



Compliance Notes - Vol. 3, Issue 24

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RECENT LOBBYING, ETHICS & CAMPAIGN FINANCE UPDATES

We read the news, cut through the noise and provide you the notes.

Welcome to *Compliance Notes* from Nossaman's **Government Relations & Regulation Group** – a periodic digest of the headlines, statutory and regulatory changes and court cases involving campaign finance, lobbying compliance, election law and government ethics issues at the federal, state and local level.

Our attorneys, policy advisors and compliance consultants are available to discuss any questions or how specific issues may impact your business.

If there is a particular subject or jurisdiction you'd like to see covered, please let us know.

Until then, please enjoy this installment of **Compliance Notes**. If you would like to have these updates delivered directly to your in-box, please click below to subscribe to our Government Relations & Regulation mailing list.

Campaign Finance & Lobbying Compliance

The Federal Election Commission (FEC) approved an Interim Final Rule on June 8, 2022, removing a regulation requiring that certain persons making independent expenditures disclose on their reports the identity of each person who made a contribution to them over \$200 “for the purpose of furthering the reported independent expenditure.” Although the Interim Final Rule will not formally strike the regulation until close to the general election, the three Republican commissioners issued interpretive guidance explaining they would only enforce the donor disclosure requirement for funds earmarked for independent expenditures. Given the slow pace of rulemakings, that interpretation could be the controlling one for quite some time. (FEC Press Release, June 8, 2022)

The FEC approved Advisory Opinion 2022-04 concerning Jill Stein for President Committee's (the Committee) use of funds raised after the 2016 general election to pay outstanding administrative fines to the FEC or make repayments to the United States Treasury. The FEC concluded the Committee need not establish a separate, segregated account to raise funds designated as "other receipts" to pay administrative fines. The Committee, however, may not use funds designated as "primary contributions" to pay those administrative fines but may use the designated funds to repay the Treasury. (FEC Record: Advisory Opinions, June 10, 2022)

Colorado: Colorado Governor Jared Polis announced that he is fundraising using a non-fungible token (NFT). In addition to receiving a digital souvenir with artwork, purchases of the NFT will also act as a ticket to get donors into events. (*Axios*, Felix Salmon)

Michigan: The Court of Appeals for the Sixth Circuit heard a case brought by the Michigan Republican Party (the Party) asserting that Governor Gretchen Whitmer violated the state's campaign finance laws when she amassed over \$3.7 million in political donations to fight over 27 recall efforts. While state law sets the contribution limit at \$6,800 for individual donors during a normal election cycle, there are no contribution limits on donations made to recall committees during recall elections. Because only one recall effort required Governor Whitmer to create a recall committee, the Party contended that she used the opportunity to fundraise for her reelection campaign under the guise of preparing to fend off the recall. Michigan's Secretary of State rejected the Party's claim about Whitmer's fundraising efforts and argued the case was mooted when the governor donated 95% of the recall contributions to the Michigan Democratic Party. (*Courthouse News Service*, Kevin Koeninger)

Government Ethics & Transparency

Colorado: State officials are investigating claims that Colorado Representative Lauren Boebert falsified mileage records to reimburse herself to satisfy state tax liens on her restaurant. While candidates can legally pay themselves back for the miles they drive, Boebert reimbursed herself more than \$22,000 from her 2020 campaign account. Boebert's payments amount to driving nearly 39,000 miles while campaigning; however, during one four-month span of her campaign, Boebert only had one publicly advertised event. (*The Durango Herald*, Sara Wilson)

Illinois: The Illinois Executive Inspector General is investigating Dr. Ngozi Ezike, the former head of the Illinois Department of Public Health, for possible ethics violations relating to her new position as head of the Sinai Health System. To create separation between state officials and the companies their agencies fund and regulate, the Illinois Ethics Act requires a one-year waiting period before department heads accept positions with such companies. Dr. Ezike, who sought guidance from the state to ensure there would be no ethics concerns before taking the job, did not wait one year before starting as CEO of the medical non-profit overseen and funded by the state agency she led. (CBS Chicago, Brad Edwards)

Oklahoma: Governor Kevin Stitt's latest campaign commercial featuring his appointed attorney general may run afoul of Oklahoma Ethics Commission electioneering rules. Oklahoma campaign finance law caps candidate committee contributions to another candidate's campaign at \$2,900 per election and prohibits candidate committees from paying for electioneering communications for another campaign within 30 days of a primary or runoff election. Advertisement disclosure reports show the Stitt campaign is spending more than \$300,000 in the next few weeks on the commercial, which exceeds the campaign finance limit. Additionally, the first 15 seconds of the commercial tout Stitt's accomplishments, and the remaining 15

seconds focus on both the Attorney General and Governor Stitt. However, in the past, when candidates have occasionally teamed up to broadcast similar commercials, each campaign would clearly state it approved the message. (*Oklahoma Watch*, Paul Monies)