

**Effective 5/14/2019**

**10-3-208 Campaign finance disclosure in municipal election.**

(1) Unless a municipality adopts by ordinance more stringent definitions, the following are defined terms for purposes of this section:

(a) "Agent of a candidate" means:

- (i) a person acting on behalf of a candidate at the direction of the reporting entity;
- (ii) a person employed by a candidate in the candidate's capacity as a candidate;
- (iii) the personal campaign committee of a candidate;
- (iv) a member of the personal campaign committee of a candidate in the member's capacity as a member of the personal campaign committee of the candidate; or
- (v) a political consultant of a candidate.

(b) "Anonymous contribution limit" means for each calendar year:

- (i) \$50; or
- (ii) an amount less than \$50 that is specified in an ordinance of the municipality.

(c)

(i) "Candidate" means a person who:

- (A) files a declaration of candidacy for municipal office; or
- (B) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a municipal office.

(ii) "Candidate" does not mean a person who files for the office of judge.

(d)

(i) "Contribution" means any of the following when done for political purposes:

- (A) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to a candidate;
- (B) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the candidate;
- (C) any transfer of funds from another reporting entity to the candidate;
- (D) compensation paid by any person or reporting entity other than the candidate for personal services provided without charge to the candidate;
- (E) a loan made by a candidate deposited to the candidate's own campaign; and
- (F) an in-kind contribution.

(ii) "Contribution" does not include:

- (A) services provided by an individual volunteering a portion or all of the individual's time on behalf of the candidate if the services are provided without compensation by the candidate or any other person;
- (B) money lent to the candidate by a financial institution in the ordinary course of business; or
- (C) goods or services provided for the benefit of a candidate at less than fair market value that are not authorized by or coordinated with the candidate.

(e) "Coordinated with" means that goods or services provided for the benefit of a candidate are provided:

- (i) with the candidate's prior knowledge, if the candidate does not object;
- (ii) by agreement with the candidate;
- (iii) in coordination with the candidate; or
- (iv) using official logos, slogans, and similar elements belonging to a candidate.

(f)

- (i) "Expenditure" means any of the following made by a candidate or an agent of the candidate on behalf of the candidate:
    - (A) any disbursement from contributions, receipts, or from an account described in Subsection (3)(a)(i);
    - (B) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes;
    - (C) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for a political purpose;
    - (D) compensation paid by a candidate for personal services rendered by a person without charge to a reporting entity;
    - (E) a transfer of funds between the candidate and a candidate's personal campaign committee as defined in Section 20A-11-101; or
    - (F) goods or services provided by a reporting entity to or for the benefit of the candidate for political purposes at less than fair market value.
  - (ii) "Expenditure" does not include:
    - (A) services provided without compensation by an individual volunteering a portion or all of the individual's time on behalf of a candidate; or
    - (B) money lent to a candidate by a financial institution in the ordinary course of business.
  - (g) "In-kind contribution" means anything of value other than money, that is accepted by or coordinated with a candidate.
  - (h)
    - (i) "Political consultant" means a person who is paid by a candidate, or paid by another person on behalf of and with the knowledge of the candidate, to provide political advice to the candidate.
    - (ii) "Political consultant" includes a circumstance described in Subsection (1)(h)(i), where the person:
      - (A) has already been paid, with money or other consideration;
      - (B) expects to be paid in the future, with money or other consideration; or
      - (C) understands that the person may, in the discretion of the candidate or another person on behalf of and with the knowledge of the candidate, be paid in the future, with money or other consideration.
    - (i) "Political purposes" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate or a person seeking a municipal office at any caucus, political convention, or election.
  - (j) "Reporting entity" means:
    - (i) a candidate;
    - (ii) a committee appointed by a candidate to act for the candidate;
    - (iii) a person who holds an elected municipal office;
    - (iv) a party committee as defined in Section 20A-11-101;
    - (v) a political action committee as defined in Section 20A-11-101;
    - (vi) a political issues committee as defined in Section 20A-11-101;
    - (vii) a corporation as defined in Section 20A-11-101; or
    - (viii) a labor organization as defined in Section 20A-11-1501.
- (2)

- (a) A municipality may adopt an ordinance establishing campaign finance disclosure requirements for a candidate that are more stringent than the requirements provided in Subsections (3), (4), and (5).
  - (b) The municipality may adopt definitions that are more stringent than those provided in Subsection (1).
  - (c) If a municipality fails to adopt a campaign finance disclosure ordinance described in Subsection (2)(a), a candidate shall comply with financial reporting requirements contained in Subsections (3), (4), and (5).
- (3)
- (a) Each candidate:
    - (i) shall deposit a contribution in a separate campaign account in a financial institution; and
    - (ii) may not deposit or mingle any campaign contributions received into a personal or business account.
  - (b) In a year in which a municipal primary is held, each candidate who will participate in the municipal primary shall file a campaign finance statement with the municipal clerk or recorder no later than seven days before the day described in Subsection 20A-1-201.5(2).
  - (c) Each candidate who is not eliminated at a municipal primary election shall file with the municipal clerk or recorder a campaign finance statement:
    - (i) no later than seven days before the day on which the municipal general election is held; and
    - (ii) no later than 30 days after the day on which the municipal general election is held.
  - (d) Each candidate for municipal office who is eliminated at a municipal primary election shall file with the municipal clerk or recorder a campaign finance statement within 30 days after the day on which the municipal primary election is held.
- (4) Each campaign finance statement described in Subsection (3) shall:
- (a) except as provided in Subsection (4)(b):
    - (i) report all of the candidate's itemized and total:
      - (A) contributions, including in-kind and other nonmonetary contributions, received up to and including five days before the campaign finance statement is due, excluding a contribution previously reported; and
      - (B) expenditures made up to and including five days before the campaign finance statement is due, excluding an expenditure previously reported; and
    - (ii) identify:
      - (A) for each contribution, the amount of the contribution and the name of the donor, if known; and
      - (B) for each expenditure, the amount of the expenditure and the name of the recipient of the expenditure; or
  - (b) report the total amount of all contributions and expenditures if the candidate receives \$500 or less in contributions and spends \$500 or less on the candidate's campaign.
- (5) Within 30 days after receiving a contribution that is cash or a negotiable instrument, exceeds the anonymous contribution limit, and is from a donor whose name is unknown, a candidate shall disburse the amount of the contribution to:
- (a) the treasurer of the state or a political subdivision for deposit into the state's or political subdivision's general fund; or
  - (b) an organization that is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code.
- (6)
- (a) A municipality may, by ordinance:
    - (i) provide an anonymous contribution limit less than \$50;

- (ii) require greater disclosure of contributions or expenditures than is required in this section; and
  - (iii) impose additional penalties on candidates who fail to comply with the applicable requirements beyond those imposed by this section.
- (b) A candidate is subject to the provisions of this section and not the provisions of an ordinance adopted by the municipality under Subsection (6)(a) if:
  - (i) the municipal ordinance establishes requirements or penalties that differ from those established in this section; and
  - (ii) the municipal clerk or recorder fails to notify the candidate of the provisions of the ordinance as required in Subsection (7).
- (7) Each municipal clerk or recorder shall, at the time the candidate for municipal office files a declaration of candidacy, and again 14 days before each municipal general election, notify the candidate in writing of:
  - (a) the provisions of statute or municipal ordinance governing the disclosure of contributions and expenditures;
  - (b) the dates when the candidate's campaign finance statement is required to be filed; and
  - (c) the penalties that apply for failure to file a timely campaign finance statement, including the statutory provision that requires removal of the candidate's name from the ballot for failure to file the required campaign finance statement when required.
- (8) Notwithstanding any provision of Title 63G, Chapter 2, Government Records Access and Management Act, the municipal clerk or recorder shall:
  - (a) make each campaign finance statement filed by a candidate available for public inspection and copying no later than one business day after the statement is filed; and
  - (b) make the campaign finance statement filed by a candidate available for public inspection by:
    - (i)
      - (A) posting an electronic copy or the contents of the statement on the municipality's website no later than seven business days after the statement is filed; and
      - (B) verifying that the address of the municipality's website has been provided to the lieutenant governor in order to meet the requirements of Subsection 20A-11-103(5); or
    - (ii) submitting a copy of the statement to the lieutenant governor for posting on the website established by the lieutenant governor under Section 20A-11-103 no later than two business days after the statement is filed.
- (9)
  - (a) If a candidate fails to timely file a campaign finance statement required under Subsection (3), the municipal clerk or recorder shall inform the appropriate election official who:
    - (i) shall:
      - (A) if practicable, remove the candidate's name from the ballot by blacking out the candidate's name before the ballots are delivered to voters; or
      - (B) if removing the candidate's name from the ballot is not practicable, inform the voters by any practicable method that the candidate has been disqualified and that votes cast for the candidate will not be counted; and
    - (ii) may not count any votes for that candidate.
  - (b) Notwithstanding Subsection (9)(a), a candidate who timely files each campaign finance statement required under Subsection (3) is not disqualified if:
    - (i) the statement details accurately and completely the information required under Subsection (4), except for inadvertent omissions or insignificant errors or inaccuracies; and
    - (ii) the omissions, errors, or inaccuracies are corrected in an amended report or in the next scheduled report.

- (c) A candidate for municipal office who is disqualified under Subsection (9)(a) shall file with the municipal clerk or recorder a complete and accurate campaign finance statement within 30 days after the day on which the candidate is disqualified.
- (10) A campaign finance statement required under this section is considered filed if it is received in the municipal clerk or recorder's office by 5 p.m. on the date that it is due.
- (11)
  - (a) A private party in interest may bring a civil action in district court to enforce the provisions of this section or an ordinance adopted under this section.
  - (b) In a civil action under Subsection (11)(a), the court may award costs and attorney fees to the prevailing party.

Amended by Chapter 74, 2019 General Session