



Notice of Temporary Adoption

Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

May 23, 2012

I. Adopted Rule Amendments

As authorized by Colorado Elections Law¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the rules concerning campaign and political finance³ are adopted on a temporary basis and immediately effective.

(Additions to the current rules are reflected in SMALL CAPS and deletions from current rules are shown in ~~stricken type~~. *Annotations* may be included):

Amendments to Rule 6 are adopted as follows:

6.1 The appropriate filing officer for a state or county political party is the Secretary of State. Therefore, state and county political parties are subject to the requirements of section 1-45-109(1)(c), C.R.S., and must file reports with the Secretary of State. [Article XXVIII Section 2(1); section 1-45-109(1)(c), C.R.S.]

6.1.1 ~~This rule shall not apply to a political party in a home rule jurisdiction reporting in accordance with Rule 14.4.~~ REPEALED.

6.2 Transfers of money within a party

6.2.1 A party may transfer money from one level of the organization to another without limit.

6.2.2 Transfers of money within a party shall be disclosed as "other income" in accordance with Rule 10.12.

6.3 HOME RULE JURISDICTIONS

6.3.1 RULE 6.1 DOES NOT APPLY TO A POLITICAL PARTY IN A HOME RULE JURISDICTION THAT REPORTS IN ACCORDANCE WITH RULE 14.4.

¹ Sections 1-1-107(2)(a) and 1-1.5-104(1)(e), C.R.S. (2011).

² Section 24-4-103, C.R.S. (2011).

³ 8 CCR 1505-6.

6.3.2 IF A POLITICAL PARTY RECEIVES CONTRIBUTIONS INTO A SEPARATE ACCOUNT IN ACCORDANCE WITH RULE 14.4, THE PARTY MAY NOT TRANSFER FUNDS FROM THAT ACCOUNT TO OTHER COUNTY PARTIES OR TO A STATE PARTY.

The following annotation is added to Rule 15.6:

15.6 An issue committee supporting or opposing a recall election is not required to register with the appropriate officer until the committee has accepted \$5,000 or more in contributions or made expenditures of \$5,000 or more in support of or opposition to the recall.

[*SAMPSON V. BUESCHER*, 625 F.3D 1247 (10TH CIR. 2010)]

THE DENVER DISTRICT COURT DECLARED RULE 4.27, THE PREDECESSOR TO RULE 4.1, INVALID IN *COMMON CAUSE ET. AL V. GESSLER*, 2011 CV 4164. THE SECRETARY HAS APPEALED THE DECISION, AND ACCORDINGLY WILL NOT ENFORCE THE RELATED RULE 15.6 UNLESS OR UNTIL THE COLORADO APPELLATE COURTS REVERSE THE DISTRICT COURT'S DECISION. THE SECRETARY WILL REVIVE RULE 15.6 IF THE APPELLATE COURTS REVERSE THE DECISION.

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State's findings to justify the immediate adoption of these new rules on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

These new rules are immediately effective on a temporary basis.

Dated this 23rd day of May, 2012,



Suzanne Staiert
Deputy Secretary of State

For

Scott Gessler
Colorado Secretary of State

⁴ Section 24-4-103(6), C.R.S. (2011).



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Rules Concerning Campaign and Political Finance 8 CCR 1505-6

May 23, 2012

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State rules concerning Campaign and Political Finance.¹ The amendments are intended to ensure uniform and proper administration, implementation, and enforcement of Colorado campaign and political finance laws.²

Specifically, the revisions clarify that the existing rule concerning transfers of money within a political party does not apply to political parties in a home rule jurisdiction and that the transfer of funds between political parties in a home rule jurisdiction and other levels of the organization are not permitted. Additionally, the revision corrects an oversight related to recall committees in that recall committees are subject to the same rules that govern issue committees and that specifically, the rule establishing a \$5,000 registration threshold for recall committees will not be enforced until a decision has been reached by the Colorado Appellate Court in *COMMON CAUSE ET. AL V. GESSLER*, 2011 CV 4164.

II. Rulemaking Authority

The statutory and constitutional authority is as follows:

1. Section 1-1-107(2)(a), C.R.S., (2011), which authorizes the Secretary of State “[t]o promulgate, publish and distribute...such rules as the secretary finds necessary for the proper administration and enforcement of the election laws.”
2. Section 1-1.5-104(1)(e), C.R.S., (2011), which authorizes the Secretary of State to “[p]romulgate rules in accordance with article 4 of title 24, C.R.S., as the secretary finds necessary for proper administration and implementation of [the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545].”

¹ 8 CCR 1505-6.

² Article XXVIII of the Colorado Constitution and Article 45, Title 1 of the Colorado Revised Statutes.



Statement of Justification and Reasons for Adoption of Temporary Rules

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Amended Rule: 6
Supplementary annotation: Rule 15.6

In accordance with Colorado election law,¹ the Secretary of State finds that certain amendments to the existing election rules must be adopted and effective immediately to ensure the uniform and proper administration and enforcement of Colorado election laws during the 2012 election cycle. Temporary adoption is necessary both to comply with law and to preserve the public welfare generally.

These rules are adopted in accordance with recommendations made by the Secretary of State, Elections Division staff, County Clerk and Recorders, and interested parties throughout the State of Colorado. The Secretary of State anticipates commencement of formal rulemaking in accordance with the State Administrative Procedure Act² in the near future to consider adoption of these amended rules on a permanent basis. Adoption of the rules on a temporary basis is necessary to provide clear guidance to interested parties, including, but not limited to: county clerks, candidates, political parties, political organizations, and committees, given the close proximity of the June 2012 Primary Election and the November 2012 General Election.

For these reasons, and in accordance with the State Administrative Procedure Act, the Secretary of State finds that adoption and immediate effect of the amendments to existing election rules is imperatively necessary to comply with state and federal law and to promote public interests.³

¹ Sections 1-1-107(1)(c), 1-1-107(2)(a), 1-1.5-104(1)(e), C.R.S. (2011). The Secretary of State has the power “[t]o promulgate, publish, and distribute...such rules as [the Secretary] finds necessary for the proper administration and enforcement of the election laws” and “...[the “Help America Vote Act of 2002”, 42 U.S.C. 15301-15545]....”

² Section 24-4-103(3)(a), C.R.S. (2011).

³ Section 24-4-103(3)(6), C.R.S. (2011).