

Colorado Revised Statutes
Title 1, Article 45
As amended by:
House Bill 04-1121 effective May 21, 2004

ARTICLE 45

Fair Campaign Practices Act

Editor's note: (1) This article was originally enacted in 1974. The substantive provisions of this article were repealed and reenacted by initiative in 1996, causing some addition, relocation, and elimination of sections as well as subject matter. The vote count on the measure at the general election held November 5, 1996, was as follows:

FOR:	928,148
AGAINST:	482,551

(2) For prior amendments, consult the red book table distributed with the session laws; the 1980 replacement volume and the original volume of C.R.S. 1973 and annual supplements to these volumes prior to 1996; and the comparative table located at the back of the index.

Cross references: For public official disclosure law, see part 2 of article 6 of title 24.

Law reviews: For article, "Fair Campaign Practices Act: Killing Trees for Good Government", see 26 Colo. Law. 101 (September 1997).

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1-45-105.5.	Contributions to members of general assembly and governor during consideration of legislation.	1-45-115.	Encouraging withdrawal from campaign prohibited.
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1-45-101. Short title. This article shall be known and may be cited as the "Fair Campaign Practices Act".

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-101 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-102. Legislative declaration. The people of the state of Colorado hereby find and declare that large campaign contributions to political candidates allow wealthy contributors and special interest groups to exercise a disproportionate level of influence over the political process; that large campaign contributions create the potential for corruption and the appearance of corruption; that the rising costs of campaigning for political office prevent qualified citizens from running for political office; and that the interests of the public are best served by limiting campaign contributions, encouraging voluntary campaign spending limits, full and timely disclosure of campaign contributions, and strong enforcement of campaign laws.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-102 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Appropriate officer" shall have the same meaning as set forth in section 2 (1) of article XXVIII of the state constitution.

(2) "Candidate" shall have the same meaning as set forth in section 2 (2) of article XXVIII of the state constitution.

(3) "Candidate committee" shall have the same meaning as set forth in section 2 (3) of article XXVIII of the state constitution.

(4) "Candidate committee account" shall mean the account established by a candidate committee with a financial institution pursuant to section 3 (9) of article XXVIII of the state constitution.

(5) "Conduit" shall have the same meaning as set forth in section 2 (4) of article XXVIII of the state constitution.

(6) (a) "Contribution" shall have the same meaning as set forth in section 2 (5) of article XXVIII of the state constitution.

(b) "Contribution" includes, with regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee.

(7) "Corporation" means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act", articles 101 to 117 of title 7, C.R.S.

(8) "Election cycle" shall have the same meaning as set forth in section 2 (6) of article XXVIII of the state constitution.

(9) "Electioneering communication" shall have the same meaning as set forth in section 2 (7) of article XXVIII of the state constitution.

(10) "Expenditure" shall have the same meaning as set forth in section 2 (8) of article XXVIII of the state constitution.

(11) "Independent expenditure" shall have the same meaning as set forth in section 2 (9) of article XXVIII of the state constitution.

(12) "Issue committee" shall have the same meaning as set forth in section 2 (10) of article XXVIII of the state constitution.

(13) "Person" shall have the same meaning as set forth in section 2 (11) of article XXVIII of the state constitution.

(14) "Political committee" shall have the same meaning as set forth in section 2 (12) of article XXVIII of the state constitution.

(15) "Political party" shall have the same meaning as set forth in section 2 (13) of article XXVIII of the state constitution.

(16) "Small donor committee" shall have the same meaning as set forth in section 2 (14) of article XXVIII of the state constitution.

(17) "Subsidiary" means a business entity having more than half of its stock owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(18) "Unexpended campaign contributions" shall have the same meaning as set forth in section 2 (15) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) added and (8) amended, p. 223, § 1, effective April 10; (1.5) amended and (14) added, p. 954, § 1, effective May 27. **L. 99:** (5) amended, p. 1390, § 12, effective June 4. **L. 2000:** (1.3), (4)(a)(V), and (4.5) added and (4)(a)(III), (10)(b), and (12) amended, pp. 122, 123, §§ 2, 3, effective March 15; (8) amended, p. 1724, § 1, effective June 1. **L. 2002:** (8)(a)(I) amended and (8)(a)(III) added, p. 198, § 1, effective April 3; (1.5) and (2) amended, p. 1576, § 1, effective July 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002. **L. 2003:** Entire section RC&RE, p. 2156, § 1, effective June 3.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-103 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

ANNOTATION

Annotator's note. Since § 1-45-103 is similar to § 1-45-103 as it existed prior to its repeal in 2002, relevant cases construing that provision and its predecessors have been included in the annotations to this section.

It is apparent from the plain language of subsection (2) that a candidate committee may be comprised of one person only and that the candidate acting alone may be a candidate committee. Thus, a candidate committee who acts alone for the purpose of receiving campaign contributions or making campaign expenditures is a candidate committee subject to the disclosure requirements of this article. Therefore, the expenditures made by a candidate from the candidate's personal funds before certification of his or her committee were either contributions to the ultimately certified

candidate committee or expenditures by a separate campaign committee composed of the candidate alone.

Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of Buckley v. Valeo, 424 U.S. 1 (1976), the court holds that the definition of "contribution" contained in subsection (4) does not include a candidate's

expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

Phrases unconstitutional. The phrase in subsection (7), "which unambiguously refer to any specific public office or candidate for such office, but does not include expenditures made by persons, other than political parties and political committees, in the regular course and scope of their business and political messages sent solely to their members[.]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The phrase in subsection (11), "or which unambiguously refers to such candidate[.]" is unconstitutional under the first amendment. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The court concluded that the unconstitutional phrases were severable and declared subsections (7) and (11) invalid only insofar as they reach beyond that which may constitutionally be regulated. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Term "independent expenditure" in subsection (7) permits the regulation of only those expenditures that are used for communications that expressly advocate the election or defeat of a clearly identified candidate. This standard includes the words and phrases listed in *Buckley v. Valeo*, 424 U.S. 1 (1976), and other substantially similar or synonymous words. This approach remains focused on actual words, as contrasted with images, symbols, or other contextual factors, provides adequate notice in light of due process concerns, and strikes an appropriate balance between trying to preserve the goals of campaign finance reform and protecting political speech. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

None of the advertisements of so-called educational committee at issue amounted to "express advocacy" as that term is applied in *Buckley* and progeny and, therefore, so-called educational committee was not subject to the requirements of the Fair Campaign Practices Act. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The term "issue" in subsection (8) includes an initiative that has gone through the title-setting process, but has not been formally certified for the election ballot. To construe the term to include only measures actually placed on the ballot would frustrate the purposes of the Campaign Reform Act by allowing groups to raise and spend money, without limit and without disclosure to the public, to convince electors to sign or not to sign a particular petition, thus significantly influencing its success or failure. *Colorado for Family Values v. Meyer*, 936 P.2d 631 (Colo. App. 1997).

The term "issue committee" covers only those issue committees that were formed for the purpose of

supporting or opposing a ballot initiative. An association that was formed and operated for purposes other than "accepting contributions or making expenditures to support or oppose any ballot issue or ballot question" does not become an "issue committee" as defined in this section if, at a future point in time, it engages in those activities with regard to a specific ballot issue or ballot question. *Common Sense Alliance v. Davidson*, 995 P.2d 748 (Colo. 2000).

A "political committee" is formed when two or more persons associate themselves with the original purpose of making independent expenditures. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

The term "political committee" in subsection (10) includes a for-profit corporation which makes contributions, contributions in kind, or expenditures to or on behalf of state political campaigns out of its ordinary corporate treasury. Therefore, such corporation is required to file a statement of organization, to report its contributions, contributions in kind, and expenditures, and otherwise to comply with any filing and reporting requirements of the "Campaign Reform Act of 1974". *Colorado Common Cause v. Meyer*, 758 P.2d 153 (Colo. 1988) (decided prior to 1988 amendment to subsection (10)).

While the stated purposes for the formation of an organization may be one criterion upon which to determine whether it is a "political committee", such purposes are not conclusive. To so hold would permit regulable conduct to escape regulation merely because the stated purposes were misleading, ambiguous, fraudulent, or all three. In addition, such a holding would exalt form over substance and would almost entirely eviscerate the Fair Campaign Practices Act and make a mockery of legitimate attempts at campaign finance reform. *League of Women Voters v. Davidson*, 23 P.3d 1266 (Colo. App. 2001).

The use of the disjunctive term "or" in subsection (11) renders the definition of "political message" applicable to messages that "unambiguously refer to a candidate", even if such messages do not also "advocate the election or defeat" of that candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

To qualify as a political message under subsection (11), a message need only: (1) Be delivered by telephone, any print or electronic media, or other written material, and (2) either (a) advocate the election or defeat of any candidate or (b) unambiguously refer to such candidate. *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

Voter guides that unambiguously refer to specific candidates but do not expressly advocate the election or defeat of any candidate constitute "political messages" as defined in subsection (11). Therefore, the funds expended to produce and disseminate the voter guides are subject to regulation as "independent expenditures" as the term is defined in subsection (7). *Citizens for Responsible Gov't State Political Action Comm. v. Davidson*, 236 F.3d 1174 (10th Cir. 2000).

1-45-103.7. Contribution limits. (1) Nothing in article XXVIII of the state constitution or this article shall be construed to prohibit a corporation or labor organization from making a contribution to a political committee.

(2) A political committee may receive and accept moneys contributed to such committee by a corporation or labor organization pursuant to subsection (1) of this section for disbursement to a candidate committee or political party without depositing such moneys in an account separate from the account required to be established for the receipt and acceptance of all contributions by all committees or political parties in accordance with section 3 (9) of article XXVIII of the state constitution.

(3) A candidate committee may accept:

(a) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a primary election at any time after the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot; or

(b) The aggregate contribution limit specified in section 3 (1) of article XXVIII of the state constitution for a general election at any time prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot.

(4) A candidate committee may expend contributions received and accepted for a general election prior to the date of the primary election in which the candidate in whose name the candidate committee is accepting contributions is on the primary election ballot. A candidate committee established in the name of a candidate who wins the primary election may expend contributions received and accepted for a primary election in the general election.

Source: **L. 2003:** Entire section added, p. 2160, § 6, effective June 3. **L. 2004:** Entire section amended, p. 863, § 1, effective May 21.

Editor's note: Section 4 of chapter 248, Session Laws of Colorado 2004, provides that the requirements of the act amending this section apply to the portion of any election cycle or for the portion of the calendar year remaining after May 21, 2004, and for any election cycle or calendar year commencing after May 21, 2004, whichever is applicable.

1-45-104. Contribution limits. (Repealed)

Source: **Initiated 96:** Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (13)(a)(II) amended, p. 632, § 2, effective May 6; (13)(c) amended, p. 950, § 1, effective May 27; (14) added, p. 955, § 2, effective May 27. **L. 99:** IP(2) amended, p. 1391, § 13, effective June 4. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-111 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105. Voluntary campaign spending limits. (Repealed)

Source: **Initiated 96:** Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (3) amended, p. 951, § 2, effective May 27. **L. 2000:** Entire section repealed, p. 129, § 12, effective March 15.

Editor's note: Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-112 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-105.3. Contribution limits. (Repealed)

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15. L. 2002: (4)(a.5) added, p. 1929, § 1, effective June 7. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Subsections (7), (8), (9), (10), and (11) were formerly numbered as 1-45-104 (9), (10), (11), (12), and (14) respectively.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

ANNOTATION

Court's interpretation of the term "candidate committee" to include expenditures of personal money by the candidate on his or her campaign does not limit the amount of money a candidate could personally spend on his or her campaign in violation of the first amendment. The act does not specifically address whether a candidate's personal expenditures are contributions. However, in light of Buckley v. Valeo, 424 U.S. 1 (1976),

the court holds that the definition of "contribution" does not include a candidate's expenditures of personal funds and contributions made by the candidate to his or her own candidate committee. Accordingly, the court rejected candidate's first amendment argument. Hlavec v. Davidson, 64 P.3d 881 (Colo. App. 2002) (decided under section that was repealed by article XXVIII of the state constitution).

1-45-105.5. Contributions to members of general assembly and governor during consideration of legislation. (1) (a) No professional lobbyist, volunteer lobbyist, or principal of a professional lobbyist or volunteer lobbyist shall make or promise to make a contribution to, or solicit or promise to solicit a contribution for:

(I) A member of the general assembly or candidate for the general assembly, when the general assembly is in regular session;

(II) (A) The governor or a candidate for governor when the general assembly is in regular session or when any measure adopted by the general assembly in a regular session is pending before the governor for approval or disapproval; or

(B) The lieutenant governor, the secretary of state, the state treasurer, the attorney general, or a candidate for any of such offices when the general assembly is in regular session.

(b) As used in this subsection (1):

(I) "Principal" means any person that employs, retains, engages, or uses, with or without compensation, a professional or volunteer lobbyist. One does not become a principal, nor may one be considered a principal, merely by belonging to an organization or owning stock in a corporation that employs a lobbyist.

(II) The terms "professional lobbyist" and "volunteer lobbyist" shall have the meanings ascribed to them in section 24-6-301, C.R.S.

(c) (I) Nothing contained in this subsection (1) shall be construed to prohibit lobbyists and their principals from raising money when the general assembly is in regular session or when regular session legislation is pending before the governor, except as specifically prohibited in paragraph (a) of this subsection (1).

(II) Nothing contained in this subsection (1) shall be construed to prohibit a lobbyist or principal of a lobbyist from participating in a fund-raising event of a political party when the general assembly is in regular session or when regular session legislation is pending before the governor, so long as the purpose of the event is not to raise money for specifically designated members of the general assembly, specifically designated candidates for the general assembly, the governor, or specifically designated candidates for governor.

(III) A payment by a lobbyist or a principal of a lobbyist to a political party to participate in such a fund-raising event shall be reported as a contribution to the political party pursuant to section 1-45-108; except that, if the lobbyist or principal of a lobbyist receives a meal in return for a portion of the payment, only the amount of the payment in excess of the value of the meal shall be considered a contribution to the political party. The political party shall determine the value of the meal received for such payment, which shall approximate the actual value of the meal.

(IV) A gift of a meal described in subparagraph (III) of this paragraph (c) by a lobbyist or a principal of a lobbyist to an incumbent in or a candidate elected to any office described in paragraph (a) of this subsection (1) shall be reported as follows:

(A) The lobbyist shall report the value of the meal in the lobbyist disclosure statement filed pursuant to section 24-6-302, C.R.S.

(B) The incumbent or candidate shall report the value of the meal in the public official disclosure statement filed pursuant to section 24-6-203, C.R.S.

Source: L. 2000: Entire section added with relocations, p. 118, § 1, effective March 15.

Editor's note: (1) This section was formerly numbered as 1-45-104 (13).

(2) Section 13 of chapter 36, Session Laws of Colorado 2000, provides that the act enacting this section is effective March 15, 2000, and applies to limits on contributions and contributions in kind by any natural person, corporation, labor organization, candidate committee, political party, political committee, or authorized committee subject to the limits of this section for the portion of any election cycle or for the portion of the year remaining after such effective date and for any election cycle or calendar year commencing after such effective date. Said section 13 further provides that such limits shall not apply to any contributions and contributions in kind made prior to March 15, 2000.

1-45-106. Unexpended campaign contributions. (1) (a) (I) Subject to the requirements of section 3 (3) (e) of article XXVIII of the state constitution, unexpended campaign contributions to a candidate committee may be:

(A) Contributed to a political party;

(B) Contributed to a candidate committee established by the same candidate for a different public office, subject to the limitations set forth in section 1-45-105.3 (4) (b) and (c), if the candidate committee making such a contribution is affirmatively closed by the candidate no later than ten days after the date such a contribution is made;

(C) Donated to a charitable organization recognized by the internal revenue service;

(D) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent campaign.

(II) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.

(III) A candidate committee for a former officeholder or a person not elected to office shall expend all of the unexpended campaign contributions retained by such candidate committee, for the purposes specified in this subsection (1), no later than nine years from the date such officeholder's term expired or from the date of the election at which such person was a candidate for office, whichever is later.

(b) In addition to any use described in paragraph (a) of this subsection (1), a person elected to a public office may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:

- (I) Voter registration;
- (II) Political issue education, which includes obtaining information from or providing information to the electorate;
- (III) Postsecondary educational scholarships;
- (IV) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;
- (V) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone and pager expenses.

(2) (Deleted by amendment, L. 2000, p. 123, § 4, effective March 15, 2000.)

(3) Unexpended contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributor.

(4) This section shall apply to unexpended campaign contributions transferred from a political committee formed prior to January 15, 1997, to a candidate committee registering after January 15, 1997, pursuant to section 1-45-108.

(5) Notwithstanding any other provision of law, any unexpended campaign contributions retained by a candidate committee for use in a subsequent election cycle shall be counted and reported as contributions from a political party in any subsequent election in accordance with the requirements of section 3 (3) (e) of article XXVIII of the state constitution.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1) amended, p. 955, § 3, effective May 27. **L. 2000:** (1)(a) and (2) amended, p. 123, § 4, effective March 15. **L. 2003:** IP(1)(a)(I) amended and (5) added, p. 2157, § 2, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-109 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Subsection (2) is constitutional. The state's interest in preventing avoidance of valid contribution limits by use of funds carried over from prior campaigns is both compelling and served by the restriction set forth in

subsection (2). This provision is narrowly tailored to accomplish the state's legitimate interest. *Citizens for Responsible Gov't State Political Action Comm. v. Buckley*, 60 F. Supp.2d 1066 (D. Colo. 1999).

1-45-107. Independent expenditures. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) Prior to its repeal, this section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-110.5 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-108. Disclosure - repeal. (1) (a) (I) All candidate committees, political committees, issue committees, small donor committees, and political parties shall report to the appropriate officer their contributions received, including the name and address of each person who has contributed twenty dollars or more; expenditures made, and obligations entered into by the committee or party.

(II) In the case of contributions made to a candidate committee, political committee, issue committee, and political party, the disclosure required by this section shall also include the occupation and employer of each person who has made a contribution of one hundred dollars or more to such committee or party.

(III) Any person who expends one thousand dollars or more per calendar year on electioneering communications shall report to the secretary of state, in accordance with the disclosure required by this section, the amount expended on the communications and the name and address of any person that contributes more than two hundred fifty dollars per year to the person expending one thousand dollars or more on the communications. If the person making such contribution of two hundred fifty dollars or more is a natural person, the disclosure required by this section shall also include the person's occupation and employer.

(b) (Deleted by amendment, L. 2003, p. 2158, § 3, effective June 3, 2003.)

(c) A candidate committee in a special district election shall not be required to file reports under this section until the committee has received contributions or made expenditures exceeding twenty dollars in the aggregate.

(d) For purposes of this section, a political party shall be treated as a separate entity at the state, county, district, and local levels.

(e) A candidate's candidate committee may reimburse the candidate for expenditures the candidate has made on behalf of the candidate committee. Any such expenditures may be reimbursed at any time. Notwithstanding any other provision of law, any expenditure reimbursed to the candidate by the candidate's candidate committee within the election cycle during which the expenditure is made shall be treated only as an expenditure and not as a contribution to and an expenditure by the candidate's candidate committee. Notwithstanding the date on which any such expenditure is reimbursed, the expenditure shall be reported at the time it is made in accordance with the requirements of this section.

(2) (a) (I) Except as provided in subsections (2.3), (2.5), (2.7), and (6) of this section, such reports that are required to be filed with the secretary of state shall be filed:

(A) Quarterly in off-election years no later than the fifteenth calendar day following the end of the applicable quarter;

(B) On the first Monday in July and on each Monday every two weeks thereafter before the primary election if reports can be filed electronically through a website on the internet with the secretary of state by July 1, 2000; except that nothing in this sub-subparagraph (B) shall require filing by such means;

(C) On the first day of each month beginning the sixth full month before the major election; except that no monthly report shall be required on the first day of the month in which the major election is held;

(D) On the first Monday in September and on each Monday every two weeks thereafter before the major election;

(E) Thirty days after the major election in election years; and

(F) Fourteen days before and thirty days after a special legislative election held in an off-election year.

(II) Such reports that are required to be filed with the county clerk and recorder or with the municipal clerk shall be filed on the twenty-first day and on the Friday before and thirty days after the primary election, where applicable, and the major election in election years and annually in off-election years on the first day of the month in which the anniversary of the major election occurs.

(III) For purposes of this section, "election year" means every even numbered year for political parties and political committees and each year in which the particular candidate committee's candidate, or issue committee's issue, appears on the ballot; and "major election" means the election that decides an issue committee's issue and the election that elects a person to the public office sought by the candidate committee's candidate.

(IV) If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.

(b) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total of contributions received, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee or party.

(c) All reports filed with the secretary of state pursuant to this subsection (2) shall be for the reporting periods established pursuant to rules promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(d) A candidate committee for a former officeholder or a person not elected to office that has no change in the balance of funds maintained by such committee, receives no contributions, makes no expenditures, and enters into no obligations during a reporting period shall not be required to file a report under this section for such period.

(e) The reporting period for all reports required to be filed with the county clerk and recorder or with the municipal clerk shall close five calendar days prior to the effective date of filing.

(2.3) (a) A candidate committee, political committee, issue committee, small donor committee, political party, or any other person that utilizes the electronic filing system described in section 1-45-109 (6) to file reports with the secretary of state shall have two additional days after each due date prescribed in paragraph (a) of subsection (2) of this section in which to file such reports.

(b) This subsection (2.3) is repealed, effective January 1, 2007.

(2.5) In addition to any report required to be filed with the secretary of state under this section, all candidate committees, political committees, issue committees, and political parties shall file a report with the secretary of state of any contribution of one thousand dollars or more at any time within thirty days preceding the date of the primary election or general election. This report shall be filed with the secretary of state no later than twenty-four hours after receipt of said contribution.

(2.7) Any candidate or candidate committee supporting any candidate, including an incumbent, in a recall election, shall file reports of contributions and expenditures with the appropriate officer fourteen and seven days before the recall election and thirty days after the recall election.

(3) Except as otherwise provided in subsection (3.5) of this section, all candidate committees, political committees, issue committees, small donor committees, and political parties shall register with the appropriate officer before accepting or making any contributions. Registration shall include a statement listing:

(a) The organization's full name, spelling out any acronyms used therein;

(b) A natural person authorized to act as a registered agent;

(c) A street address and telephone number for the principle place of operations;

(d) All affiliated candidates and committees;

(e) The purpose or nature of interest of the committee or party;

(f) Any intent of the candidate committee, political committee, issue committee, small donor committee, or political party to electronically file reports required by this article that may be filed electronically on a web site operated and maintained by the secretary of state pursuant to section 1-45-109.

(3.5) Any political committee that has registered with the federal election commission may file with the appropriate officer a copy of the registration filed with the federal election commission and,

insofar as such registration contains substantially the same information required by subsection (3) of this section, the political committee shall be considered to have registered with the appropriate officer for purposes of subsection (3) of this section and, therefore, shall be authorized to accept or make contributions as permitted by law. Any political committee that satisfies the requirements of this subsection (3.5) shall be subject to all other legal requirements pertaining to contributions and disclosure that are applicable to political committees.

(4) For purposes of subsection (3) of this section, a political committee in existence on January 1, 1997, shall register with the secretary of state on or before April 1, 1997, pursuant to the requirements of this act.

(5) The registration and reporting requirements of this section shall not apply to that part of the organizational structure of a political party which is responsible for only the day-to-day operations of such political party at the national level if copies of the reports required to be filed with the Federal Election Commission pursuant to the "Federal Election Commission Act of 1971", as amended, are filed with the secretary of state and include the information required by this section.

(6) Any issue committee whose purpose is the recall of any elected official shall file a committee registration with the appropriate officer within ten business days of receiving its first contribution. Reports of contributions and expenditures shall be filed with the appropriate officer within fifteen days of the filing of the committee registration and every thirty days thereafter until the date of the recall election has been established and then fourteen days and seven days before the recall election and thirty days following the recall election.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (1), (2)(a), and IP(3) amended, p. 223, § 2, effective April 10; (2)(c) added, p. 951, § 3, effective May 27. **L. 99:** (2)(a) amended and (2)(c)(V) and (2)(c)(VI) added, p. 1391, §§ 14, 15, effective June 4. **L. 2000:** (2)(a) and (2)(c) amended and (2)(d), (2.3), and (2.5) added, pp. 124, 125, §§ 5, 6, effective March 15; (1) amended, p. 1725, § 2, effective June 1; (2)(e) added, p. 791, § 2, effective August 2. **L. 2001:** (3)(f) added, p. 808, § 1, effective August 8; (2.3) amended, p. 1111, § 2, effective September 1. **L. 2002:** IP(2)(a)(I) and (6) amended and (2.7) added, p. 198, § 2, effective April 3; (1)(c) added, p. 1640, § 33, effective June 7. **L. 2003:** (1)(a), (1)(b), (2.3)(a), (2.5), IP(3), and (3)(f) amended and (1)(d) added, p. 2158, § 3, effective June 3. **L. 2004:** (1)(e) and (3.5) added and IP(3) amended, p. 864, §§ 2, 3, effective May 21.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-108 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) Subsections (2)(a)(I) and (2)(a)(II) as they existed prior to March 15, 2000, were renumbered on revision as (2)(a)(III) and (2)(a)(IV).

(3) Section 4 of chapter 248, Session Laws of Colorado 2004, provides that the requirements of the act enacting subsections (1)(e) and (3.5) and amending the introductory portion to subsection (3) apply to the portion of any election cycle or for the portion of the calendar year remaining after May 21, 2004, and for any election cycle or calendar year commencing after May 21, 2004, whichever is applicable.

ANNOTATION

Under subsection (1)(a), candidate committees must disclose all expenditures and obligations, even if no contributions are received. Thus, if a candidate runs without a separate committee and finances the campaign from personal funds, the candidate is a candidate committee and must disclose expenditures and obligations as required by subsection (1)(a). Nothing in subsection (1)(a) indicates that expenditures must be reported only if drawn on outside contributions. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002).

Here, both candidate and the candidate committee made expenditures under the authority of the candidate. Thus, both the candidate and the committee were candidate committees or the candidate was acting

through the formed committee. In either instance, the expenditures were subject to the disclosure requirements of subsection (1)(a). *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002).

Act is neither unconstitutionally vague nor unconstitutionally overbroad. As to candidate's vagueness argument, court finds that act provides sufficient notice to persons of ordinary intelligence that expenditures, regardless of the source of the funds, must be reported. As to candidate's arguments that act is unconstitutionally overbroad and inhibits basic first amendment freedoms, court finds that, construed to preserve its constitutionality, the act does not inhibit a candidate's expenditures of personal funds so long as those expenditures are made

through a candidate committee and reported in accordance

with this section. *Hlavec v. Davidson*, 64 P.3d 881 (Colo. App. 2002).

1-45-109. Filing - where to file - timeliness. (1) For the purpose of meeting the filing and reporting requirements of this article, candidates for state wide office, the general assembly, district attorney, district court judge, or any office representing more than one county, except candidates for school district director; the candidate committees for such candidates; political committees in support of or in opposition to such candidates; issue committees in support of or in opposition to an issue on the ballot in more than one county; small donor committees making contributions to such candidates; and persons expending one thousand dollars or more per calendar year on electioneering communications shall file with the secretary of state. Candidates in municipal elections, their candidate committees, any political committee in support of or in opposition to such candidate, an issue committee supporting or opposing a municipal ballot issue, and small donor committees making contributions to such candidates shall file with the municipal clerk. Candidates in special district elections, except candidates for director of the regional transportation district; the candidate committees of such candidates; political committees in support of or in opposition to such candidates; issue committees supporting or opposing a special district ballot issue; and small donor committees making contributions to such candidate shall file with the clerk and recorder of the county in which the district court having jurisdiction over the special district pursuant to section 32-1-303, C.R.S., is located. All other candidates, candidate committees, issue committees, political committees, and small donor committees shall file with the county clerk and recorder of the county of their residence. However, a report required to be filed with a county clerk and recorder shall be deemed properly filed if filed electronically pursuant to subsection (8) of this section.

(2) Reports required to be filed by this article are timely if received by the appropriate officer not later than the close of business on the due date. Reports may be filed by fax and are timely if received by the appropriate officer not later than the close of business on the due date only if an original of the report is received by the appropriate officer within seven days of the due date.

(3) In addition to any other reporting requirements of this article, every incumbent in public office and every candidate elected to public office is subject to the reporting requirements of section 24-6-203 C.R.S.

(4) (a) All reports required to be filed by this article are public records and shall be open to inspection by the public during regular business hours. A copy of the report shall be kept by the appropriate officer and a copy shall be made available immediately in a file for public inspection.

(b) Any report that is deemed to be incomplete by the appropriate officer shall be accepted on a conditional basis and the committee or party treasurer shall be notified by mail as to any deficiencies found. If an electronic mail address is on file with the secretary of state, the secretary of state may also provide such notification by electronic mail. The committee or party treasurer shall have seven business days from the date of mailing such notice to file an addendum that cures the deficiencies.

(5) (a) The secretary of state shall establish, operate, and maintain a web site on the internet, or modify, operate, and maintain an existing web site, so as to allow any person who wishes to review reports filed with the secretary of state's office pursuant to this article electronic read-only access to such reports free of charge.

(b) All reports required to be filed by this article that are electronically filed pursuant to subsection (6) of this section shall be made available on said web site within forty-eight hours after filing. In addition, the web site shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee. The secretary of state may promulgate rules necessary for the implementation of this subsection (5). Such rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(6) (a) No later than September 1, 2000, or as near to such date as is practicable, the secretary of state shall establish, operate, and maintain a system that enables electronic filing of the reports required by this article by utilizing the internet. The rules for use of the electronic filing system shall be promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(b) In addition to any other method of filing, any person may use the electronic filing system described in paragraph (a) of this subsection (6) in order to meet the filing requirements of this article. Where a person uses such electronic filing system to meet the filing requirements of this article, the secretary of state shall acknowledge by electronic means the receipt of such filing.

(7) (a) No later than January 1, 2002, the secretary of state shall either modify the web site operated and maintained pursuant to subsection (5) of this section or establish, operate, and maintain an additional web site so as to allow any person who wishes to review reports filed with a county clerk and recorder pursuant to this article and electronically transmitted to the secretary of state or electronically filed in accordance with subsection (8) of this section electronic read-only access to such reports free of charge.

(b) Within forty-eight hours after receiving in electronic form from a candidate, candidate committee, issue committee, political committee, small donor committee, person expending one thousand dollars or more per calendar year on electioneering communications, or county clerk and recorder any report required to be filed with a county clerk and recorder pursuant to this article, the secretary of state shall make the report available on the web site described in paragraph (a) of this subsection (7). The web site shall enable a user to produce summary reports based on search criteria that shall include, but not be limited to, the reporting period, date, name of the person making a contribution or expenditure, candidate, and committee. The secretary of state may promulgate rules necessary for the implementation of this subsection (7). The rules shall be promulgated in accordance with article 4 of title 24, C.R.S.

(8) (a) No later than January 1, 2002, or as near to such date as practicable, the secretary of state shall either modify the electronic filing system operated and maintained pursuant to subsection (6) of this section or establish, operate, and maintain an additional system to enable electronic filing, through utilization of the internet, of reports required to be filed with a county clerk and recorder pursuant to this article.

(b) (I) Before January 1, 2006, each county clerk and recorder who has the technology available to access the internet may use the electronic filing system described in paragraph (a) of this subsection (8) to transmit any report filed with the county clerk and recorder to the secretary of state.

(II) On and after January 1, 2006, each county clerk and recorder shall use the electronic filing system described in paragraph (a) of this subsection (8) to transmit any report filed with the county clerk and recorder to the secretary of state.

(III) A county clerk and recorder shall transmit any report to be transmitted to the secretary of state pursuant to subparagraph (I) or (II) of this paragraph (b) as quickly as practicable. The county clerk and recorder shall convert any report that is not electronically filed into electronic format before transmitting the report to the secretary of state. A county clerk and recorder that does not have the technology available to access the internet shall not transmit reports to the secretary of state pursuant to subparagraph (I) of this paragraph (b). The rules for the use of the electronic filing system shall be promulgated by the secretary of state in accordance with article 4 of title 24, C.R.S.

(c) (I) Before January 1, 2006, any person required to file reports with a county clerk and recorder pursuant to this article may meet the filing requirements by using the electronic filing system described in paragraph (a) of this subsection (8) if the county clerk and recorder has the technology available to access the internet. If the county clerk and recorder does not have the technology available to access the internet, reports shall not be filed electronically.

(II) On and after January 1, 2006, any person required to file reports with a county clerk and recorder pursuant to this article may meet the filing requirements by using the electronic filing system described in paragraph (a) of this subsection (8).

(9) Subsections (1), (7), and (8) of this section shall not be construed to require the secretary of the state to review reports electronically filed by persons required to file reports with a county clerk and

recorder pursuant to this article or to impose any enforcement duties upon the secretary of state beyond the duties specified in section 1-45-111.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (4), (5), and (6) amended, p. 125, § 7, effective March 15. **L. 2001:** (1) amended and (7), (8), and (9) added, p. 808, § 2, effective August 8; (6)(b) amended, p. 1111, § 3, effective September 1. **L. 2002:** (1) and (4)(a) amended, p. 1640, § 34, effective June 7. **L. 2003:** (1) and (7)(b) amended, p. 2159, § 4, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-104 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-110. Candidate affidavit - disclosure statement. (1) When any individual becomes a candidate, such individual shall certify, by affidavit filed with the appropriate officer within ten days, that the candidate is familiar with the provisions of this article; except that an individual who is a candidate in a special legislative election that filed a candidate affidavit for the preceding general election shall not be required to comply with the provisions of this section, and except that a candidate in a special district election shall file the candidate affidavit or, alternatively, a copy of the candidate's self-nomination and acceptance form or letter submitted in accordance with section 32-1-804.3, C.R.S., if such form or letter contains a statement that the candidate is familiar with the provisions of this article, no later than the date established for certification of the special district's ballot pursuant to section 1-5-203 (3) (a). A candidate in a municipal election may comply with this section by filing a candidate affidavit pursuant to section 31-10-302 (6), C.R.S., if such affidavit contains a statement that the candidate is familiar with the provisions of this article.

(2) (a) Except as provided in paragraph (b) of this subsection, each candidate for the general assembly, governor, lieutenant governor, attorney general, state treasurer, secretary of state, state board of education, regent of the University of Colorado, and district attorney shall file a statement disclosing the information required by section 24-6-202 (2) with the appropriate officer, on a form approved by the secretary of state, within ten days of filing the affidavit required by subsection (1) of this section.

(b) No candidate listed in paragraph (a) of this subsection shall be required to file another disclosure statement if the candidate had already filed such a statement less than ninety days prior to filing the affidavit required by subsection (1) of this section.

(3) Failure of any person to file the affidavit or disclosure statement required under this section shall result in the disqualification of such person as a candidate for the office being sought. Disqualification shall occur only after the appropriate officer has sent a notice to the person by certified mail, return receipt requested, addressed to the person's residence address. The notice shall state that the person will be disqualified as a candidate if the person fails to file the appropriate document within five business days of receipt of the notice.

(4) Any disclosure statement required by subsection (2) of this section shall be amended no more than thirty days after any termination or acquisition of interests as to which disclosure is required.

(5) If a person is defeated as a candidate or withdraws from the candidacy, that person shall not be required to comply with the provisions of this section after the withdrawal or defeat.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 99:** (1) amended, p. 1392, § 16, effective June 4. **L. 2002:** (1) amended, p. 1641, § 35, effective June 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-105 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-111. Duties of the secretary of state - enforcement. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** (1)(a.5) added and (1)(b) and (2) amended, p. 126, § 8, effective March 15; (2)(d) added, p. 1725, § 3, effective June 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-113 and 1-45-114 as said sections existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-111.5. Duties of the secretary of state - enforcement. (1) The secretary of state shall promulgate such rules, in accordance with article 4 of title 24, C.R.S., as may be necessary to enforce and administer any provision of this article.

(2) The prevailing party in a private action brought to enforce the provisions of article XXVIII of the state constitution or of this article shall be entitled to the recovery of such party's reasonable attorney fees and costs.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3.

1-45-112. Duties of municipal clerk and county clerk and recorder. (1) The municipal clerk and county clerk and recorder shall:

(a) Develop a filing and indexing system for their offices consistent with the purposes of this article;

(b) Keep a copy of any report or statement required to be filed by this article for a period of one year from the date of filing. In the case of candidates who were elected, those candidate's reports and filings shall be kept for one year after the candidate leaves office;

(c) Make reports and statements filed under this article available to the public for inspection and copying no later than the end of the next business day after the date of filing. No information copied from such reports and statements shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose.

(d) Upon request by the secretary of state, transmit records and statements filed under this article to the secretary of state;

(e) Notify any person under their jurisdiction who has failed to fully comply with the provisions of this article and notify any person if a complaint has been filed with the secretary of state alleging a violation of this article;

(f) Report apparent violations of law to appropriate law enforcement authorities.

(2) The secretary of state shall reimburse the municipal clerk and the county clerk and recorder of each county at the rate of two dollars per candidate per election to help defray the cost of implementing this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-115 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-112.5. Immunity from liability for fine or penalty. (1) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be immune from any liability for a fine or penalty imposed pursuant to section 10 (1) of article XXVIII of the state constitution in any proceeding that is based on an act or omission of such volunteer if:

(a) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and

(b) The violation was not caused by willful and intentional misconduct by such volunteer.

(2) Subsection (1) of this section shall be administered in a manner that is consistent with section 1 of article XXVIII of the state constitution and with the legislative declaration set forth in section 1-45-102.

Source: L. 2003: Entire section added, p. 2160, § 6, effective June 3.

1-45-113. Sanctions. (Repealed)

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 98:** (6) added, p. 633, § 3, effective May 6; (6) added, p. 952, § 4, effective May 27. **L. 2000:** (1), (2), (3), and (4) amended, p. 127, § 9, effective March 15. **L. 2001:** (4) amended, p. 1110, § 1, effective September 1. **Initiated 2002:** Entire section repealed, effective upon proclamation of the Governor, December 20, 2002; however, section 13 of the initiated measure repealing this section provides that the effective date of this section is December 6, 2002.

Editor's note: (1) This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-121 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

(2) (a) Subsection (4) of section 1 of article V of the state constitution provides that initiated and referred measures shall take effect from and after the official declaration of the vote thereon by the proclamation of the Governor. The measure enacting article XXVIII of the state constitution takes effect upon proclamation of the vote by the Governor. The Governor's proclamation was issued on December 20, 2002. However, section 13 of the measure enacting article XXVIII of the state constitution provides that the effective date of article XXVIII is December 6, 2002.

(b) This section was repealed by an initiated measure that was adopted by the people in the general election held November 5, 2002. Section 12 of article XXVIII provides for the repeal of this section. For the text of the initiative and the vote count, see Session Laws of Colorado 2003, p. 3609.

1-45-114. Expenditures - political advertising - rates and charges. (1) No candidate shall pay to any radio or television station, newspaper, periodical, or other supplier of materials or services a higher charge than that normally required for local commercial customers for comparable use of space, materials, or services. Any such rate shall not be rebated, directly or indirectly.

(2) Any radio or television station, newspaper, or periodical that charges a candidate committee a lower rate for use of space, materials, or services than the rate such station, newspaper, periodical, or supplier charges another candidate committee for the same public office for comparable use of space, materials, or services shall report the difference in such rate as a contribution to the candidate committee that is charged such lower rate pursuant to section 1-45-108.

(3) Nothing in this article shall be construed to prevent an adjustment in rates related to frequency, volume, production costs, and agency fees if such adjustments are offered consistently to other advertisers.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2000:** Entire section amended, p. 128, § 10, effective March 15. **L. 2003:** (2) amended, p. 2160, § 5, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-118 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-115. Encouraging withdrawal from campaign prohibited. No person shall offer or give any candidate or candidate committee any money or any other thing of value for the purpose of encouraging the withdrawal of the candidate's candidacy, nor shall any candidate offer to withdraw a candidacy in return for money or any other thing of value.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-119 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-116. Home rule counties and municipalities. Any home rule county or municipality may adopt ordinances or charter provisions with respect to its local elections that are more stringent than any of the provisions contained in this act. Any home rule county or municipality which adopts such ordinances or charter provisions shall not be entitled to reimbursement pursuant to subsection 1-45-112 (2). The requirements of article XXVIII of the state constitution and of this article shall not apply to home rule counties or home rule municipalities that have adopted charters, ordinances, or resolutions that address the matters covered by article XXVIII and this article.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2003:** Entire section amended, p. 2161, § 7, effective June 3.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-120(1) as said section existed in 1995, the year prior to the repeal and reenactment of this article.

1-45-117. State and political subdivisions - limitations on contributions. (1) (a) (I) No agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof shall make any contribution in campaigns involving the nomination, retention, or election of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:

(A) State-wide ballot issue that has been submitted for the purpose of having a title designated and fixed pursuant to section 1-40-106 (1) or that has had a title designated and fixed pursuant to that section;

(B) Local ballot issue that has been submitted for the purpose of having a title fixed pursuant to section 31-11-111 or that has had a title fixed pursuant to that section;

(C) Referred measure, as defined in section 1-1-104 (34.5);

(D) Measure for the recall of any officer that has been certified by the appropriate election official for submission to the electors for their approval or rejection.

(II) However, a member or employee of any such agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subparagraph (I) of

this paragraph (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than fifty dollars of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subparagraph (I) of this paragraph (a).

(b) (I) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state, or any political subdivision thereof from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the jurisdiction. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on an election ballot in the jurisdiction.

(II) Nothing in this subsection (1) shall be construed to prevent an elected official from expressing a personal opinion on any issue.

(III) Nothing in this subsection (1) shall be construed as prohibiting an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from:

(A) Passing a resolution or taking a position of advocacy on any issue described in subparagraph (I) of paragraph (a) of this subsection (1); or

(B) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such agency, department, board, division, bureau, or council of the state or any political subdivision thereof is regularly provided to the public.

(C) Nothing in this subsection (1) shall be construed as prohibiting a member or an employee of an agency, department, board, division, bureau, commission, or council of the state or any political subdivision thereof from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subparagraph (I) of paragraph (a) of this subsection (1).

(2) The provisions of subsection (1) of this section shall not apply to:

(a) An official residence furnished or paid for by the state or a political subdivision;

(b) Security officers who are required to accompany a candidate or the candidate's family;

(c) Publicly owned motor vehicles provided for the use of the chief executive of the state or a political subdivision;

(d) Publicly owned aircraft provided for the use of the chief executive of the state or of a political subdivision or the executive's family for security purposes; except that, if such use is, in whole or in part, for campaign purposes, the expenses relating to the campaign shall be reported and reimbursed pursuant to subsection (3) of this section.

(3) If any candidate who is also an incumbent inadvertently or unavoidably makes any expenditure which involves campaign expenses and official expenses, such expenditures shall be deemed a campaign expense only, unless the candidate, not more than ten working days after the such expenditure, files with the appropriate officer such information as the secretary of state may by rule require in order to differentiate between campaign expenses and official expenses. Such information shall be set forth on a form provided by the appropriate officer. In the event that public moneys have been expended for campaign expenses and for official expenses, the candidate shall reimburse the state or political subdivision for the amount of money spent on campaign expenses.

(4) Any violation of this section shall be subject to the sanctions authorized in section 1-45-113 or any appropriate order or relief, including injunctive relief or a restraining order to enjoin the continuance of the violation.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997. **L. 2002:** (4) added, p. 280, § 1, effective August 7.

Editor's note: This section was contained in an article that was repealed and reenacted in 1996. Provisions of this section, as it existed in 1996, are similar to those contained in 1-45-116 as said section existed in 1995, the year prior to the repeal and reenactment of this article.

ANNOTATION

Annotator's note. Since § 1-45-117 is similar to § 1-45-116 as it existed prior to the 1997 repeal and reenactment of this article, relevant cases construing that provision have been included in the annotations to this section.

The purpose of this section is to prohibit the state government and its officials from spending public funds to influence the outcome of campaigns for political office or ballot issues. *Colo. Common Cause v. Coffman*, __ P.3d __ (Colo. App. 2003).

Moneys in fund administered by the Colorado compensation insurance authority that consisted primarily of premiums paid into the fund by employers constituted "public moneys" for purposes of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

While the term "public moneys" is not defined, the all-inclusive language "from any source" indicates that the general assembly intended an expansive definition of the phrase. Thus, the term "public moneys" may not be construed to refer only to sums realized from the imposition of taxes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

Although moneys collected by the political subdivision were not derived from state-imposed sales, use, property, or income taxes, those moneys may be spent by the political subdivision only for authorized public purposes. The general assembly has in essence declared that the expenditure of moneys in the fund for purposes prohibited by this section are not authorized expenditures for public purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section prohibits the use of "public moneys from any source," not the use of "public funds". The general assembly thus selected a phrase not previously construed in seeking to limit the expenditure of funds by various governmental entities for certain purposes. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

This section tends to promote public confidence in government by prohibiting the use of moneys authorized for expenditure by political subdivisions for specified public purposes to advance the personal viewpoint of one group over another. A political subdivision's use of moneys that were authorized for expenditure for the benefit of an insured to oppose the passage of an amendment proposed by an insured is the type of conduct the general assembly intended to prohibit by the enactment of this section. *Denver Area Labor Fed'n v. Buckley*, 924 P.2d 524 (Colo. 1996).

What is of "official concern" to school district board of education is to be determined by reference to the official powers and duties delegated by the general assembly in the school laws. *Mountain States Legal*

Foundation v. Denver School Dist. No. 1, 459 F. Supp. 357 (D. Colo. 1978).

A matter of official concern is one which at the very least involves questions which come before the officials for an official decision. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

Proposed constitutional amendment not of official concern. A proposed amendment to the state constitution on a general election ballot is not a matter of official concern. *Campbell v. Joint Dist. 28-J*, 704 F.2d 501 (10th Cir. 1983).

Not determined solely by board. The characterization of a campaign issue as being of "official concern" is not a judgment which can be made solely by the board of education; such an interpretation of this section would give unlimited discretion to the school board to use school funds and school facilities whenever it suited the personal preference of the majority of the members. *Mountain States Legal Foundation v. Denver School Dist. No. 1*, 459 F. Supp. 357 (D. Colo. 1978).

This section allows an employee with policy-making responsibility to expend public funds up to the \$50 limit in expressing an opinion about a pending ballot issue. *Regents of the Univ. of Colo. v. Meyer*, 899 P.2d 316 (Colo. App. 1995).

State treasurer's press conference and press releases opposing a statewide ballot issue violated this section. The press releases were not balanced factual summaries of the ballot issue and were not resolutions because they were not formal expressions of a voting body. The state treasurer expended more than \$50 in preparing the press releases and was not permitted to expend more than that to take a position of advocacy. *Colo. Common Cause v. Coffman*, __ P.3d __ (Colo. App. 2003).

Public school payroll deduction system for teachers' union dues, a portion of which was given by the union to a political action committee, did not constitute a "contribution in kind" because it did not support a specific "issue" or "candidate" that the political action committee supported or opposed during the time that the district made the payroll deductions. *Mountain States v. Secretary of State*, 946 P.2d 586 (Colo. App. 1997) (decided under law in effect prior to 1997 amendment).

1-45-118. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: Initiated 96: Entire article R&RE, effective upon proclamation of the Governor, January 15, 1997.