



Attorney General of New Mexico

GARY K. KING
Attorney General

ALBERT J. LAMA
Chief Deputy Attorney General

February 9, 2009

The Honorable Carroll H. Leavell
New Mexico State Senator
P.O. Drawer D
Jal. NM 88252

Re: Opinion Request -- Contributions to Public Regulation Commission ("PRC") Candidates

Dear Senator Leavell:

You requested our advice regarding possible limitations on contributions to PRC candidates. More specifically, you asked whether PRC candidates may receive contributions from: 1) a corporate insurance agency or brokerage that holds a license from the PRC; 2) an individual that holds an insurance license issued by the PRC; 3) an employee of an insurance agency that is not required to be licensed by the PRC, and; 4) an employee of a company that holds an insurance license issued by the PRC. Based on our examination of the relevant New Mexico constitutional, statutory and case law authorities, and on the information available to us at this time, we conclude that Section 8-8-19 of the Public Regulation Commission Act prohibits the acceptance of campaign contributions from any of these entities and individuals.

The Public Regulation Commission Act provides that "a candidate for election to the public regulation commission shall not solicit or accept anything of value, either directly or indirectly, from a person whose charges for services to the public that are regulated by the commission." NMSA 1978, § 8-8-19(C) (1998). Similarly, Section 1-19-34.2 of the Campaign Reporting Act states that "it is unlawful for ... a candidate who seeks election to a regulatory office ... to knowingly solicit a contribution from an entity, its officers or employees, or a person that is directly regulated by the office." An entity or person is directly regulated by a regulatory office when the entity's or person's charges for services offered to the public are set or directly subject to the approval by the regulatory office or when a license to do business in the state is determined by the regulatory office. See NMSA 1978, § 1-19-34.2 (1995).

Your request questioned four different scenarios pertaining to PRC campaign contributions. You first asked whether a corporate insurance agency or brokerage that holds a license from the PRC may contribute to a PRC candidate. These two types of prospective contributors generally charge for their services to the public and are regulated by the PRC as licensees. As such, a candidate for election to the PRC may not solicit or accept anything of value from a licensed corporate insurance agency or brokerage.

The Honorable Carroll H. Leavell

February 9, 2009

Page 2

Secondly, you asked whether an individual that holds an insurance license issued by the PRC may contribute to a PRC candidate. The applicable laws do not distinguish between an individual or a corporate agency. Section 8-8-19(A)(4) of the Public Regulation Commission Act states:

“regulated entity” means a *person* whose charges for services to the public are regulated by the commission and includes any direct or emerging competitors of a regulated entity and includes an agent, representative, attorney, employee, officer, owner, director or partner of the regulated entity.

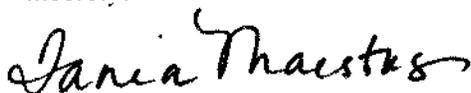
(Emphasis added.) “Person” is defined as “an individual, corporation, firm, partnership, association, joint venture or similar legal entity.” NMSA 1978, § 8-8-2(C) (1998). Similarly, the prohibitions of the Campaign Reporting Act quoted above apply to either an “entity” or a “person.” Therefore, a candidate for election to the PRC is prohibited from soliciting or accepting anything of value from an individual who is regulated or licensed by the PRC.

Your third inquiry was whether an employee of an insurance agency that is not required to be licensed by the PRC may contribute to a PRC candidate. The definition of “regulated entity” in Section 8-8-19(A)(4) includes “any direct or emerging competitors of a regulated entity.” An insurance agency, regulated or not, would constitute a direct or emerging competitor of an insurance agency regulated by the PRC. Therefore, an unregulated insurance agency and its employees are regulated entities for purposes of the Public Regulation Commission Act’s limits on contributions. Correspondingly, a PRC candidate may not solicit or accept anything of value from an employee of an insurance company that is regulated by the PRC, even though the employee is not required to be licensed, as premised by your fourth question.

Thus, we conclude that Section 8-8-19 of the Public Regulation Commission Act and Section 1-19-34.2 of the Campaign Reporting Act preclude PRC candidates, either directly or through anyone they authorize, from soliciting or accepting anything of value from any of the four entities proposed in your request.

Your request to us was for a formal Attorney General’s Opinion on the issues discussed within. Such an opinion is a public document available to the general public. Although we are providing you our legal advice in the form of a letter instead of an Attorney General’s Opinion, we believe this letter is also a public document, not subject to the attorney-client privilege. Therefore, we may provide copies of this letter to the public. If there are any further questions that I can assist you with, do not hesitate to contact me.

Sincerely,



TANIA MAESTAS
Assistant Attorney General

cc: Albert J. Lama, Chief Deputy Attorney General