question in the regular course of publication or broadcasting; or (e) An expenditure for nonpartisan voter registration activities. This subdivision shall not apply if a candidate or a group of candidates sponsors, finances, or is identified by name with the activity. This subdivision shall apply to an activity performed pursuant to the Election Act by an election commissioner or other registration official who is identified by name with the activity. (§49-1419(3))

06Bi. An expenditure for communication strictly with the person's paid members or shareholders includes a) communications not advocating or opposing the nomination or election of a candidate or the qualification, passage or defeat of a ballot issue; and b) information about a candidate or ballot issue which may include the person's expressions of support or opposition.

06Bii. A person acting as the distributor of campaign materials of a candidate, a candidate committee, or a ballot question committee to the person's paid members or shareholders is not making an expenditure for communications. The distribution is a communication from the candidate, a candidate committee, or a ballot question committee to the person's paid members or shareholders.

.07 Independent expenditure shall mean an expenditure as defined in §49-1419 by a person if the expenditure is not made at the direction of, under the control of, or with the cooperation of another person and if the expenditure is not a contribution to a committee. (§49-1428)

07A. Any expenditure which is made as a result of a request or explicit suggestion of the candidate, the committee treasurer, or anyone acting on behalf of either, shall be considered an in-

kind contribution and not an independent expenditure.

07Ai. The term "anyone acting on behalf of either" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

07B. Any expenditure to distribute or republish campaign material (print or broadcast) produced or prepared by a candidate's campaign is an in-kind contribution or an independent expenditure reportable as required by law.

08. In-kind contribution or expenditure shall mean a contribution as defined in §49-1415 or expenditure as defined in subsections (1), (2), and (3) of §49-1419, other than money. (§49-1430)

09. Late contribution means a contribution as defined in section 49-1415 and 002.01 of one thousand dollars (\$1,000.00) or more received after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459. (§49-1458(5))

10. Late independent expenditure means an independent expenditure as defined in section 49-1428 of one thousand dollars (\$1,000.00) or more made after the closing date for campaign statements as provided in subdivision (1)(b) of section 49-1459. (§49-1478.01(3))

11. Loan shall mean a transfer of money, property, or anything of ascertainable monetary value in exchange for an obligation, conditional or not, to repay in whole or part. (§49-1432)

12. Political party committee shall mean a state central, district, or county committee of a political party which is a committee. (§49-1441)

### **003 Time and Place of Filing Reports and Statements Pursuant to §49-1445 through §49-1479.02**

01. Reports and statements required pursuant to §49-1445 through §49-1479.02 shall be filed with the Nebraska Accountability and Disclosure Commission.

02. Reports and statements may be filed by hand delivery, delivery by the United States Postal Service, other delivery service, email, or facsimile transmission. Reports and statements may be filed by any electronic filing system provided by the Nebraska Accountability and Disclosure Commission after the filer has been issued electronic filing credentials by the Commission.

03. A report or statement is considered timely filed if it is received by the Commission on or before the due date or if it is postmarked by the United States Postal Service on or before the due date.

04. A report or statement is considered timely filed if it is received at the Commission office at or before 11:59 p.m. Central Time on the date due and the filing is made in a manner that permits the Commission to determine the time of receipt.

05. The Commission's office hours for receiving hand deliveries of reports and statements are 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, State holidays excepted.

**004. Limitations on Loans and Interest, All Committees.** A candidate committee shall not accept more than fifteen thousand dollars (\$15,000) in loans prior to or during the first thirty (30) days after

formation of his or her candidate committee. On and after the 31st day after a candidate committee is required to be formed pursuant to the provisions of §49-1413, the committee shall not accept loans in an aggregate amount of more than fifty percent (50%) of contributions of money received which are other than the proceeds of loans. Any loans which have been repaid as of such date shall not be taken into account for the purposes of the aggregate loan limit. (§49-1446.04)

01. The restriction on loans received on and after the 31st day after a candidate committee is required to be formed pursuant to the provisions of §49-1413 continues until the end of the term of the office to which the candidate sought nomination or election, regardless of whether the candidate is elected to office.

02. The provisions of this section are applicable to loans from any source, including loans by the candidate to his or her committee.

03. A committee shall be considered *formed* upon raising, receiving, or spending more than five thousand dollars (\$5,000) in a calendar year. (§49-1413)

04. A candidate committee shall not pay interest on a loan made to the committee by the candidate, a member of the immediate family of the candidate, or a business with which the candidate is associated. (§49-1446.04(1))

04A. Immediate family means a child residing in a candidate's household, a spouse of the candidate, or an individual claimed by the candidate or the candidate's spouse as a dependent for federal income tax purposes. (§49-1425)

04B. Business with which the candidate is associated means a business 1) in which the candidate is a partner, limited liability company member, director, or officer; or 2) in which the candidate or a member of the candidate's immediate family is a stockholder of closed corporation stock worth one thousand dollars (\$1,000) or more at fair market value or which represents more than a five percent (5%) equity interest, or is a stockholder of publicly traded stock worth ten thousand dollars (\$10,000) or more at fair market value or which represents more than a ten percent (10%) equity interest. (§49-1408)

005. **Petty Cash Funds, All Committees.** A committee may maintain a petty cash fund out of which it may make expenditures not in excess of fifty dollars (\$50) to any person in connection with a single purchase or transaction.

01. A written record of petty cash disbursements must be kept if a petty cash fund is maintained including the date and amount of payment, the name and address of the payee, and the purpose of the disbursement.

02. No check shall be made payable to cash except to replenish a petty cash fund, and such check shall be drawn only upon the official committee depository.

03. Contributions, loans, and other funds received in cash or by written instrument or from the disposition of in-kind contributions may not be used for petty cash. Such cash, checks, written instruments and proceeds must be deposited directly into a committee's designated depository.

04. Receipts and invoices shall be obtained in connection with any purchase or transaction from a petty cash fund. Such receipts and invoices shall be preserved for five (5) years and shall be made available for inspection as authorized by the Commission.

006. **Record Keeping Requirements, All Committees.** Each committee shall designate one account in a financial institution in Nebraska as the official depository for the purpose of depositing all

contributions which it receives in the form of or which are converted to money, checks, or other negotiable instruments and for the purpose of making all expenditures. No expenditure shall be made by a committee without the authorization of the treasurer or the assistant treasurer. The contributions received or expenditures made by a candidate or an agent of a candidate shall be considered received or made by the candidate committee. (Ref. §49-1446)

The treasurer of each committee shall maintain detailed records of all contributions or other receipts and all expenditures, including all bank statements, deposit slips, cancelled checks, receipts, bills, invoices, and other written records to document the following:

01. The name and address of each contributor, the amount of each contribution, the date of receipt of each contribution, and the cumulative amount contributed by each contributor for the election period or annual reporting period. Contributions received from a political committee must include the full name of the committee's treasurer.

01A. Cash contributions of fifty dollars (\$50) or less received as the result of a fund raising event pursuant to the provisions of §49-1472(2) need not include the name and address of the contributor.

01B. Contributions received by an individual acting in behalf of the committee shall be reported promptly to the committee's treasurer not later than five (5) days before the closing date of any Campaign Statement required to be filed by the committee. (§49-1446(5))

01Bi. If the contribution is received less than five (5) days before the closing date, the contribution shall be reported to the committee treasurer immediately. (§49-1446(5))

01Bii. A contribution shall be considered received by a committee when the contribution is received by the committee treasurer or a designated agent of the committee treasurer notwithstanding the fact that the contribution is not deposited in the official depository by the reporting deadline. (§49-1446(6))

01Biii. Contributions received by a committee shall not be commingled with any funds of an agent of the committee or any other person except for funds received or disbursed by a separate segregated political fund for the purpose of supporting or opposing candidates and committees in elections in states other than Nebraska and candidates for federal office as provided in §49-1469.06. (§49-1446(7))

01C. Contributions which are in-kind must include the value and a description of the thing of value provided.

01D. Earmarked contributions received pursuant to the provisions of §49-1479.01 must include the full name and address of the actual contributor of the funds and of the intermediary or agent.

01E. Pledges must include and the name and address of the person making the pledge, the date the pledge was made, the amount of the pledge, and the date the pledge is expected to be paid.

02. The name and address of each person making a loan to the committee, the date and the amount of the loan, and the name and address of any guarantor of the loan.

02A. Records shall be maintained by the treasurer as to the repayment of the loan, including the amount and date of each payment on the loan.

02B. The treasurer shall maintain a copy of the check, money order or other written instrument by which any loan repayment is made.

03. The full name and street address of each payee, the date of each expenditure, and a description of the goods or services for which the expenditure was made.

03A. If the person providing the consideration for which any expenditure is made is other than the payee, the full name and street address of that person shall also be recorded.

03B. If expenditures are made to an agent or independent contractor and the agent or contractor makes expenditures on behalf of the committee, a detailed record of such expenditures shall be obtained and kept with other committee records.

03C. Records maintained of expenditures shall include all bank statements issued by the financial institution in which the account is located and all cancelled checks.

03Ci. In the event that the financial institution normally provides only photocopies of cancelled checks, the photocopies of the cancelled checks shall be maintained by the treasurer.

03Cii. In the event that the financial institution does not normally provide either cancelled checks or photocopies of cancelled checks except on request and/or for a charge, the treasurer need not maintain copies of the checks, but shall secure copies of the checks at the committee's own expense if so requested by the Commission.

03Ciii. A check register, log, or ledger of the checks issued on the official depository shall be maintained by the treasurer.

03Civ. A ledger or other record of the name and address of each payee from the official depository, including the amount paid, the date paid, and a description of the goods or services provided, shall be maintained by the treasurer.

03Cv. Invoices, bills and cash register receipts shall be maintained by the treasurer for all expenditures.

04. All candidate committee and ballot question committee records shall be kept for a period of five (5) years after dissolution of the committee. All committee records, except those of candidate committees and ballot question committees, shall be kept for a period of ten (10) years after the date the record was created or for a period of five (5) years after the dissolution of the committee, whichever is sooner.

#### **007. Late Contributions; §49-1458**

01. A late contribution means a contribution of one thousand dollars or more received after the closing date for campaign statements as provided in subdivision (1)(b) of §49-1459.

02. A committee which receives a late contribution shall report the contribution to the Commission within two days after the date of the its receipt.

03. The report shall include the full name, street address, occupation, employer, and principal place of business of the contributor. The report shall also include the amount of the contribution and the date of receipt.

04. A report of late contribution may be filed electronically if the filer has been issued filing credentials by the Commission.

## **008. Late Independent Expenditures; §49-1478.01**

01. An independent committee, including a separate segregated political fund, which makes a late independent expenditure shall report the expenditure to the Commission within two days after the date of the expenditure.

02. The report shall include the committee's full name, street address, the amount of the expenditure and the date of the expenditure. The report shall also include the full name and street address of the recipient of the expenditure. For the purposes of this section, the recipient of the expenditure is the person or persons who provide the goods or services as consideration for the late independent expenditure.

03. The report shall include the name and office sought of the candidate whose nomination or election is supported or opposed by the expenditure and the identification of the ballot question, the qualification, passage, or defeat of which is supported or opposed by the expenditure. The report shall state whether the candidate or ballot question identified is supported or opposed by the expenditure.

04. A late independent expenditure means an independent expenditure as defined in §49-1428 of one thousand dollars or more made after the closing date for campaign statements as provided in subdivision (1)(b) of §49-1459.

05. A report of late independent expenditure may be filed electronically if the Commission has issued filing credentials to the filer.

## **009. Late Fees and Civil Penalties; Responsibility of Candidates and Committee Treasurers; §49-1447**

01. For any committee other than a candidate committee, the committee treasurer shall be responsible for filing all statements and reports of the committee under the Nebraska Political Accountability and Disclosure Act. The committee treasurer shall be personally liable, subject to §011, for any late filing fees, civil penalties, and interest that may be due under the Nebraska Political Accountability and Disclosure Act as a result of a failure to make such filings.

02. For candidate committees, the candidate shall be responsible for filing all statements and reports required to be filed his or her candidate committee under the Nebraska Political Accountability and Disclosure Act. The candidate shall be personally liable for any late filing fees, civil penalties, and interest that may be due under either act as a result of a failure to make such filings and may use funds of the candidate committee to pay such fees, penalties, and interest.

## **010. Interest on Late Filing Fees and Civil Penalties; Section 49-1463.02**

01. Interest shall accrue on all late filing fees and civil penalties imposed under the Nebraska Political Accountability and Disclosure Act at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

02. The interest shall begin to accrue thirty days after the Commission sends notice to the person of the assessment of the late filing fee or civil penalty.

03. A written request filed with the Commission for relief from late filing fees shall stay the accrual of interest on a late filing fee until such time as the Commission grants or denies the relief.

04. Interest on an unpaid late filing fee and civil penalty shall be simple interest.

04A. The daily accrual of interest shall be calculated by dividing the amount of the annual interest by 365.

04B. At the time of payment interest may be rounded down to the nearest dollar.

04C. When the interest rate changes in accordance with the provisions of §45-104.02, the new interest rate shall thereafter be applied to any unpaid late filing fees and civil penalties including those late fees and civil penalties previously assessed.

.05 Payment of late filing fees, civil penalties and interest shall be applied first to the interest and then to the principal of the late filing fees and civil penalties.

**011. Ballot Question Committees; Posting of Bonds to Guaranty Payment of Late Filing Fees, Civil Penalties and Interest. §49-1461.01.**

01. A ballot question committee shall file with the Commission a surety bond running in favor of the State of Nebraska with surety by a corporate bonding company authorized to do business in this state and conditioned upon the payment of all fees, penalties, and interest which may be imposed under the Nebraska Political Accountability and Disclosure Act.

02. A bond in the amount of five thousand dollars shall be filed with the Commission within thirty days after the committee receives contributions or makes expenditures of more than one hundred thousand dollars in a calendar year. The amount of the bond shall be increased by five thousand dollars for each additional five hundred thousand dollars received or expended in a calendar year.

03. Proof of any required increase in the amount of the bond shall be filed with the Commission within thirty days after each additional five hundred thousand dollars is received or expended.

04. Upon any failure to pay late filing fees, civil penalties, or interest due under the Nebraska Political Accountability and Disclosure Act, the Commission shall first attempt to recover from the proceeds of the bond prior to proceeding to recovering from the treasurer of the committee.

**012. Ballot Question Committees; Release of Bond**

01. A ballot question committee which has posted a bond to guarantee the payment of any late filing fee or civil penalty may apply to the Commission for leave to terminate the bond.

02. The Commission shall grant leave to terminate the bond upon a finding that the ballot question committee: a) has no outstanding late filing fees or civil penalties; b) has filed all campaign statements related to the ballot question election or the ballot question qualification process; and c) is not currently supporting or opposing the qualification, passage or defeat of a ballot question.