

01-040

ELECTIONS: CAMPAIGN FINANCE DISCLOSURE ACT.

Formation of tax exempt corporation for purpose of educating public on political position relating to matter of governmental policy constitutes "political purpose," permissible under Act. Group of elected officials may form corporation, or political action committee, exempt from federal taxation, for purpose of influencing public policy.

The Honorable H. Morgan Griffith

Member, House of Delegates

May 2, 2001

You ask whether it is permissible under Virginia law for a group of elected officials to form an educational corporation exempt from income taxation under § 501(c)(4) of the Internal Revenue Code¹ for the purpose of influencing public policy. You advise that a statement of organization and regular reports of contributions are not filed with the State Board of Elections.

You relate that the corporation seems to be a political action committee, and that its purpose is to educate the public on the political position of the group of elected officials. You advise that thirty-four state senators have contributed funds to the corporation from their campaign accounts.

The Campaign Finance Disclosure Act² constitutes "the exclusive and entire campaign finance disclosure law of the Commonwealth."³ For the purposes of the Act, the term "political action committee" is defined as "any organization, other than a campaign committee or political party committee, established or maintained in whole or in part to receive and expend contributions for political purposes."⁴ Section 24.2-909 of the Act provides that certain entities "may^[5] establish and administer for political purposes, and solicit and expend contributions for, a political action committee."⁶

The Campaign Finance Disclosure Act does not define the term "political purposes" as it is used in the definition of "political action committee" and in § 24.2-909. The term must, therefore, be given its common, ordinary meaning.⁷ The term "political" generally means "of or relating to government, a government, or the conduct of governmental affairs"; "of or relating to matters of government as distinguished from matters of law"; "of, relating to, or concerned with the making as distinguished from the administration of governmental policy"; "of, relating to, or concerned with politics"; "of relating to, or involved in party politics."⁸ The term "purpose" generally is defined to mean "something that one sets before himself as an object to be attained"; "an end or aim to be kept in view, in any plan, measure, exertion, or operation"; "an object, effect, or result aimed at, intended, or attained"; "a subject under discussion or an action in course of execution."⁹

The Supreme Court of Virginia has noted that, "[w]hile in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity."¹⁰ "[T]he plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."¹¹ Statutes should not be interpreted in ways that produce absurd or irrational consequences.¹²

Section 24.2-909 permits certain entities to establish and administer political action committees "for political purposes" and to solicit and expend contributions on behalf of such committees. The commonly accepted definition of "political purposes" includes an objective relating to the conduct of governmental affairs and the making of governmental policy. Consequently, I must conclude that the formation of a tax exempt corporation for the purpose of educating the public on a political position relating to a matter of governmental policy clearly constitutes a "political purpose," and is thus permissible under the Campaign Finance Disclosure Act.¹³ I, therefore, also conclude that it is permissible under Virginia law for a group of elected officials to form a corporation, or political action committee, under § 501(c)(4)(A) of the Internal Revenue Code for the purpose of influencing public policy.

¹See I.R.C. § 501(c)(4)(A) (West Supp. 2000) (exempting from federal income tax "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare").

²Va. Code Ann. §§ 24.2-900 to 24.2-930 (Michie Repl. Vol. 2000).

³Section 24.2-900.

⁴Section 24.2-901.

⁵The use of the term "may" in § 24.2-909 indicates that the formation of a political action committee is permissive and discretionary. See 21 M.J. *Words and Phrases* 353-54 (2000); 1997 Op. Va. Att'y Gen. 10, 12, and opinions cited at 13 n.11.

⁶Section 24.2-909 provides: "Any stock or nonstock corporation, labor organization, membership organization, cooperative, or other group of persons may establish and administer for political purposes, and solicit and expend contributions for, a political action committee, provided that:

"1. No political action committee shall make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisal, threat of force, or as a condition of employment.

"2. Any person soliciting a contribution to a political action committee shall, at the time of solicitation, inform the person being solicited of (i) his right to refuse to contribute without any reprisal and (ii) the political purposes of the committee."

⁷See *Anderson v. Commonwealth*, 182 Va. 560, 565, 29 S.E.2d 838, 840 (1944) (noting well-recognized meaning of words "listed or assessed" in tax statutes); Op. Va. Att'y Gen.: 1997 at 202, 202; *id.* at 72, 73; 1993 at 210, 213.

⁸Webster's Third New International Dictionary of the English Language Unabridged 1755 (1993).

⁹*Id.* at 1847.

¹⁰Watkins v. Hall, 161 Va. 924, 930, 172 S.E. 445, 447 (1934) (quoting Floyd v. Harding, 69 Va. (28 Gratt.) 401, 405 (1877)).

¹¹Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

¹²McFadden v. McNorton, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); see 1993 Op. Va. Att'y Gen. 192, 196, and opinions cited therein.

¹³You have advised that the entity created is educational in nature and formed for the purpose of influencing public policy. Accordingly, for the purpose of this opinion, I assume that the entity intends to engage only in issue advocacy and will not expressly advocate the election or defeat of a clearly identified candidate for public office. I note, however, that, should the entity exceed the bounds of issue advocacy and advocate or endorse the election or defeat of any particular candidate(s) for public office, the entity would be subject to the reporting requirements of §§ 24.2-908 and 24.2-910. See *Virginia Soc. for Human Life, Inc. v. Caldwell*, 152 F.3d 268 (4th Cir. 1998) (affirming 906 F. Supp. 1071 (W.D. Va. 1995), after certifying question of law to Virginia Supreme Court (see *Va. Society for Human Life v. Caldwell*, 256 Va. 151, 500 S.E.2d 814 (1998) (holding that Campaign Finance Disclosure Act does not reach groups that engage purely in issue advocacy))).

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