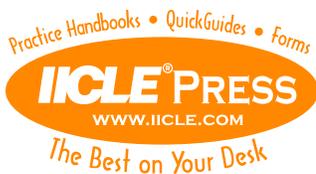


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7

State Campaign Financial Disclosure

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I. [7.1] INTRODUCTION AND SCOPE OF CHAPTER

This chapter contains analysis of statutory and regulatory requirements of Article 9 of the Election Code, 10 ILCS 5/1-1, *et seq.*, and 26 Ill.Admin. Code pts. 100 and 125, which govern the organization, registration, and reporting of political committees and discusses the pertinent rules and forms used by the State Board of Elections in implementing the provisions of Article 9 of the Election Code. In addition, this chapter addresses the registration requirements of business entities that bid on or are a party to certain state contracts (see 10 ILCS 5/9-35; 30 ILCS 500/20-160; 26 Ill.Admin. Code §§100.180, 100.185), and the enforcement procedures for violations of the Election Code or regulations promulgated under it. This chapter also discusses the recently enacted amendments to Article 9 that went into effect in July 2010 and January 2011, which include contribution limitations, independent expenditures, and board ordered audits of political committees. Finally, this chapter discusses the subject of raffles conducted by political committees under the provisions of the Raffles Act, 230 ILCS 15/0.01, *et seq.* See the discussion of 230 ILCS 15/8.1 in §§7.103 – 7.105 below.

The State Board of Elections' website, www.elections.il.gov, has a plethora of guides, instructional tools, forms, and other information regarding political committees and campaign disclosure. Among the material available are video classes on how to comply with the campaign finance laws, and the board's administrative regulations governing campaign finance.

II. [7.2] SUMMARY OF PROVISIONS OF ARTICLE 9 OF THE ELECTION CODE

Sections 7.3 – 7.12 below summarize the topics related to Article 9 of the Election Code, 10 ILCS 5/9-1, *et seq.*, and should be read before reading any other part of this chapter. This summary may materially reduce the research time spent on specific questions about political committees and campaign finance disclosure by providing a shortcut to understanding Article 9 and the regulations that implement it.

A. [7.3] Campaign Disclosure Statute

Article 9 of the Election Code, entitled “Disclosure and Regulation of Campaign Contributions and Expenditures,” requires political committees that raise or spend in excess of \$3,000 to register and file reports with the State Board of Elections. The reports required to be filed by the political committees must disclose campaign contributions, expenditures, and independent expenditures, along with certain corresponding information for each item.

The campaign disclosure statute was amended in September 2008 by P.A. 95-971 (eff. Jan. 1, 2009) to require business entities with bids or proposals on state contracts, existing state contracts, or a combination of the two that annually total more than \$50,000 to register with the State Board of Elections. Such businesses are prohibited from making contributions to the public officials responsible for awarding the contract(s) or responsible for accepting the bids/proposals on such contracts (or candidates running for those offices or their political committees). See 30 ILCS 500/50-37; §§7.106 – 7.112 below. Additionally, P.A. 96-832, certain sections effective

July 1, 2010 and other sections effective January 1, 2011, made a number of significant changes to the campaign disclosure statute, which include new classifications for political committees, contribution limits for certain political committees, and new reporting requirements for political committees.

The campaign disclosure statute contains additional restrictions on contributions and use of funds. These restrictions include:

1. no one may make an anonymous contribution to a political committee, or a contribution in the name of another person, thus concealing the true source of the funds (10 ILCS 5/9-25);
2. a candidate may not use funds acquired by their political committees for private gain or for other personal uses (10 ILCS 5/9-8.10(a));
3. political committee funds may not be commingled with personal funds of anyone affiliated with the committee (10 ILCS 5/9-6(c));
4. a political committee must have both a chairman and a treasurer (the same person may serve as both) and may not accept contributions or make expenditures while either post is vacant (10 ILCS 5/9-2(g));
5. no political committee may solicit funds in support of a candidate who has not authorized the solicitation unless it includes notice of its lack of authority in its solicitations and advertising (10 ILCS 5/9-8);
6. on any spring session day beginning on February 1 through the later of the actual adjournment dates of either house and during the fall veto session, no political fundraising may take place in Sangamon County involving constitutional officers, legislators, and candidates for these offices unless these individuals' districts are situated entirely within the county (10 ILCS 5/9-27.5; 5 ILCS 430/5-40);
7. political contributions may be neither given nor received on state property unless the property has been rented for fundraising purposes (10 ILCS 5/9-8.15);
8. political literature must identify the political committees that paid for the literature unless the item is too small to include the name of the committee (10 ILCS 5/9-9.5(a)); and
9. a candidate who owes the State Board of Elections a monetary civil penalty imposed under Article 9 may not appear on any ballot for any office (10 ILCS 5/9-30).

Additionally, federal law prohibits certain persons/organizations from making political donations — foreign nationals and federally chartered banks, for example.

B. [7.4] State Board of Elections

The State Board of Elections is given the authority of civil enforcement for the campaign disclosure statute. The board may order a political committee to conduct an audit of the financial records required to be maintained by the committee to ensure compliance with §§9-8.5 and 9-10 of the Election Code, pertaining to limitations on campaign contributions and reports required to be filed. 10 ILCS 5/9-13. Alternatively, the board may hold investigations, inquiries, and hearings concerning any matter covered by Article 9 of the Election Code, subject to such rules and regulations as the board may establish. 10 ILCS 5/9-18. Further, the board may audit reports to determine whether information is complete and accurate and conduct investigations to determine whether all receipts and expenses have been reported. In practical terms, the authority of the board consists of (1) requiring the correct and timely filing of reports and business entity registrations; (2) requiring the correct and timely notice of the formation of or change in information concerning political committees; (3) imposing statutory fines for the late or non-filing of reports; (4) enforcing the statutory contribution limitations imposed on certain political committees, and assessing civil penalties against such committees when the limitations are exceeded; (5) conducting audits of political committees, both random and “for cause”; (6) requiring business entities to timely report any change in registration information and assessing civil penalties for failing to do so; and (7) referring criminal matters to an appropriate prosecutor. See 10 ILCS 5/9-13.

If a civil penalty has been imposed by the board against a person’s political committee under Article 9 and has not been paid, the board has the authority to deny certification of the name of such person to appear on any ballot for any office in any election if the penalty continues to be unpaid by the date required for certification. 10 ILCS 5/9-30.

With regard to criminal penalties, Article 9 of the Election Code provides for the enforcement of criminal penalties by the several state’s attorneys and the Illinois Attorney General. 10 ILCS 5/9-26.

C. [7.5] Political Committees

Section 9-1.8 of the Election Code has been modified by P.A. 96-832 (eff. Jan. 1, 2011) and by P.A. 97-766 (eff. July 6, 2012), to define “political committees” to include a candidate political committee, a political party committee, a political action committee (PAC), a ballot initiative committee, and an independent expenditure committee. The following is a brief summary of the five committee types: (1) candidate political committee — a candidate or any other person or group who accepts contributions or makes expenditures totaling more than \$3,000 in aggregate during any 12-month period on behalf of a candidate; (2) political party committee — a state or county central committee of a political party, a legislative caucus committee, or a committee formed by ward or township committeemen of a political party; (3) political action committee — any person or group other than a candidate or political party who accepts contributions or makes expenditures totaling more than \$3,000 (in aggregate) during any 12-month period for or against a candidate(s); this includes spending for electioneering communication related to any candidate; (4) ballot initiative committee — any person or group who accepts contributions or makes expenditures totaling more than \$3,000 (in aggregate) during

any 12-month period supporting or opposing a public policy question to be put on a ballot; the \$3,000 threshold includes electioneering communication and applies to any part of the process of getting the issue put on the ballot or working for its passage or defeat; and (5) independent expenditure committee — any trust, partnership, committee, association, corporation, or other organization or group of persons: (a) formed for the exclusive purpose of making independent expenditures during any 12-month period in an aggregate amount exceeding \$3,000 in support of or in opposition to (i) the nomination for election, election, retention, or defeat of any public official or candidate or (ii) any question of public policy to be submitted to the electors; or (b) that makes electioneering communications that are not made in connection, consultation, or concert with or at the request or suggestion of a public official or candidate, a public official's or candidate's designated political committee or campaign, or an agent or agents of the public official, candidate, or political committee or campaign during any 12-month period in an aggregate amount exceeding \$3,000 related to (i) the nomination for election, election, retention, or defeat of any public official or candidate or (ii) any question of public policy to be submitted to the voters. Prior to the addition of the term "independent expenditure committee" by P.A. 97-766, the federal district court case *Personal PAC v. McGuffage*, No. 12-CV-104, 2012 WL 850744 at *6 (N.D.Ill. 2012), created by virtue of a court injunction a committee referred to as an "independent-expenditure-only PAC" that is able to accept unlimited contributions but is prohibited from making direct contributions or coordinated expenditures.

D. [7.6] Contribution Limits and Election Cycles

Effective January 1, 2011, with the enactment of P.A. 96-832, the Illinois General Assembly adopted contribution limits for most Illinois political committees. There are different contribution limits for different types of committees, and each limit refers to contributions received during a particular election cycle. See §7.37 below for further discussion on this topic.

E. [7.7] Reporting Requirements

Within ten business days after a political committee raises or spends in excess of \$3,000, it is required to submit to the State Board of Elections a Form D-1, Statement of Organization, which is available at www.elections.il.gov/downloads/campaigndisclosure/pdf/d1.pdf. This form identifies the name of the committee, the date the committee was created, the amount of funds available to the committee on the date created, the type of committee, the committee's area of activity, scope and party affiliation (if applicable), the purpose of the committee, the candidates supported or opposed by the committee, the name of its chairman and treasurer, the bank in which it keeps its funds, any sponsoring entity of the committee, and the disposition it intends to make of its funds when it dissolves. This form must be submitted within two business days, if the committee crosses the reporting threshold within 30 days of an election. 10 ILCS 5/9-3. Failure to file or late filing of a Statement of Organization will result in the committee being assessed a civil penalty by the board. A Statement of Organization may be filed in person, by fax (at 217-782-5959), or by e-mail (at D1@elections.il.gov).

All political committees are required to report their financial activity on official forms distributed by the State Board of Elections. The Form D-2, Report of Campaign Contributions and Expenditures, available at www.elections.state.il.us/downloads/campaigndisclosure/pdf/d2.pdf, is the official form used by political committees to disclose totals of receipts,

expenditures, debts, fund balances, and investments in any given reporting period. The Form D-2 is a quarterly report that must be filed every three months, requiring a political committee to disclose its financial activity during the reporting periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Each report is due by the 15th of the month following the reporting period, *i.e.*, April 15, July 15, October 15, and January 15. Every political committee is required to file quarterly reports. In addition to the quarterly report, political committees must also file two other forms, Schedule A-1, Report of Campaign Contributions of \$1,000 or More, available at www.elections.il.gov/downloads/campaigndisclosure/pdf/a1.pdf, and Schedule B-1, Report of Independent Expenditures of \$1,000 or More, available at www.elections.il.gov/downloads/campaigndisclosure/pdf/b1.pdf, within certain time periods that vary under certain circumstances as discussed in §§7.42 – 7.45 below.

A political committee's failure to file a properly completed quarterly report, Schedule A-1, or Schedule B-1 in a timely manner may also result in substantial civil penalties. See §§7.93 – 7.99 below for more information regarding civil penalties.

When a committee wants to dissolve, it must file a final report (also on Form D-2) showing the disposition of funds remaining in its possession, if any, at the time of the committee's dissolution. This disposition should be consistent with the intended disposition indicated on the committee's statement of organization. 10 ILCS 5/9-5. The State Board of Elections takes the position that its jurisdiction over the committee remains beyond the filing of a final report in order to resolve questions that may arise subsequent to the filing and to enforce the campaign disclosure statute's requirements in the event of a violation.

F. [7.8] Administrative Rules

As noted in §7.1 above, the rules and regulations interpreting and expounding the campaign disclosure statute can be found in 26 Ill.Admin. Code pts. 100 and 125. Part 100 provides definitions and rules of interpretation of the campaign disclosure statute. Part 125 provides procedures for filing and hearing complaints brought under the campaign disclosure statute, procedures for the imposition of civil penalties for delinquent reports, procedures for conducting inquiries and investigations, and procedures for rulemaking. Section 100.180 establishes procedures for business entities to register with the State Board of Elections, and §100.185 sets forth the civil penalties the board is authorized to assess in the event of noncompliance with particular sections of Article 9 of the Election Code.

G. [7.9] Hearings Before the Board and Delinquent Reports

The State Board of Elections is authorized by the campaign disclosure statute to hear complaints for any violation of its provisions. The first step in acting on a complaint is to hold a closed preliminary hearing to determine whether the complaint was filed on justifiable grounds. 10 ILCS 5/9-21. The board interprets "justifiable grounds" to mean that some evidence exists that the campaign disclosure statute or a regulation interpreting it has been violated. If, after the closed preliminary hearing, the board fails to determine that the complaint was filed on justifiable grounds, the complaint is dismissed. At least five votes of the board are necessary to make a

determination of justifiable grounds. However, the Illinois Supreme Court in *Illinois Campaign for Political Reform v. Illinois State Board of Elections*, 388 Ill.App.3d 517, 904 N.E.2d 996, 328 Ill.Dec. 486 (1st Dist. 2009), held that a 4-4 tie vote on the question of whether a complaint was filed on justifiable grounds, which has the effect of dismissing the complaint based on the language of §9-21 (failure to determine complaint has been filed on justifiable grounds results in dismissal) is reviewable under the “clearly erroneous” standard of review, and therefore §9-21 is not unconstitutional. If the board determines that the complaint was filed on justifiable grounds, then it must order a public hearing to be held unless the respondent agrees to fully correct the violations alleged in the complaint. The parties may settle (with the approval of the board) the case at any time during the proceedings, prior to a final decision by the board. Following a public hearing, if the board determines that a violation has or is occurring, the board may enter an order requiring compliance with the campaign disclosure statute or its implementing regulations. 10 ILCS 5/9-21. If the respondent subsequently violates the board order, the board may impose a civil monetary penalty not to exceed \$5,000 (\$10,000 for a committee supporting a candidate for statewide office or an officer elected statewide) for each violation. 10 ILCS 5/9-23. Except in the case of late or non-filed campaign disclosure reports, contribution limit violations or failing to timely submit a required audit, civil penalties may not be assessed unless a board order has not been complied with. Civil penalties for late or non-filed disclosure reports and schedules require no prior disregard of a board order and are, by rule, automatically assessed based on the committee’s funds on hand, the number of days the report is late, and the number of past violations. Late or non-filed Schedule A-1, Report of Campaign Contributions of \$1,000 or More, are assessed a civil penalty equal to 50 percent of the value of the contribution that was untimely reported (unless the violation was willful, which would result in a penalty equal to 150 percent of the late or unreported contribution) The board, however, takes into account the culpability level of the committee when assessing the civil penalty. First time violations of a Schedule A-1 filing requirement will almost always receive a 90-percent reduction of the original assessment. Board policy is to assess at 50 percent for second violations, 75 percent for third violations, and 100 percent for fourth or subsequent violations, unless the facts of a particular violation warrant a higher or lower assessment. Committees may appeal assessments to the board, arguing that the imposition of the penalty was unwarranted or that it should be reduced. See §§7.93 – 7.99 below regarding civil enforcement.

H. [7.10] Criminal Sanctions

The campaign disclosure statute gives the State Board of Elections limited authority to punish criminal violations. For instance, willfully failing to file a report or filing a false or incomplete report is a business offense subject to a fine of up to \$5,000. 10 ILCS 5/9-26. This applies to the principal campaign disclosure filings with the board: the statement of organization (filed on Form D-1, Statement of Organization), the quarterly report, the Schedule A-1, Report of Campaign Contributions of \$1,000 or More, and the Schedule B-1, Report of Independent Expenditures of \$1,000 or More.

The campaign disclosure statute contains two other provisions that include criminal penalties for violations thereof but do not authorize the board to issue a corresponding criminal sanction. These provisions are the willful filing of a false complaint (Class B misdemeanor) and the expenditure of public funds for campaign purposes (Class B misdemeanor for a first violation,

Class A misdemeanor for a second and subsequent violations (see §7.11 below)). *Id.*; 10 ILCS 5/9-25.1(c). The state's attorney of the appropriate county or the Attorney General may prosecute any criminal violations of the statute. 10 ILCS 5/9-26. An 18-month statute of limitations applies to the prosecution of these criminal actions. *Id.* Although the board lacks the power to impose criminal sanctions, it will refer to the appropriate state's attorney or to the Attorney General matters that it believes warrant a criminal prosecution.

I. [7.11] Election Interference Prohibition

Section 9-25.1 of the Election Code is commonly known as the election interference prohibition statute. This statute imposes criminal penalties for the expenditure of public funds to support or oppose a candidate or referenda or for political campaign purposes. 10 ILCS 5/9-25.1(b). "Public funds" are defined as those amounts appropriated by the General Assembly or any political subdivision of the State of Illinois. 10 ILCS 5/9-25.1(a). Though many concerned citizens feel that the statute should have broad applicability to any type of government property arguably used for political purposes and paid for by public funds, the Fifth District Appellate Court, in *Jenner v. Wissore*, 164 Ill.App.3d 259, 517 N.E.2d 1220, 115 Ill.Dec. 534 (5th Dist. 1988), applied the statute rather narrowly when it rejected a claim by a community college trustee who alleged inter alia that the school district violated the statute when it allowed a local committee supporting a tax referenda the use of its facilities. The court interpreted the term "public funds" to mean "money or negotiable instruments readily convertible into cash, or, at most, property which is contemplated as something to be used for the payment of debts" when it rejected the plaintiff's claim on the basis of lack of standing to enjoin the use of these facilities. 517 N.E.2d at 1226. The court seemed to draw a distinction between the use of property and an actual dispersal of funds when it failed to find that a violation had occurred. Based on *Jenner*, which appears to be the only case in which the court has dealt with the definition of "public funds" as it relates to the election interference prohibition statute, the mere use of property, as opposed to the outright allocation of money, for political purposes is not enough to trigger a violation of the statute. See also §7.101 below regarding the prohibition on the use of public funds for campaigning.

J. [7.12] Raffles

Political committees organized under Article 9 of the Election Code may be eligible for a license to conduct raffles as a source of income for the committee under the provisions of the Raffles Act. See 230 ILCS 15/8.1. A political committee may apply for a raffle license as soon as it files a Form D-1, Statement of Organization, with the State Board of Elections. Further requirements of eligibility are:

1. No committee officer may have a felony conviction.
2. The committee must be currently active.
3. The committee must not owe any civil penalty to the board.

The board may issue and revoke raffle licenses, but criminal enforcement is left to the appropriate state's attorney.

A separate raffle report is required of any committee that conducts a raffle pursuant to its license issued by the board. This report must be filed no later than the last day for filing the quarterly report for the reporting period in which the raffle occurred. The report must include the date of the raffle, the total receipts and expenditures relating to the raffle, and the names and addresses of the winners, including an itemization of the amounts or items the winners received.

III. REPORTING AND DISCLOSURE

A. Definitions

1. [7.13] Candidate

A “candidate” is a person who seeks a nomination for election or seeks election to public office, a person who seeks election to the established political party offices of ward or township committeeman in Cook County (currently, there are two statewide established political parties — the Democratic and Republican parties), and any sitting judge in Illinois who seeks retention in office. 10 ILCS 5/9-1.3; 26 Ill.Admin. Code §100.10(b)(2).

26 Ill.Admin. Code §100.10(b)(2) adds to the statutory definition by stating that a person becomes a candidate under the campaign disclosure statute if he or she (a) circulates or authorizes the circulation of nominating petitions on his or her behalf for public office or (b) receives contributions, makes expenditures, or gives consent for another person to receive contributions or make expenditures with a view to bringing about his or her nomination for election to any office.

2. [7.14] Contribution

A “contribution” means “a gift, subscription, donation, dues, loan, advance, or deposit of money, or anything of value, knowingly received in connection with the nomination for election, election, or retention of any candidate or person to or in public office, or in connection with any question of public policy.” 10 ILCS 5/9-1.4(A)(1).

This definition also includes the purchasing of tickets for fundraising events, the making of electioneering communications (see §7.15 below), the transfer of funds received by a political committee from another political committees (see §7.26 below), and an expenditure by a political committee made in cooperation, consultation, or concert with another political committee. 10 ILCS 5/9-1.4(A)(1.5), 5/9-1.4(A)(2), 5/9-1.4(A)(3), 5/9-1.5(A)(5). The services of an employee donated by an employer are also considered a “contribution” and must be reported in the name of the employer. However, individual services provided on a voluntary basis with no expectation of compensation are excluded from the definition and need not be reported. 10 ILCS 5/9-1.4(A)(4).

26 Ill.Admin. Code §100.10(b)(3) specifies that “anything of value,” as used in the definition of “contribution” in §9-1.4(A)(1), includes any item, thing, service, or good regardless of whether it may be valued in monetary terms according to ascertainable market value. If the item, thing, service, or good is of such a nature that it is not able to be given a specific value, then it must be described in such a way that an accurate assessment of its value can be determined. *Id.*

The campaign disclosure statute specifically excludes the following from the term contribution:

- (a) the use of real or personal property and the cost of invitations, food, and beverages, voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises for candidate-related activities; provided the value of the service provided does not exceed an aggregate of \$150 in a reporting period;**
- (b) the sale of any food or beverage by a vendor for use in a candidate's campaign at a charge less than the normal comparable charge, if such charge for use in a candidate's campaign is at least equal to the cost of such food or beverage to the vendor;**
- (c) communications by a corporation to its stockholders and executive or administrative personnel or their families;**
- (d) communications by an association to its members and executive or administrative personnel or their families;**
- (e) voter registration or other campaigns encouraging voting that make no mention of any clearly identified candidate, public question, political party, group, or combination thereof;**
- (f) a loan of money by a national or State bank or credit union made in accordance with the applicable banking laws and regulations and in the ordinary course of business, but the loan shall be listed on disclosure reports required by [Article 9 of the Election Code]; however, the use, ownership, or control of any security for such a loan, if provided by a person other than the candidate or his or her committee, qualifies as a contribution; or**
- (g) an independent expenditure. 10 ILCS 5/9-1.4(B).**

Furthermore, the campaign disclosure statute excludes interest or other investment income, earnings or proceeds, and refunds or returns of all or part of a committee's previous expenditures from the definition of the term "contribution," but such items must still be listed on disclosure reports required by Article 9 of the Election Code.

In addition to the campaign disclosure statute, regulations exclude other items from the definition of "contribution," such as (a) unreimbursed payments made by a volunteer for travel and living expenses on behalf of a candidate or political committee; (b) news stories, editorials, etc., of a news organization; (c) regular publications of a corporation or labor organization as long as the corporation or organization is not primarily engaged in supporting or opposing candidates or referenda; (d) occasional use of real property to convey information to officers, stockholders, employees, and members of their families by a candidate; and (e) the unrealized appreciation or depreciation of an asset while it is being held by the candidate or political committee. 26 Ill.Admin. Code §100.10(b)(3)(E).

3. [7.15] Electioneering Communication

Section 9-1.14 of the Election Code establishes a type of contribution and expenditure known as an “electioneering communication,” which has been incorporated into the definition of “contribution” in §9-1.4(A)(1.5) and “expenditure” in §9-1.5(A)(2). This concept is modeled after the “electioneering communication” provisions of the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub.L. No. 107-155, 116 Stat. 81, a federal campaign finance statute that, among other things, was aimed at addressing the problems of “soft money” in federal elections. The Illinois campaign disclosure statute defines “electioneering communication” as any broadcast, cable, or satellite communication, including radio, television, or Internet communication, that

(1) refers to (i) a clearly identified candidate or candidates who will appear on the ballot for nomination for election, election, or retention, (ii) a clearly identified political party, or (iii) a clearly identified question of public policy that will appear on the ballot, (2) is made within (i) 60 days before a general election or consolidated election or (ii) 30 days before a primary election, (3) is targeted to the relevant electorate, and (4) is susceptible to no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate for nomination for election, election, or retention, a political party, or a question of public policy. 10 ILCS 5/9-1.14(a).

The “susceptible to no reasonable interpretation” language derives from the Supreme Court decision in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 168 L.Ed.2d 329, 127 S.Ct. 2652 (2007).

Section 9-1.14(b) of the campaign finance statute provides certain exceptions to the definition. They include (a) a communication appearing in a news story or commentary of a recognized news organization, unless this organization is owned by the political committee or candidate; (b) a communication to promote a candidate debate or forum; (c) a communication in connection with a nonpartisan “get-out-the-vote” activity; (d) a communication by a §501(c)(3) organization (those nonprofit organizations exempt from the payment of income tax under the Internal Revenue Code by virtue of their refraining from engaging in partisan political activities); (e) a communication by a labor union to its members; and (f) a communication by a §501(c)(6) organization (organizations with a common business interest and whose political expenditures while permitted, are limited to promotion of the interests of the organization) to its members. 10 ILCS 5/9-1.14.

The appellate court held in *Citizens Organized To Save Tax Cap v. State Board of Elections of State of Illinois*, 392 Ill.App.3d 392, 910 N.E.2d 605, 331 Ill.Dec. 196 (1st Dist. 2009), that a school district that distributed literature regarding an upcoming school referenda, even though it did not violate §9-25.1 (see §7.11 above), was not exempt from the coverage of the campaign disclosure statute when it spent in excess of \$3,000 on the literature, as it fell within the definition of “electioneering communication” contained in §9-1.14. The holding however was effectively nullified by the recent amendment to the electioneering communication definition; specifically the fourth criteria that such communication must be susceptible to no reasonable interpretation other than an appeal to vote for or against a candidate, political party, or referenda.

4. [7.16] Expenditure

Section 9-1.5(A)(1) of the Election Code defines “expenditure” as a “payment, distribution, purchase, loan, advance, deposit, gift of money, or anything of value, in connection with the nomination for election, election, or retention of any person to or in public office or in connection with any question of public policy.” 10 ILCS 5/9-1.5(A)(1). The definition of “expenditure,” similar to the definition of “contribution,” includes amounts spent on electioneering communications. 10 ILCS 5/9-1.5(A)(2). See also §7.15 above. The definition also includes “a transfer of funds by a political committee to another political committee.” 10 ILCS 5/9-1.5(A)(3). Another similarity to the definition of “contribution,” §9-1.5 specifically excludes candidate receptions and similar activities when they are conducted at the private residence of the provider and when the cost does not exceed \$150, and excludes food and beverage provided at a discount by a vendor as long as the charge is at least equal to the actual cost to the vendor.

The regulations expand on this definition by clarifying the term “anything of value,” to include any item, thing, service, or good regardless of whether they may be valued in monetary terms according to ascertainable market value. 26 Ill.Admin. Code §100.10(b)(3)(B). See the last paragraph of §7.14 above for a list of miscellaneous items that are not considered anything of value for purposes of the definition of “expenditure.” Note that anything of value that does not have an ascertainable market value must be reported by describing the expenditure.

5. [7.17] Person or Whoever

A “‘person’ or ‘whoever’ ” is defined as a natural person, trust, partnership, committee, association, corporation, or any other organization or group of persons. 10 ILCS 5/9-1.6. The terms “other organizations” and “groups of persons” as defined in §9-1.6 of the Election Code includes, but not be limited to, all corporations, labor unions, trade associations or other such groups, religious organizations, fraternal societies, luncheon and dinner organizations, etc. 26 Ill.Admin. Code §100.10(b)(4).

6. [7.18] Political Committee

Political committees in Illinois are divided into five classifications: candidate political committee, political party committee, political action committee, ballot initiative committee, and independent expenditure committee, and are described further in §§7.19 – 7.23 below. See 10 ILCS 5/9-2. 26 Ill.Admin. Code §100.10(b)(5) further interprets or applies §§9-1.8, “Political committees” and 9-1.9, “Election cycle” of the Election Code. This administrative code subsection also includes as part of the statutory definition of “political committees” those persons or groups referred to above who receive funds and act as a conduit for these funds by forwarding them on to another person or group. In this situation, these conduits are also required to file as a separate political committee. However, the provisions of §100.10(b)(5) do not apply to those persons who accept contributions from at least five individuals as provided in §9-6 of the Election Code. This rule provides an important exemption to the standard definition of “political committee.” A person or group does not become a political committee by simply making a contribution, no matter how large or how often, from that person’s or group’s personal income or profits. But, if the person or group solicits funds for the purpose of giving them to a candidate (or

the candidate's committee) or a committee supporting a question of public policy, then the person or group could be considered a political committee and would have to file as such, subject to §9-6 of the Election Code. For a modification of this rule, see *Santana v. State Board of Elections*, 371 Ill.App.3d 1044, 864 N.E.2d 944, 309 Ill.Dec. 703 (1st Dist. 2007). In *Santana*, the court held that a political operative who expended his own money to create and distribute a sample ballot brochure endorsing a candidate, regardless of whether the operative expected to be reimbursed at a later time, became a de facto political committee by his independent actions in connection with the creation of the brochure.

a. [7.19] Candidate Political Committee

A "candidate political committee" is defined as the candidate himself or herself, or any natural person, trust, partnership, corporation, or any other organization or group of persons designated by the candidate that accepts contributions or makes expenditures during any 12-month period in an aggregate amount exceeding \$3,000 on behalf of the candidate.

b. [7.20] Political Party Committee

A "political party committee" is one formed by the state central or county central committee of a political party, a committee formed by a ward or township committeeman, or a legislative caucus committee. In addition, candidates who form a political party under 10 ILCS 5/10-2 (new political parties) may pursuant to 26 Ill.Admin. Code §100.10(b)(5)(D) form a political party committee.

A legislative caucus committee is one formed by any of the four legislative caucus leaders (Speaker of the House, President of the Senate, and the minority leaders of the House and Senate) for the purpose of electing legislative candidates. It also includes a committee formed by at least five members of the same caucus of the Senate or ten members of the same caucus of the House. A legislative caucus committee also includes any caucus declared as such by its members.

c. [7.21] Political Action Committee

A "political action committee" is similar to a candidate committee in its definition, however it is not one formed by the candidate, but rather it is formed by another person, group, association, corporation, etc., that accepts contributions and makes expenditures exceeding \$3,000 during a 12-month period in support of or opposition to a candidate or that makes electioneering communications related to a candidate. Independent candidates, groups of established party candidates (Democrat, Republican, or local established parties) and candidates who ran for an office that is by law "non-partisan" (such as school, library, park district, etc.) who wish to collectively form a committee may file as a PAC.

d. [7.22] Ballot Initiative Committee

A "ballot initiative committee" consists of a person, group, association, corporation, etc., that accepts contributions and makes expenditures exceeding \$3,000 during a 12-month period in support of or opposition to a question of public policy (the question) or that makes electioneering communications related to the question. The \$3,000 contribution/expenditure threshold applies at

all stages of the process to secure a place on the ballot for the question and all efforts to secure passage or defeat of such question and applies regardless of the method of initiation (citizens petition or governing body resolution). A ballot initiative committee can be formed by exceeding the threshold regardless of whether petitions were actually filed or whether the question was ultimately adopted by the governing body. 10 ILCS 5/9-1.8(e).

e. [7.23] Independent Expenditure Committee

A “independent expenditure committee” means any trust, partnership, committee, association, corporation, or other organization or group of persons: (1) formed for the exclusive purpose of making independent expenditures during any 12-month period in an aggregate amount exceeding \$3,000 in support of or in opposition to (a) the nomination for election, election, retention, or defeat of any public official or candidate or (b) any question of public policy to be submitted to the electors; or (2) that makes electioneering communications that are not made in connection, consultation, or concert with or at the request or suggestion of a public official or candidate, a public official’s or candidate’s designated political committee or campaign, or an agent or agents of the public official, candidate, or political committee or campaign during any 12-month period in an aggregate amount exceeding \$3,000 related to (a) the nomination for election, election, retention, or defeat of any public official or candidate or (b) any question of public policy to be submitted to the voters. 10 ILCS 5/9-1.8(f).

Section 1.15 of Article 9 of the Election Code defines “independent expenditure” to mean any payment, gift, donation, or expenditure of funds (1) by a natural person or political committee for the purpose of making electioneering communications or of expressly advocating for or against the nomination for election, election, retention, or defeat of a clearly identifiable public official or candidate or for or against any question of public policy to be submitted to the voters and (2) that is not made in connection, consultation, or concert with or at the request or suggestion of the public official or candidate, the public official’s or candidate’s designated political committee or campaign, or the agent or agents of the public official, candidate, or political committee or campaign. 10 ILCS 5/9-1.15.

NOTE: The 2012 federal district court decision in *Personal PAC v. McGuffage*, No. 12-CV-104, 2012 WL 850744 at *6 (N.D.Ill. 2012), created a new type of committee; the “independent-expenditure-only PAC” committee (the Election Code has been amended by P.A. 97-766 (eff. July 6, 2012) to add a new committee referred to as an independent expenditure committee). The court, through the issuance of a permanent injunction, prohibited the State Board of Elections from enforcing contribution limits on committees that engage solely in independent expenditures. (The injunction also enjoined the board from enforcing the limitation of one political action committee per entity restriction, as it applies to independent expenditure committees.) Such committees however, are limited in their activity, as they cannot make direct contributions nor can they make coordinated expenditures (expenditures made at the suggestion of or in cooperation or coordination with a candidate, political party, or their respective committees). Committees who choose to exist as independent expenditure only, must register as such with the board by making the appropriate designation on Form D-1, Statement of Organization. See §§7.28 and 7.29 below.

7. [7.24] Public Office

“Public office” is defined as “any elective office or judicial office subject to retention.” 10 ILCS 5/9-1.10. A public office is distinguished from a political party office such as a precinct, ward, township, or state-central committeeman.

8. [7.25] Public Official

“Public official” means “any person who is elected or appointed to public office.” 10 ILCS 5/9-1.11.

9. [7.26] Transfer in/Transfer out

A “transfer in” is a contribution to a political committee received from another political committee. A “transfer out” is a contribution given by one political committee to another political committee. The term “transfer of funds” is broadly defined to mean any conveyance of money from one political committee to another political committee. 10 ILCS 5/9-1.13.

B. Forming a Political Committee

1. [7.27] Political Committee Designation

A political committee’s designation determines what election cycle applies to them, which establishes the time period in which it can receive contributions and the permissible amount of such contributions it can receive. When formed, a political committee must designate itself as one of the following political committee categories: candidate, political party, political action, ballot initiative, or independent expenditure and must include such designation on the committee’s D-1, Statement of Organization. See §7.28 below. Each candidate, political party, entity (whether it’s a person, group of persons, association, corporation, labor union, etc.) or ballot initiative person or group is limited to forming one, and only one, political committee. 10 ILCS 5/9-2. This limitation does not apply to independent expenditure committees. 10 ILCS 5/9-2(d). In the case of a candidate committee, a candidate may only maintain one committee for each office that person holds or is running for.

2. [7.28] Filing the D-1, Statement of Organization

After a candidate or committee exceeds the \$3,000 reporting threshold in terms of its receipts or expenditures (note that a candidate’s personal contributions to his or her campaign should also be included in determining whether the committee has crossed the \$3,000 threshold), the candidate or committee must file a Form D-1, Statement of Organization, with the State Board of Elections. See 10 ILCS 5/9-3. See §7.29 below for details about the Form D-1. All reports filed by a political committee must be retained by the committee for a period of two years. 10 ILCS 5/9-10(f).

3. [7.29] Contents of the Statement of Organization

Form D-1, Statement of Organization, which is available at www.elections.state.il.us/downloads/campaigndisclosure/pdf/d1.pdf, requires the name and address of the political committee and the required designation (candidate, political party, political action committee, ballot initiative, or independent expenditure) to be provided. 10 ILCS 5/9-3(b).

A candidate committee name must include the name of the candidate supported by the committee and if the candidate forms separate committees for each public office held by or sought by the candidate, the committee name must also include such public office. Only a candidate committee may include the name of a candidate in its name. No public official or candidate for public office may maintain or establish more than one candidate political committee for each office that public official or candidate holds or is seeking. 10 ILCS 5/9-2(b).

For political party committees, the political party officials or organizations (state central, county central, township, and ward committeemen), and legislative caucuses or other groups formed to elect members of the General Assembly are similarly limited to one political party per party official/organization, and such committee name must include the name of the political party. 10 ILCS 5/9-2(c).

Entities forming a PAC may only maintain one such PAC per entity, except that an entity may form, in addition to a PAC, an independent expenditure PAC. 10 ILCS 5/9-2(d). Such independent expenditure PAC may only make independent expenditures, and may not make direct contributions or coordinated expenditures. Groups of candidates who wish to form a PAC may do so, however the name of the PAC cannot include the name of any of the candidates. The Illinois Administrative Code requires that the name of the PAC must include the office(s) the candidates are running for, as well as the political subdivision or unit of government (*e.g.*, Village of Rochester, Naperville School District, etc.) they are running in. 26 Ill.Admin.Code §100.10(b)(5)(D).

A ballot initiative committee name must include a brief description of the referendum and whether the committee supports or opposes it. 10 ILCS 5/9-2(e).

Form D-1, Statement of Organization, also requires:

- a. the political committee's purpose, scope, area of activity, and party affiliation (if any) (Generally, the purpose of the committee is to support or oppose a candidate or referenda. The scope and area of activity is where the committee intends to conduct its primary activities.);
- b. the name, address, and position of any custodian of the committee's books and accounts (Typically, the custodian is the treasurer of the committee.);
- c. the name, address, and position of the committee's principal officers, that is, its chairman and treasurer;

- d. the name and address of any sponsoring entity (A sponsoring entity is one that contributes at least 33 percent of the committee's total funding.);
- e. a statement of how any residual funds will be disposed of upon dissolution of the committee (After a committee has paid all its outstanding liabilities, including staff salaries and any civil penalties that the committee may have incurred, the committee may dispose of excess funds by (1) donating the funds to a charitable organization of the committee's choice, (2) transferring the funds to another political committee, or (3) returning the funds to the contributors in an amount not to exceed the amount of their individual contributions. 10 ILCS 5/9-5.);
- f. the name of the committee's bank or financial institution and any other repositories or custodians of funds (see §7.34 below); and
- g. the amount of funds available for campaign expenditures as of the date that the statement of organization is filed (The committee's funds available on the date of creation cannot exceed \$3,000. The reason for this is that a political committee does not have any filing obligations until it exceeds \$3,000. The requirement to disclose contributors and committee expenses takes effect once the committee has accepted contributions or made expenditures in excess of \$3,000. The contribution or expenditure that places the campaign committee over the threshold is the first item reported. For this reason, a political committee's available funds at the date of creation generally cannot exceed \$3,000.). 10 ILCS 5/9-1.8, 5/9-3.

The statement of organization must be verified, dated, and signed by either the treasurer of the political committee making the statement or the candidate on whose behalf the statement is made. 10 ILCS 5/9-3(c).

The statement of organization for an independent expenditure committee also shall include a verification signed by the chairperson of the committee that (a) the committee is formed for the exclusive purpose of making independent expenditures, (b) all contributions and expenditures of the committee will be used for the purpose described in the statement of organization, (c) the committee may accept unlimited contributions from any source, provided that the independent expenditure committee does not make contributions to any candidate political committee, political party committee, or political action committee, and (d) failure to abide by these requirements shall deem the committee in violation of this Article. 10 ILCS 5/9-3(d-5).

4. [7.30] Amending the Statement of Organization

If any of the information contained in the statement of organization changes, the change must be reported within ten days following that change. 10 ILCS 5/9-3. These changes must be reported by filing an amended Form D-1, Statement of Organization. It is especially important to notify the State Board of Elections of any change in committee officers or the address of the committee as notices that may impact the committee (*e.g.*, assessment of penalties and appeal procedures) are sent to the address on file with the board.

5. [7.31] Electronic Filing

Political committees that at any time raise or spend in excess of \$10,000 or have received a loan in excess of \$10,000 must file all of its disclosure reports electronically, with the exception of the Form D-1, Statement of Organization, which currently must still be filed on paper pursuant to the instructions of the State Board of Elections. 10 ILCS 5/9-28. Political committees that do not meet this threshold may file their reports electronically, even though they are not required to. It is important to note that once a committee exceeds the \$10,000 threshold during a reporting period, it must continue to file all its reports electronically, even though its receipts or expenditures may go below this threshold during a subsequent reporting period. 26 Ill.Admin. Code §100.150(b). Pursuant to 26 Ill.Admin. Code §100.150(c), once a committee is required to file its reports electronically under §9-28 of the Election Code, it must continue to file all reports (quarterly, amended quarterly, final, amended final, and Schedule A-1, Report of Campaign Contributions of \$1,000 or More) electronically, except as follows:

a. A paper report shall be considered a timely filing if it is received by the State Board of Elections on or before the filing deadline, provided that it covers the initial reporting period during which the mandatory electronic filing threshold is exceeded and that the report is filed electronically within 30 days after receipt of notice from the board that this report was required to have been filed electronically. If the report is not filed electronically within this 30-day period, it shall be considered as never having been filed, and the civil penalties mandated by 26 Ill.Admin. Code §125.425 will accrue from the date of the filing deadline.

b. A paper report shall be considered a non-filing if the committee has previously received the notification referred to in 26 Ill.Admin. Code §100.150(c)(1). If the report is not filed electronically by the filing deadline, it shall be considered as having never been filed, and the civil penalties mandated by 26 Ill.Admin. Code §125.425 will accrue until such time as it is filed electronically.

c. A paper report shall be considered a timely filing if at least one previous report was required to have been filed electronically and the committee had never been notified by the board that it was required to electronically file its reports, provided that the report is filed electronically within 30 days after the notification referred to in 26 Ill.Admin. Code §100.150(c)(1). If the report is not filed electronically within this 30-day period, it shall be considered as never having been filed, and the civil penalties mandated by 26 Ill.Admin. Code §125.425 will accrue from the date of the filing deadline.

d. A paper report shall be considered a timely filing if it is received on or before the filing deadline and the committee has never exceeded the \$10,000 threshold requiring the electronic filing of its reports, regardless of whether the committee filed previous reports electronically.

e. If a committee is assessed a civil penalty for delinquently filing a report required to be filed electronically and, in the course of its appeal, raises the defense that computer-related issues (including, but not limited to, software, firewalls, and system failures) prohibited the timely filing of an electronic report, the board may consider that defense when determining the final outcome of the appeal.

The board is required to provide software (known as the Illinois Disclosure Information System (IDIS)) free of charge to political committees that will enable them to file their reports electronically, although committees are free to obtain alternative software from private vendors. 26 Ill.Admin. Code §100.150(a). Political committees who choose to obtain their software from an outside vendor should contact the board to determine whether that vendor has successfully completed testing of its program and received board approval for its use. The board staff is available during regular business hours to provide assistance to persons who are electronically filing their reports. Once a political committee files its reports with the board electronically, these reports are immediately available for public examination via the board's website at www.elections.state.il.us/infoforcommittees.aspx.

6. [7.32] Where To File

All political committees must file their reports with the State Board of Elections. 10 ILCS 5/9-35, 5/9-10.

7. [7.33] When To File

A political committee's statement of organization must be filed within ten business days of the political committee's creation (*i.e.*, the date on which the committee exceeds the \$3,000 reporting threshold). However, a political committee that crosses this threshold within the 30 days before an election must file the statement within two business days of its creation date. 10 ILCS 5/9-3.

8. [7.34] Bank Accounts and Tax Reporting

The campaign disclosure statute requires that a political committee's funds must be segregated from, and may not be commingled with, any personal funds of its officers, candidates, or associates of the committee. 10 ILCS 5/9-6(c). Accordingly, opening a separate, segregated bank account is one of the recommended steps in forming a political committee. The bank may request that the political committee apply for an employer identification number (EIN) from the Internal Revenue Service to open the account. Using an EIN eliminates the use of an individual's social security number on the committee's account, which might result in personal tax liability if interest accrues on the account. Information regarding IRS reporting for political committees can be found in §8.148 of this handbook.

C. [7.35] Election Cycles and Contribution Limits

Section 9-1.9 of the Election Code gives the time periods that constitute "election cycles," during which contributions can be received but are subject to contribution limits found in §9-8.5. 10 ILCS 5/9-1.9, 5/9-8.5.

1. [7.36] Election Cycles

Section 9-1.9 gives the following breakdown of election cycles:

(1) For a candidate political committee organized to support a candidate to be elected at a general primary election or general election, (i) the period beginning January 1 following the general election for the office to which a candidate seeks nomination or election and ending on the day of the general primary election for that office or (ii) the period beginning the day after a general primary election for the office to which the candidate seeks nomination or election and through December 31 following the general election.

(2) Notwithstanding paragraph (1), for a candidate political committee organized to support a candidate for the General Assembly, (i) the period beginning January 1 following a general election and ending on the day of the next general primary election or (ii) the period beginning the day after the general primary election and ending on December 31 following a general election.

(3) For a candidate political committee organized to support a candidate for a retention election, (i) the period beginning January 1 following the general election at which the candidate was elected through the day the candidate files a declaration of intent to seek retention or (ii) the period beginning the day after the candidate files a declaration of intent to seek retention through December 31 following the retention election.

(4) For a candidate political committee organized to support a candidate to be elected at a consolidated primary election or consolidated election, (i) the period beginning July 1 following a consolidated election and ending on the day of the consolidated primary election or (ii) the period beginning the day after the consolidated primary election and ending on June 30 following a consolidated election.

(5) For a political party committee, political action committee, ballot initiative committee, or independent expenditure committee, the period beginning on January 1 and ending on December 31 of each calendar year. 10 ILCS 5/9-1.9.

2. [7.37] Contribution Limits

The signature change brought about by the passage of P.A. 96-832 was the enactment of contribution limits on political committees. Effective January 1, 2011, candidate, political party, and political action committees are restricted in the amount of money they can receive from various persons and organizations. The time period during which such committees can raise funds is divided into election cycles See §7.36 above. Committees may raise up to the maximum amount permitted during each of the delineated cycles. The following list sets forth the amount of the restriction and the person or entity to whom it applies. (All contribution limit references are in the aggregate.)

A candidate political committee may receive up to

- a. \$5,000 from an individual;
- b. \$10,000 from a corporation, labor organization, or association; and
- c. \$50,000 from a candidate political committee or PAC. 10 ILCS 5/9-8.5(b).

A candidate committee formed to support a candidate for the General Assembly may accept contributions from only one legislative caucus committee. There are no limits to contributions to a candidate political committee from a political party committee except during an election cycle in which the candidate seeks nomination at a primary election. During an election cycle in which the candidate seeks nomination at a primary election, a political party committee may contribute

- a. \$200,000 to a candidate for statewide office;
- b. \$125,000 to a candidate for the Senate, a supreme or appellate court in Cook County, or county-wide office in Cook County;
- c. \$75,000 to a candidate for the House of Representatives, a supreme or appellate court outside of Cook County, county-wide office outside of Cook County, and local candidates within Cook County; and
- d. \$50,000 to any other candidate. 10 ILCS 5/9-8.5(b).

A political party committee may accept contributions up to

- a. \$10,000 from an individual;
- b. \$20,000 from a corporation, labor organization, or association; and
- c. \$50,000 from a PAC.

However, there can be no transfers permitted between legislative caucus committees. During the primary election (first day of petition circulation through primary election), a political party committee may accept up to

- a. \$50,000 from a candidate political committee; and
- b. \$50,000 from another political party committee;

This is not applicable if the political party committee is not participating in the election and filed a statement of nonparticipation. A political party committee may accept contributions in any amount from a candidate committee or political party committee if the political party committee receiving the contribution filed a statement of nonparticipation in the primary. If the committee

violates this nonparticipation requirement, it is subject to a fine equal to 150 percent of the total contributions or coordinated expenditures made in violation of the restriction. Also, there are no limits on transfers between a state political committee and a federal political committee. 10 ILCS 5/9-8.5(c) through 5/9-8.5(c-10).

During an election cycle, a PAC may receive contributions up to

- a. \$10,000 from an individual;
- b. \$20,000 from a corporation, labor organization, political party committee, or association; and
- c. \$50,000 from a political action committee or candidate political committee. 10 ILCS 5/9-8.5(d).

Ballot initiative committees have no limits from any source provided that the committee files the document required by §9–3 of the Election Code and files the disclosure reports required by the provisions of Article 9 of the Election Code. 10 ILCS 5/9-8.5(e).

An independent expenditure committee may accept contributions in any amount from any source, provided that the committee files the document required by §9–3 of the Election Code and files the disclosure reports required by the provisions of Article 9 of the Election Code. 10 ILCS 5/9-8.5(e-5); *Personal PAC v. McGuffage*, No. 12-CV-104, 2012 WL 850744 (N.D.Ill. 2012).

3. [7.38] Self-Funding Candidates

Candidates, (including incumbents) and/or their immediate family (spouse, parent, or child) who contribute in excess of \$100,000 to the campaign (\$250,000 for candidates running for statewide office) are considered self-funding and must notify the State Board of Elections of this fact within one day. 10 ILCS 5/9-8.5(h). The notice shall detail each contribution made by the candidate or his or her family. Within two business days of filing said notice, the board shall give notice to all candidates running for that office, including the self-funding candidate, and shall post the notice on its website. Upon receiving said notice, all such candidates are excluded from the contribution limits.

4. [7.39] Transfer of Aggregate Contributions

A corporation, labor organization, association, or a political action committee organized by the same, may act as a conduit to facilitate the transfer of contributions received in the form of dues, levies, or similar assessments to a PAC, and may report such contributions in the aggregate as having come from the corporation, labor organization, association, or PAC. 10 ILCS 5/9-8.5(i). In order to do this, three conditions must be met: (a) none of the individual dues, levies, or assessments may exceed the contribution limitations applicable to natural persons or organizations, (b) the conduit facilitating the transfer must maintain a list of the natural persons, corporations, labor organizations, and associations that paid the dues, levies, or assessments, and (c) contributions made through dues, levies, or similar assessments paid by any natural person, corporation, labor organization, or association that exceed \$500 in a quarterly reporting period

shall be itemized on the committee's quarterly report and may not be reported in the aggregate. A PAC that facilitates the delivery of the aggregated contributions must disclose on their financial reports the amount of dues delivered or received and the name of the corporation, labor organization, association, or PAC that delivered the contributions, if applicable.

5. [7.40] Civil Penalties for Violation of Contribution Limits

A political committee that receives a contribution in excess of the contribution limits has 30 days (after the State Board of Elections sends notification of the excess contribution by certified mail) to either return the contribution (or in the event that the contribution is an in-kind, an amount equal to the value of said in-kind) to the contributor or give an amount equal to the contribution to a charity. 10 ILCS 5/9-8.5(j). Failure to do this within the 30-day period subjects the committee to a fine equal to 150 percent of the amount received in excess of said limits. In addition, the committee must escheat to the State's General Revenue Fund the amount received in excess. Committees do have the opportunity to contest the violation by filing an appeal of the assessment, under the same procedures contained in the rules for appealing violations of the Quarterly and Schedule A-1, Report of Campaign Contributions of \$1,000 or More filing requirements.

6. [7.41] Political Party Committee, Nonparticipation at a Primary Election

In general, a political party committee is limited to \$50,000 in the amount of contributions it can receive from a candidate committee or another political party committee. 10 ILCS 5/9-8.5(c-5). This limitation applies during the period beginning on the first day to circulate nominating petitions to appear on the general primary ballot and ending on the day of the general primary. If a political party committee does not intend to participate in that general primary, it may file a statement of nonparticipation and from that point on it may receive unlimited contributions from candidate and political party committees. To be eligible to file a statement of nonparticipation, the committee must agree not to make any contributions or coordinated expenditures in support of or opposition to a candidate or referendum on the ballot at that general primary election. If the committee fails to abide by this restriction, it is subject to a civil penalty up to 150 percent of the contribution or coordinated expenditure made in violation of the restriction. 10 ILCS 5/9-8.5(c-10).

There are no limits on the amount of money transferred between a political party committee and a federal political committee. 10 ILCS 5/9-8.5(c). A political party committee may not accept contributions from a ballot initiative committee or from an independent expenditure committee. A political party committee established by a legislative caucus may not accept contributions from another political party committee established by a legislative caucus.

D. [7.42] Filing Campaign Disclosure Reports

Once the committee has filed its statement of organization, it is required to file periodic reports (either on Form D-2, Report of Campaign Contributions and Expenditures or Form Schedule A-1, Report of Campaign Contributions of \$1,000 or More) listing its financial activity

during the period of its existence, and this obligation does not end until the committee dissolves. See State Board of Elections, *A Guide to Campaign Disclosure*, which is available at www.elections.il.gov/downloads/campaigndisclosure/pdf/campdiscguide.pdf, for detailed information on filling out the various reports that are discussed in §§7.42 – 7.45 below.

1. [7.43] Quarterly Report

Every political committee must file quarterly reports disclosing its financial activity (basically, receipts and expenditures) for the following three-month reporting periods: January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports are to be filed on the 15th of the month following the close of the reporting period for each quarter. When the 15th falls on a Saturday, Sunday, or holiday, the last day to file is the first business day following the 15th. Such reports must be filed regardless of whether the committee has engaged in any financial activity during the reporting period. 10 ILCS 5/9-10(b).

2. [7.44] Schedule A-1, Report of Campaign Contributions of \$1,000 or More

A political committee must file a Schedule A-1, Report of Campaign Contributions of \$1,000 or More, for any contribution in excess of \$1,000 received during the year, except that any contribution received within the 30-day period prior to an election must be filed within two business days of its receipt. 10 ILCS 5/9-10(c). This two business day filing requirement only applies to committees that are either (a) organized to support or oppose a candidate or referenda on the ballot at that election, or (b) the committee has made an expenditure(s) in excess of \$500, including expenditures for in-kind contributions or on electioneering communications, on behalf of or in opposition to a candidate or referenda on the ballot. 26 Ill.Admin. Code §100.70(d)(2)(A). The Schedule A-1 filing requirement only applies to single contributions in excess of \$1,000, as the requirement of treating contributions in the aggregate for the Schedule A-1 reporting purposes no longer applies. 26 Ill.Admin. Code §100.70 (d)(2).

A committee that, having determined that it will not participate in an election, subsequently makes an expenditure in excess of \$500 or expends or has expended an aggregate amount in excess of \$500 on behalf of or in opposition to a candidate or candidates or on behalf of a question or questions of public policy that will appear on the ballot at the next election shall, beginning with the date of that expenditure, report contributions of \$1,000 or more received, as defined in §9-10(d) of the Election Code, by the chairman, treasurer, or candidate within 30 days prior to the election, within two business days after receipt by that person. 26 Ill.Admin. Code §100.70(e).

A money contribution (*e.g.*, cash, check, money order, debit, etc.) is considered received on the date the contribution is deposited in a bank, financial institution, or other repository of committee funds. If such contribution is not deposited in said repository, the contribution is deemed received on the date the cash is received by an employee or agent of the committee, or if it is in the form of a check, the date the check is cashed and the money is available to the committee for its use. 26 Ill.Admin. Code §100.120(c). An in-kind donation of goods is deemed received on the date the committee comes into possession of such goods, and if in the form of services, the date on which the services are rendered. 26 Ill.Admin. Code §100.120(d). In-kind

contributions, possession of which is not actually obtained by the committee, are deemed to be received on the date that the committee receives the detailed account of the contribution required by Election Code §9-6(b) to be submitted to the recipient committee by the contributor. If this certificate is not received by the committee, then the in-kind contribution is deemed received when the chairman, treasurer, candidate, or public official obtains knowledge of the contribution. *Id.*

Schedule A-1 reports are required of candidates who “contribute” their own funds to the committee exceeding \$1,000, whether it is in the form of a direct transfer of funds to the committee’s account (including loans) or whether the candidate makes an expenditure from his or her personal funds, in which case this expenditure is deemed to be an in-kind contribution.

Contributions reported on a Schedule A-1 must also be included on the committee’s next scheduled quarterly report.

An independent expenditure committee that makes an independent expenditure supporting or opposing a public official or candidate that, alone or in combination with any other independent expenditure made by that independent expenditure committee supporting or opposing that public official or candidate during the election cycle, equals an aggregate value of more than (a) \$250,000 for statewide office or (b) \$100,000 for all other elective offices must file a written disclosure with the State Board of Elections within two business days after making any expenditure that results in the independent expenditure committee exceeding the applicable threshold. 10 ILCS 5/9-10(e-5).

3. [7.45] Final Report

A political committee that is no longer active (*i.e.*, is no longer raising or spending money on a candidate or question of public policy) may dissolve itself. To do this, the committee must file a final report, showing a zero balance. It must disburse any remaining funds, after paying any outstanding obligations, including any civil penalties that have been assessed by the State Board of Elections. Any remaining funds in the committee’s possession must be refunded to its contributors in amounts not exceeding their individual contributions, transferred to another political committee, or given to a bona-fide charitable organization. 10 ILCS 5/9-5.

A committee that files a final report while still owing a civil penalty to the board is still under an obligation to pay this penalty. Therefore, if the committee reactivates itself or forms what is known as a successor committee, the reactivated or successor committee will have the outstanding civil penalty attached to it. However, if a committee owing a civil penalty files a final report and remains inactive for a period of two years (*i.e.*, it does not reactivate or form a successor committee), the civil penalty will automatically be abated.

A “successor committee” is defined as a committee that is formed subsequent to the dissolution of the original committee and that has the same name, is organized for the same purpose, or supports or opposes any of the same candidates regardless of what office they may be running for, or has any of the same officers (chairman or treasurer). 26 Ill.Admin. Code §100.110(b).

If a political committee is owed money by another political committee, before it can dissolve itself, it must first either collect the debt from the other committee or forgive the other political committee's debt and amend its reports to show the forgiven debt as a contribution to the debtor committee. 26 Ill.Admin. Code §100.110(c).

IV. POLITICAL COMMITTEE OFFICERS

A. [7.46] Chairman and Treasurer

Each political committee must designate a chairman and a treasurer and list them on its statement of organization. The same person may serve as both chairman and treasurer. 10 ILCS 5/9-2(f).

NOTE: Canon 7 of the Illinois Code of Judicial Conduct (S.Ct. Rule 67) prohibits a sitting judge or a candidate for judicial office from serving as an officer in a political committee. Judges or candidates for judicial office therefore must appoint other persons to serve as the chairman and treasurer of their political committees.

Either the treasurer of the committee or the candidate that the committee is supporting must sign, date, and verify the information contained in the statement of organization and all subsequent campaign disclosure reports. 10 ILCS 5/9-3(c); 26 Ill.Admin. Code §100.40(d). If both the treasurer and the candidate are unable or unavailable to sign a report, another individual may sign in their place. If this occurs, the treasurer must submit a letter to the State Board of Elections within 30 days of the filing indicating that the substitute signature is authorized and that the treasurer accepts responsibility as if he or she had signed the report. 26 Ill.Admin. Code §100.40(d). No expenditure can be made without the authorization of the committee chairman, treasurer, or designated agent. 10 ILCS 5/9-2(g).

B. [7.47] Vacancies in Office

No contribution may be accepted and no expenditure may be made by or on behalf of a committee when there is a vacancy in the office of chairman or treasurer. 10 ILCS 5/9-2(g).

1. [7.48] Death of Treasurer

Upon the death of the treasurer, the candidate or the remaining officers must appoint a replacement treasurer and amend the statement of organization within ten days of the individual's death. If no candidate or officers of the committee remain, the persons who succeed to the interests of the committee in its funds are responsible for filing all appropriate reports until new officers are chosen or the committee dissolves. 26 Ill.Admin. Code §100.40(a).

2. [7.49] Removal from Office

A candidate who has a committee related only to him or her (*e.g.*, the candidate is Sue Smith, and the committee is Citizens for Sue Smith) may remove any of the officers of the committee if the candidate was the one who originally named the officers to their positions. The candidate

must indicate this removal in writing. If a candidate removes any of the committee's officers, the candidate is then responsible for maintaining all of the committee's records. If any of the former officers request, the candidate must allow them access to the committee's records and provide a reasonable opportunity to make copies. 26 Ill.Admin. Code §100.40(b).

3. [7.50] Resignation

In the event that the treasurer and all the other officers of the committee resign and no new officers are appointed, the former treasurer and the other officers are responsible for terminating the committee. In the case of a candidate committee, the candidate is responsible for terminating the committee. A resigning treasurer must verify the accuracy of the committee records to the new treasurer; however, the new treasurer is not responsible for the accuracy of any records held by the former treasurer. 26 Ill.Admin. Code §100.40(c).

C. [7.51] Ownership and Transfer of Committee Documents

All documents required to be kept by the treasurer are the property of the committee. As a consequence, no officer has a proprietary interest in these documents. 26 Ill.Admin. Code §100.40(e). Should there be a change in the officers of a committee, all of the records and reports must be transferred to their successors within ten days. 26 Ill.Admin. Code §100.40(f). If any outgoing officer refuses to transfer the records or if one officer withholds them from another, the aggrieved officers may file a complaint with the State Board of Elections requesting a turnover order. 26 Ill.Admin. Code §100.40(g).

V. [7.52] RECORD-KEEPING

The treasurer is responsible for maintaining the records of the committee and for filing all campaign disclosure reports for the political committee. 10 ILCS 5/9-2, 5/9-10. This involves keeping detailed accounts, records, bills, and receipts that verify all information shown on the campaign disclosure reports. The records must include the total amount of all contributions (including all loans, transfers in, and in-kind contributions) received and all expenditures and contributions made by the committee.

In the event that a committee fails to preserve its records for the statutory period of two years, it may be required to reconstruct the committee records of financial activities for auditing purposes. If this is necessary, the committee is responsible for any costs associated with reconstruction. 26 Ill.Admin. Code §100.40(h).

A. [7.53] Records Retention

Political committees must save a copy of the reports and statements they file for two years from the date of filing. 10 ILCS 5/9-7.

B. [7.54] Segregating Committee Funds

All funds of a political committee shall be segregated from and not be commingled with any personal funds of the committee officers or its members. 10 ILCS 5/9-6(c).

C. [7.55] Reporting of Contributions and Expenditures

Anyone receiving a contribution on behalf of the political committee must forward it on to the treasurer on demand, and in any case, no later than five days after receipt thereof. In addition, the person receiving the contribution must provide to the treasurer a detailed account thereof, including the amount, the name and address of the contributor, and the date on which the contribution was received. 10 ILCS 5/9-6(a).

The treasurer is the sole person responsible for keeping a record of all receipts and expenditures received or made, including the name and mailing address of the contributor and recipient and the amount and date of the contribution or expenditure. Proof of payment of expenditures must also be maintained by the treasurer. 10 ILCS 5/9-7(1). Provided however as an exception to the foregoing, the treasurer of a political committee shall keep a detailed and exact account of the total amount of contributions made to or for a committee at an event licensed under §8.1 of the Raffles Act. For an event licensed under §8.1, the treasurer is not required to keep a detailed and exact account of the full name and mailing address of a person who purchases tickets at the event in an amount that does not exceed \$150. 10 ILCS 5/9-7(2).

D. [7.56] Itemizing Contributions and Expenditures in Excess of \$150

All committee transactions that have an aggregate value in excess of \$150 occurring in quarterly reporting periods must be itemized on the committee's campaign disclosure reports. Itemization includes the name and address of the contributor or the person or entity in receipt of the contribution or expenditure, as well as the date and amount of the transaction. In the case of an expenditure, the purpose and beneficiary must also be included. 10 ILCS 5/9-11.

Contributions or expenditures that do not exceed \$150 in the aggregate during these reporting periods need not be itemized; however, the committee must provide a sum total of all non-itemized transactions during the particular reporting period.

E. [7.57] Contributions in Excess of \$500

In addition to filing the Schedule A-1, Report of Campaign Contributions of \$1,000 or More (see §7.44 above), a committee receiving a single contribution in excess of \$500 or receiving more than one contribution totaling more than \$500 in aggregate from the same source (including loans and in-kind contributions) must include the contributor's or lender or endorser's occupation and employer. 10 ILCS 5/9-11(a)(4), 5/9-11(a)(8). If the occupation and employer is not known, the committee must make a good-faith effort to determine this information. After a diligent attempt has been made and the information still remains unknown, the committee must indicate on the report that a good-faith effort was made to obtain the information. 26 Ill.Admin. Code §100.160(a).

F. [7.58] Reporting In-Kind Contributions

Contributions of goods and services (*i.e.*, in-kind contributions) must also be reported if in excess of \$150. 10 ILCS 5/9-1.4, 5/9-1.5, 5/9-1.12; 26 Ill.Admin. Code §100.10(b)(3). To facilitate this requirement, the contributor of an in-kind contribution must notify the recipient candidate or committee within five business days of the contribution. 10 ILCS 5/9-6(b). The contributor may use the In-Kind Contribution Notification Form provided by the State Board of Elections. In any case, the contributor must provide a detailed account of the contribution, including (1) the name and address of the person making the contribution, (2) a description and market value of the goods or services, and (3) the date on which the contribution was made. The notification should be sent to the candidate, treasurer, or committee.

G. [7.59] Listing Vendor Payments

A committee is required to list the ultimate recipient of any expenditure. This becomes important when a committee uses a credit card to pay for items or hires a consultant to manage a campaign. The campaign disclosure report must list the names of vendors whose goods or services were utilized and paid for with a credit card — not the name of the credit card company. Likewise, if an individual makes an expenditure on behalf of the committee and is later reimbursed, it is the reimbursor who is listed, not the individual who made the original expenditure. If a consultant is contracted to run or assist with a campaign, then any vendors used by this person would need to be listed, along with the fee or salary of the consultant. Likewise, if a political committee pays for a media buy, a breakdown of the vendors used and the amounts paid to each vendor must be reported as well. (The State Board of Elections does not require subcontractors of such vendors to be listed, as the committee may not be aware of any subcontracting agreement arranged by the vendor.) 26 Ill.Admin. Code §100.70(c). Again, only amounts in excess of \$150 need be itemized. 10 ILCS 5/9-11.

VI. [7.60] POLITICAL LITERATURE

Any political committee making an expenditure for political literature (*e.g.*, a pamphlet; circular; handbill; Internet communication; radio, television, or print advertisement; or other communication) directed at voters and mentioning the name of a candidate in the next upcoming election shall ensure that the name of any political committee paying for any part of the communication is clearly identified within the communication as the payor. This requirement also applies to literature that is created without the candidate's permission and to literature that advocates for or against a public policy position. Items that are too small to contain the required disclosure are excluded. Disclosure is not required on any telephone communication using random sampling or other scientific survey methods to gauge public opinion for or against any candidate or question of public policy. 10 ILCS 5/9-9.5(a), 5/9-9.5(b).

Any vendor who provides any of the political literature listed above, regardless of whether the vendor is paid by the committee, must maintain records showing the name and address of the person who purchased or requested the service and the amount paid. These records must be kept for one year from the date of payment. 10 ILCS 5/9-9.5(a). This requirement does not apply to vendors who provide services using random sampling or other scientific survey methods to gauge public opinion for or against any candidate or question of public policy. *Id.*

A. [7.61] Financial Solicitations

Political committees must include a notice on any literature or advertisement that solicits funds. 10 ILCS 5/9-9. The specific language required to be included on the solicitation is stated below:

A copy of our report filed with the State Board of Elections is (or will be) available on the Board's official website (insert the current website address) or for purchase from the State Board of Elections, Springfield, Illinois. *Id.*

B. [7.62] Support Not Authorized by Candidate

Any committee soliciting or receiving contributions or making expenditures on behalf of a candidate that is not authorized to do so in writing by such candidate must include a notice on the face or front page of all literature and advertisements published and following all commercials broadcast, that are authorized by the committee and that mention the candidate, stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee. 10 ILCS 5/9-8.

VII. RESTRICTIONS ON CONTRIBUTIONS AND SOLICITATIONS**A. [7.63] Anonymous Contributions**

Anonymous contributions are prohibited, as are contributions made in the name of another. In addition, political committees are prohibited from knowingly receiving these contributions. Any contribution received anonymously shall escheat to the State of Illinois by being immediately forwarded to the State Treasurer. 10 ILCS 5/9-25.

B. [7.64] Contributions on State Property

Under the State Officials and Employees Ethics Act, 5 ILCS 430/1-1, *et seq.*, contributions shall not be intentionally solicited, accepted, offered, or made on state property by public officials, by state employees, by candidates for elective office, by persons required to be registered under the Lobbyist Registration Act, 25 ILCS 170/1, *et seq.*, or by any officers, employees, or agents of any political organization. 5 ILCS 430/5-35. "State property" means any building or portion thereof owned or exclusively leased by the state or any state agency at the time the contribution is solicited, offered, accepted, or made. The term "state property" does not apply to property that is leased or rented from the state or a state agency by a private person or entity. *Id.* If a violation occurs, the State Board of Elections may impose a civil penalty on that political committee in an amount equal to 100 percent of the contribution. 10 ILCS 5/9-8.15.

C. [7.65] Fundraising in Sangamon County

No constitutional officer, member of the General Assembly, candidates for these offices, or any political caucus of the General Assembly, or any political committees of the aforementioned individuals and caucuses may hold a fundraising function in Sangamon County on any day that

the legislature is in session (1) during the period beginning February 1 and ending on the later of the actual adjournment dates of either house of the spring session and (2) during the fall veto session. 5 ILCS 430/5-40. For purposes of §5-40, the legislature is not considered to be in session on a day that is solely a perfunctory session day or on a day when only a committee is meeting. These restrictions do not apply during the period beginning June 1 and ending on the first day of the fall veto session each year to (1) a member of the General Assembly whose legislative or representative district is entirely within Sangamon County, or (2) a candidate for the General Assembly from that legislative or representative district. *Id.* If a political committee receives and retains a contribution that is in violation of this provision, the State Board of Elections may impose a civil penalty equal to 100 percent of the contribution. 10 ILCS 5/9-27.5.

D. [7.66] Contributions by Businesses with State Contracts, Bids, or Proposals on State Contracts

Businesses with state contracts, bids, or proposals on state contracts that are valued in excess of \$50,000 are prohibited from contributing to the public official (or the political committee of the public official) who entered into the contract or accepted the bid or proposal with that business. This prohibition applies to candidates for the respective office as well. For more detail, see §§7.106 – 7.112 below.

VIII. [7.67] RESTRICTIONS ON EXPENDITURES

Section 9-8.10(a) of the Election Code generally prohibits a political committee from using its funds for the personal use of the committee's officers, candidates, or their families. Specifically, there are 11 items for which the expenditure of a committee's funds are prohibited. The State Board of Elections may levy a fine on any person who knowingly makes expenditures in violation of §9-8.10. Fines cannot exceed \$500 for each improper expenditure of \$500 or less and cannot exceed the amount of the expenditure plus \$500 for each improper expenditure greater than \$500. 10 ILCS 5/9-8.10(b). The board may levy a fine on any person who knowingly makes a malicious and false accusation of such a violation. The board is also empowered to render opinions and rulings relating to compliance with this provision. *Id.*

A. [7.68] In Violation of Law

A political committee may not make an expenditure that is in violation of state or federal law. 10 ILCS 5/9-8.10(a)(1). Included therein are two prohibitions contained in federal law but which apply to state or local political committees: (1) contributions from foreign nationals (2 U.S.C. §441e(a)(1)(A); 11 C.F.R. §110.20(b)) and (2) contributions from nationally-chartered banks (2 U.S.C. §441b(a)).

The United States Supreme Court held, in *Citizens United v. Federal Election Commission*, ___ U.S. ___, 175 L.Ed.2d 753, 130 S.Ct. 876 (2010), that §441b's provisions restricting corporations from using general treasury funds to make independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections, and restricting corporations from using general treasury funds

to make independent expenditures for electioneering communications within 30 days of a primary election or 60 days of general election for federal office, violated the First Amendment political speech rights of a nonprofit corporation that wished to distribute on cable television, through video-on-demand, a film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election.

B. [7.69] In Excess of Market Value

A political committee may not pay an amount that is clearly in excess of the fair market value of the materials, services, or facilities or other things of value received in exchange. 10 ILCS 5/9-8.10(a)(2).

C. [7.70] Repayment of Debt

A political committee may not make expenditures for the repayment of any debt, other than loans made to the committee or the candidate. Funds may not be used to repay personal loans to the candidate. For any loan or credit agreement made by the committee, its terms must be explicitly spelled out in writing and executed by the chairperson or treasurer. Interest on a loan may not be substantially higher than the prevailing rate at the time of the loan. 10 ILCS 5/9-8.10(a)(3).

D. [7.71] Mortgage Payments

A political committee may not use its funds for the repayment of debts or for expenditures related to a personal residence, including use as collateral for a home mortgage. 10 ILCS 5/9-8.10(a)(4).

E. [7.72] Clothing Expenses

A political committee may not make expenditures for clothing or laundry expenses unless these expenses are related to a political or campaign event. Clothing items advertising one's candidacy are permitted. 10 ILCS 5/9-8.10(a)(5).

F. [7.73] Travel Expenses

A political committee may not make expenditures for travel expenses unless it is necessary for political, governmental, or public policy purposes. 10 ILCS 5/9-8.10(a)(6).

G. [7.74] Health Clubs

A political committee may not use committee funds for memberships to health or recreation clubs. However, the renting of these clubs for campaign events is permitted. 10 ILCS 5/9-8.10(a)(7).

H. [7.75] Double Reimbursements

A political committee may not use committee funds to reimburse individuals who have already been reimbursed by the state or any other person or paid for anything of value. A per diem allowance is not considered a reimbursement. 10 ILCS 5/9-8.10(a)(8).

I. [7.76] Certain Motor Vehicles

A political committee may not use committee funds for the purchase of a motor vehicle unless it can demonstrate that purchasing the vehicle is more cost effective than leasing it. In either case, the vehicle must be used primarily for governmental duties or campaign purposes. Reimbursements to individuals using vehicles that are not owned or leased by the committee is permissible if the vehicles are used for governmental or campaign purposes. Mileage reimbursement must not exceed that allowed for business expense mileage as set out in the Internal Revenue Code. 10 ILCS 5/9-8.10(a)(9).

J. [7.77] Certain Tuition Payments

A political committee may not make expenditures for the direct payment of an individual's tuition or other educational expenses unless directly related to the candidate's or public official's responsibilities. 10 ILCS 5/9-8.10(a)(10).

K. [7.78] Certain Payments to Public Officials and Their Families

A political committee may not use committee funds to make payments to a candidate, a public official, or family members of these persons unless the payments are for services actually rendered. This restriction does not apply to those amounts in a committee's funds equal to the ending balance that the committee reported on its semiannual report covering the period ending June 30, 1998. 10 ILCS 5/9-8.10(a)(11).

An officeholder or candidate may use campaign funds to defray the "customary and reasonable" expenses of an officeholder in connection with the performance of governmental and public service functions. 10 ILCS 5/9-8.10(c).

IX. FUNCTIONS AND DUTIES OF THE BOARD RELATING TO THE CAMPAIGN DISCLOSURE STATUTE**A. [7.79] Duties of State Board of Elections' Campaign Disclosure Division**

The State Board of Elections, through its Campaign Disclosure Division, administers the campaign disclosure statute by performing the following statutory duties:

1. developing prescribed forms giving notice to political committees of their obligations under the statute;

2. developing prescribed forms that political committees use to disclose their identity and financial activities (*i.e.*, statement of organization, quarterly report with accompanying schedules, Schedule A-1, Report of Campaign Contributions of \$1,000 or More, etc.) (These forms, along with a notice of obligation to file, must be mailed to each political committee on file with the board at least 30 days before the beginning of each filing period.);
3. publishing a manual of instructions giving guidance to committee officers to ensure compliance with the campaign disclosure statute (The notice referred to in item 2 above shall also state that this manual of instructions is available from the board upon request.);
4. promulgating rules and regulations implementing the campaign disclosure statute;
5. sending to the various state central, county central, township, and ward committees notice of their obligations under the campaign disclosure statute;
6. making available for public inspection and copying (for a reasonable fee) the disclosure reports filed by the various political committees and preserving them for a period of two years (These reports must be made available no later than the second day following their receipt by the board.);
7. developing a filing, coding, and cross-indexing system consistent with the purposes of the campaign disclosure statute;
8. reporting violations of the campaign disclosure statute to the appropriate law enforcement authorities;
9. maintaining a searchable database of business entities (and their affiliated persons/entities) and the political committees registered with the board that shows any contributions made by such businesses to such committees; this database is linked to the website maintained by the Comptroller's office, which contains a listing of existing state contracts between the executive branch officers and state agencies and the business entities;
10. providing notice (on Form D-5, Notice of Obligation) to all candidates at the time they file their nomination papers with the board of their financial disclosure obligations and directing them as to where they may obtain the reporting forms and the manual of instructions, as well as stating who is required to file and the penalties for failure to file; and
11. promptly sending, by first-class mail directed only to the officers of a political committee, and by certified mail to the address of the political committee, written notice of any fine or penalty assessed or imposed against the political committee under this Article. 10 ILCS 5/9-15, 5/9-16, 5/9-35(g).

In addition to these statutory duties, the Campaign Disclosure Division conducts reviews of the disclosure reports filed, provides a forum in which complaints for violation of the campaign disclosure statute can be resolved, and is authorized to conduct investigations regarding any matter covered by the campaign disclosure statute.

B. [7.80] Conducting Investigations

The State Board of Elections may conduct investigations, inquiries, and hearings pertaining to any issues that may arise under the campaign disclosure statute. 10 ILCS 5/9-18. These procedures are fully spelled out in 26 Ill.Admin. Code pt. 125. In conducting these investigations, the board is empowered to administer oaths, issue subpoenas, compel the attendance and testimony of witnesses, and compel the production of documents. The hearings are open to the public. To assist in the hearing procedures set forth in Election Code §§9-18 and 9-21, the board may hire investigators and hearing examiners and delegate its functions to them. However, only the board may issue a final order or judgment.

C. Audits

1. [7.81] In General

Under the campaign finance reform amendments made by P.A. 96-832 (eff. Jan 1, 2011), the State Board of Elections was given the authority and responsibility to order political committees to perform audits of their financial activity over a two-year period. Section 9-13 provides for two types of audits: audits for cause and random audits. In both cases, the audits are intended to insure compliance with §§9-8.5 (contribution limits) and 9-10 (filing of the quarterly report and the Schedule A-1, Report of Campaign Contributions of \$1,000 or More). Failure to deliver an audit to the board in a timely manner (60 calendar days from the date the committee is given notice of the audit) is a business offense, subject to a \$250 per day penalty, up to a maximum of \$5,000. The board may not disclose the name of any committee ordered to conduct an audit, unless such audit reveals a violation of §9-3 (Statement of Organization filing), §9-8.5, or §9-10.

2. [7.82] Audits for Cause

The State Board of Elections may order a political committee to conduct an audit for the following bases:

- a. a discrepancy between the ending balance of a given reporting period and the beginning balance of the following reporting period;
- b. failing to report previously disclosed loans or investments; and
- c. a discrepancy between a committee's reporting of a contribution received from or an expenditure made to another political committee and that committees reporting (or not reporting) of same. (For this basis, there must be a willful pattern of inaccurate reporting or a pattern of misreporting of contributions involving the same contributor.) 10 ILCS 5/9-13(b).

A committee that has been ordered to conduct an audit for cause shall be given notice and the opportunity for a closed preliminary hearing to give the reasons why the committee should not be required to conduct the audit and an opportunity to correct the discrepancies forming the bases for the audit. If required to do the audit following the hearing, the committee must hire a person or firm qualified to perform audits (typically a CPA). If the person selected is not a CPA, but has other qualifications provided by board rule (See 26 Ill.Admin. Code §100.175(d)(1)), the committee must submit the person and his or her credentials to the board for prior approval. The board must render a decision in writing approving or disapproving the person selected. If the person is not approved, the committee must submit another person qualified to conduct the audit within ten business days of the board's decision. In any event, the person who conducts the audit cannot have contributed to the committee within the four-year period preceding the order of the audit.

3. [7.83] Random Audits

No later than February 1st of each year (this date may change, as it falls within the busy income tax filing season), the State Board of Elections will randomly select a number of committees (not to exceed three percent of the committees registered with the board) who will be required to conduct an audit. Such audit of the financial records will be conducted to insure compliance with §9-8.5 and the reporting requirements set forth in §§9-3 and 9-10. 10 ILCS 5/9-13(d). The period covered by the audit is the lesser of two years or the time since the most recent audit by the committee. The audit must review the amount of funds and investments and must accurately account for the committee's receipts and expenditures during the audit period. The financial records subject to the audit may include bank statements, deposit slips, internal registers, or ledgers including records stored electronically. The committee must deliver a certified copy of the audit within 60 calendar days of the notice of audit unless an extension is granted by the board. Once a committee is randomly selected for audit, it may not be ordered to conduct another random audit for at least five years, unless grounds exist to order an audit for cause. *Id.*

4. [7.84] Excusal From Audit

Committees that can demonstrate a financial hardship may be excused from conducting a randomly selected audit. 26 Ill.Admin. Code §100.175(h). If the committee (other than a state or county central committee, which by definition is a political party committee) through its treasurer, chairman, or candidate states under oath that it lacks the financial means to hire a CPA, or other qualified individual to perform the audit, it may avoid such obligation by dissolving the committee within ten days after receiving the notice of audit. Such committee must remain dissolved for a period of at least four years. Failure to dissolve within the ten-day period could result in forfeiture of the opportunity to avoid the audit, if the committee fails to dissolve within five days of receiving an additional notice from the State Board of Elections. Should a committee that has dissolved in order to avoid an audit choose to re-activate, it must conduct an audit of its financial activity covering the two-year period immediately prior to its dissolution as a condition to being allowed to re-activate.

A committee must demonstrate that it lacks the financial means to conduct an audit by showing that its funds balance is less than the amount necessary to secure a qualified auditor,

based on the cost of such service within the county in which the committee officers or candidate reside. The committee must also provide a written cost estimate from a local CPA or other person or firm qualified to perform an audit. Such person is subject to the same restrictions and qualifications that apply to potential committee auditors. See 26 Ill.Admin. Code §100.175(h).

D. Complaint Process

1. [7.85] Filing Complaint

Any person, including the staff of the State Board of Elections, who believes a violation of the campaign disclosure statute has occurred, may file a complaint for violation of the statute with the board. 10 ILCS 5/9-20. The board has created a form for use in filing a complaint — Form D-4, Complaint for Violation of the Campaign Disclosure Act, which is available at www.elections.il.gov/downloads/campaigndisclosure/pdf/d4.pdf. The complaint must be in writing and must be signed and verified. It must state the nature of the violation and the statutory provision believed to have been violated. The complaint must also be addressed to the candidate or officers of the political committee or any other person the complainant believes has violated the campaign disclosure statute. *Id.* It is the responsibility of the complainant to serve a copy of the complaint on the respondent. Complaints without a signed statement that process was served will not be accepted by the board. These procedures also may be used to file complaints against business entities for violation of the registration requirements set forth in P.A. 95-971 (eff. Jan. 1, 2009).

2. [7.86] Closed Preliminary Hearing

The closed preliminary hearing is the first step in the process after a complaint is filed. 10 ILCS 5/9-21. At the hearing, a hearing officer appointed by the State Board of Elections will sit and hear evidence submitted by both the complainant and the respondent and will generally review the substance of the complaint; however, the hearing officer is not authorized to rule on questions of law. By virtue of §9-21, this hearing is not open to the public. In addition, the Attorney General has issued an opinion that the Open Meetings Act, 5 ILCS 120/1.01, *et seq.*, does not prohibit the board from conducting closed preliminary hearings. Op. Att’y Gen. (Ill.) No. 82-041. The purpose of the hearing is to elicit evidence on the question of whether the complaint was filed on justifiable grounds and whether it has some basis in fact and law. *See Troy v. State Board of Elections*, 84 Ill.App.3d 740, 406 N.E.2d 562, 40 Ill.Dec. 556 (1st Dist. 1980). The closed preliminary hearing is not an adjudication and not necessarily adversarial. After the hearing, the hearing officer submits a recommendation on the matter to the board and to the general counsel, who makes his or her own recommendation on the matter.

At any time before the hearing officer submits a recommendation, the complainant and the respondent may settle the matters between them, subject to the approval of the board. Further, whenever a closed preliminary hearing is conducted, when possible, the parties are afforded an opportunity to come into compliance with any applicable requirement of the campaign disclosure statute, other provisions of the Election Code, or any regulation of the board.

3. [7.87] Public Hearing

A public hearing will be held if the State Board of Elections determines that the complaint was filed on justifiable grounds. In some circumstances, the respondent will admit guilt and take action (or indicate that action will be taken) that will correct the issue complained of. If this occurs, the board may determine that a public hearing is not necessary, despite a finding that the complaint was filed on justifiable grounds. 26 Ill.Admin. Code §125.262(a). “If the Board fails to determine that the complaint has been filed on justifiable grounds, it shall dismiss the complaint without further hearing.” 10 ILCS 5/9-21. This provision of §9-21 was amended by P.A. 93-574 (eff. Aug. 21, 2003) in response to the Illinois Supreme Court’s decision in *Illinois Republican Party v. Illinois State Board of Elections*, 188 Ill.2d 70, 720 N.E.2d 231, 241 Ill.Dec. 776 (1999). A tie vote has been determined by the Illinois Supreme Court to be judicially reviewable, thus avoiding a constitutional defect in the statutory language. *Illinois Campaign for Political Reform v. Illinois State Board of Elections*, 388 Ill.App.3d 517, 904 N.E.2d 996, 328 Ill.Dec. 486 (1st Dist. 2009). The significance of this language is that a tie vote on the question of whether the complaint was filed on justifiable grounds results in the matter being dismissed since in that situation the board did not determine by at least five votes that the complaint was filed on justifiable grounds. If the board finds the complaint was not filed on justifiable grounds, it will be dismissed. Failure of the complainant to appear at the closed preliminary hearing or a public hearing to prosecute the complaint, without just cause, is grounds for the complaint to be dismissed. After the public hearing, the board will enter a final order disposing of the case, taking whatever action it deems appropriate to resolve the matter.

4. [7.88] Board Order

Whenever the State Board of Elections issues an order compelling a committee to take certain action to come into compliance with the campaign disclosure statute or to cease and desist from action the board considers a violation of the campaign disclosure statute and the committee violates the board order, the board may assess a civil penalty not to exceed \$5,000 (or \$10,000 for committees formed to support statewide officers or candidates for statewide office). These penalties shall be enforceable in the circuit court. In addition to or in lieu of the imposition of a civil penalty, the board may refer the matter to the appropriate state’s attorney or the Attorney General. 10 ILCS 5/9-23.

5. [7.89] Settlement or Withdrawal

At any time during the hearing process, the parties may settle the matter between them subject to the State Board of Elections’ approval of this settlement. Additionally, a complainant always has the option to withdraw the complaint prior to the final judgment of the board. When the board is a party to the complaint, the matter is typically resolved by the respondent entering into a written stipulation with the board. The respondent agrees that it will be in compliance with all provisions of the campaign disclosure statute for a 12-month period and that a failure to remain in compliance will result in the board’s assessing penalties, for both the original and the current violation. 10 ILCS 5/9-21.

6. [7.90] Time Guidelines

The State Board of Elections must enter a final judgment within 60 days of the filing of the complaint. 10 ILCS 5/9-21. It should be noted that this 60-day deadline has been held to be directory. *Brennan v. Illinois State Board of Elections*, 336 Ill.App.3d 749, 784 N.E.2d 854, 271 Ill.Dec. 300 (1st Dist. 2002). If a complaint is filed within 60 days preceding an election, the board must render its final judgment within 7 days of the filing of the complaint. If the complaint is filed within 7 days of an election, the board must render a final judgment prior to the election, if possible. 10 ILCS 5/9-21.

7. [7.91] Judicial Review

Any party to a proceeding of the State Board of Elections who is adversely affected by the board's action or failure to act may obtain judicial review, subject to the provisions of the Administrative Review Law, 735 ILCS 5/3-101, *et seq.* The review shall be instituted directly in the appellate court located in the district in which the cause of action arose and shall be initiated by petition within seven days of the entry of the board's order. (This time limit may be waived with the consent of all parties.) If the review sought is an appeal of a board order, the order will not be stayed unless ordered by the appellate court upon a motion of the petitioner with notice to the board. 10 ILCS 5/9-22.

8. [7.92] Database of Founded Complaints

The State Board of Elections is now required to establish and maintain on its website a searchable database of complaints that have been found to have been filed on justifiable grounds. The database must include what action was taken by the board and any penalties that were imposed. Such database must be updated within five days after action was taken by the board regarding such a complaint. 10 ILCS 5/9-23.5. In addition, 26 Ill.Admin. Code §125.445 requires that the name of the complainant and the respondent, the case number, the date the complaint was filed, the statute that was found to be violated, and the date of the public hearing also be included in the database.

X. CIVIL ENFORCEMENT

A. [7.93] Delinquent Filing of Reports

Automatic penalties are assessed against political committees that file their disclosure reports after the filing deadline. The amount of the assessment for a delinquently filed quarterly report depends on the number of business days the report is filed late; the amount of money the committee spends, receives, or has in its funds balance at the end of the reporting period; and whether the committee has committed any past filing delinquencies. Any penalty assessed by the State Board of Elections must be done pursuant to a board order. *Citizens to Elect Collins v. Illinois State Board of Elections*, 366 Ill.App.3d 993, 853 N.E.2d 53, 304 Ill.Dec. 521 (1st Dist. 2006).

The following chart illustrates the penalty assessment structure mandated by 10 ILCS 5/9-10 and 26 Ill.Admin. Code §125.425(d) with respect to all political committees other than independent expenditure committees:

Quarterly Report			
Receipts, Expenditures, Ending Balance \$5,000 or less		Receipts, Expenditures, Ending Balance More than \$5,000	
1st Violation:	\$25 per business day	1st Violation:	\$ 50 per business day
2nd Violation:	\$50 per business day	2nd Violation:	\$100 per business day
3rd Violation:	\$75 per business day	3rd Violation:	\$200 per business day

With regard to an independent expenditure committee, the board shall assess a civil penalty against an independent expenditure committee for failure to file the required disclosures not to exceed (1) \$500 for an initial failure to file the required disclosure and (2) \$1,000 for each subsequent failure to file the required disclosure. 10 ILCS 5/9-10(e-5).

A quarterly report that is mailed and postmarked at least 72 hours prior to the deadline will not be considered delinquently filed in the event that it is received by the board beyond the deadline. 10 ILCS 5/9-10(b). In the case of a report that is not received, or received but containing an illegible postmark or containing no postmark at all, any appeal of a civil penalty assessed for this delinquent filing will be granted, provided that the committee executes an affidavit setting forth the fact that the report was indeed mailed more than 72 hours prior to the filing deadline and provided further that this is the first time the committee has used this defense. Any subsequent similar claims must be supported by a certificate issued by the post office setting forth the date that the report was mailed.

If a political committee delinquently files a Schedule A-1, Report of Campaign Contributions of \$1,000 or More (*i.e.*, files it more than five (or two when necessary) business days after the receipt of the contribution or fails to file it entirely), the board may impose a fine not to exceed 50 percent of the total amount of the contributions that were untimely reported or may waive the fine. The board may assess a fine of up to 150 percent of the delinquently reported contribution for a willful violation, but in no case when a fine is imposed shall it be less than 10 percent of the total amount of the contributions that were untimely reported. 10 ILCS 5/9-10(c); 26 Ill.Admin. Code §125.425(d)(5). When considering the amount of the fine to be imposed for a violation that the board determines was willful, the board shall consider the number of days the contribution was reported late and past violations of §§9-3 and 9-10 of the Election Code by the committee. For inadvertent or negligent violations, the board shall consider (1) whether the political committee made an attempt to disclose the contribution and any attempts made to correct the violation, (2) whether the violation is attributed to a clerical or computer error, (3) the amount of the contribution, (4) whether the violation arose from a discrepancy between the date the contribution was reported transferred by a political committee and the date the contribution was received by a political committee, (5) the number of days the contribution was reported late, and (6) past violations of §§9-10 and 9-3 by the political committee. 10 ILCS 5/9-10(c); 26 Ill.Admin. Code §125.425(d)(5).

The board will automatically stay the assessed penalty for a first-time violation, regardless of which report was filed late. In the case of a Schedule A-1, the stayed penalty applies only to the first delinquently reported contribution. Any subsequent delinquency, even if contained on the Schedule A-1 report containing the first delinquently reported contribution, will lift the stay and both assessments will be due. 26 Ill.Admin. Code §125.425(h).

Political committees must pay any civil penalties assessed within 30 days after the mailing of the assessment notice. 26 Ill.Admin. Code §125.425(e)(3). See §7.95 below regarding appeals of civil penalties.

B. [7.94] Civil Penalties for Delinquent Filing of D-1 Forms

The State Board of Elections shall impose a civil penalty of \$50 per business day on a political committee for failing to file or filing late a Form D-1, Statement of Organization. This penalty shall not exceed \$5,000 (\$10,000 for a statewide office political committee). There shall be no fine if the statement is mailed and postmarked at least 72 hours prior to the filing deadline. 10 ILCS 5/9-3. In addition to these civil penalties, the board or any other affected political committee may apply to the circuit court for a temporary restraining order or a preliminary or permanent injunction against the political committee to cease the expenditure of funds and to cease operations until the statement of organization is filed. *Id.*

C. [7.95] Appeal of Civil Penalty Assessment

A committee that believes a penalty was assessed in error may appeal the assessment by filing an appeal affidavit form with the State Board of Elections. In the appeal affidavit, the committee should set forth the reasons for the late filing, showing why a civil penalty should not be assessed. Along with the appeal affidavit, the committee must submit either a request for hearing form or a request for waiver of appearance form. These forms must all be submitted within 30 days of the mailing of the assessment notice. 26 Ill.Admin. Code §§125.425(e)(1), 125.425(e)(2). Whether the committee requests an in-person hearing before a board-appointed hearing officer or waives the right to a hearing, the hearing officer will review the defense offered by the committee and make a recommendation to the board. The general counsel may comment on the recommendation and submit these comments to the board. The board will then issue a ruling on whether the committee is liable for the assessment. If an appeal affidavit is filed, the civil penalty is not due until the appeal is determined by the board. 26 Ill.Admin. Code §125.425(e)(3). Committees are cautioned that any defense that could have been presented at the hearing (or on the appeal affidavit) but was in fact not so presented may not be presented to the board at the meeting in which the board considers the recommendation of the hearing officer as to the appeal. 26 Ill.Admin. Code §125.425(f).

D. [7.96] Payment of Civil Penalty Assessments

Political committees must pay any civil penalties assessed within 30 days after the mailing of the assessment notice. 26 Ill.Admin. Code §125.425(e)(3). See §7.95 above regarding appeal of civil penalties. The following provisions apply to political committees that have been assessed civil penalties for delinquently filed reports but have gone at least two years without being assessed any additional civil penalties for such reports:

1. If an active political committee or organization is assessed no more than one civil penalty under 10 ILCS 5/9-10 during a two-year period, it shall, after two years have lapsed following the assessment, be considered as never having violated §9-10. For a single violation, the two-year period begins to run with the mailing of the assessment letter. If an active political committee or organization is assessed more than one civil penalty and has paid all assessed civil penalties, it shall be considered for assessment purposes as not having violated that section if it is assessed no other civil penalty during a two-year period following receipt of payment by the State Board of Elections. 26 Ill.Admin. Code §125.425(j)(1).

2. If a committee or organization is assessed a single penalty under §9-10 and subsequently files a final report or has filed a final report prior to the assessment, during the two-year period beginning with the date of the assessment letter, or the final board order if the assessment is appealed and the appeal is denied, any successor committee or organization shall be considered, for assessment purposes, as not having violated §9-10 if it is assessed no other penalty. 26 Ill.Admin. Code §125.425(j)(2).

3. If a committee or organization is assessed more than one penalty under §9-10 and subsequently files a final report or has filed a final report prior to the assessment, and the political committee or organization has not paid the civil penalties, any successor committee or organization that subsequently pays all civil penalties due shall be considered as never having violated §9-10 if, for two years from the date of receipt of payment by the board, the successor committee or organization is assessed no other civil penalty. 26 Ill.Admin. Code §125.425(j)(3).

E. [7.97] Board Orders for Other Article 9 Violations

Whenever in the judgment of the State Board of Elections, whether pursuant to a third-party or board-initiated complaint or board investigation, any person or political committee has engaged or is about to engage in an act in violation of the campaign disclosure statute or any regulations promulgated under the statute, the board shall issue an order compelling the person or committee to take corrective action or desist from the action giving rise to the violation. The order must be preceded by due notice and an opportunity for a public hearing. If the person or committee fails or refuses to comply with the order of the board, the board may impose a civil penalty not to exceed \$5,000 (\$10,000 for statewide officeholders or candidates for statewide office and their committees). These civil penalties shall be enforceable in the circuit court. In addition, the Board may refer the matter to the Attorney General and the appropriate state's attorney. 10 ILCS 5/9-21, 5/9-23.

F. [7.98] Ballot Forfeiture

Persons who have not paid a civil penalty assessed against their political committees by the State Board of Elections for any violation of the campaign disclosure statute shall not have their name certified for the ballot for any office at any election while the penalty remains unpaid. In addition, the board shall generate a list of all candidates whose committees have not paid an assessed civil penalty, and submit such list to the election authority in charge of printing the ballots on which such candidate is to appear, and said election authority shall not place the

candidate's name on the ballot while the penalty is unpaid, unless the candidate has requested a hearing to contest the assessment, and the board has not resolved the matter by the date of certification. 10 ILCS 5/9-30.

G. [7.99] Injunctive Relief Regarding Electioneering Communications

A person who makes, produces, publishes, or broadcasts an electioneering communication paid for by any person who has not complied with the registration and disclosure provisions of Article 9, can be enjoined from continuing such electioneering communication activity until the registration requirements are complied with. The Attorney General, a state's attorney, or a political committee may seek such injunction (either preliminary or permanent) in the circuit court to restrain such activity. If done by the Attorney General or state's attorney, such action shall be taken on behalf of the people of the State of Illinois or the people of the relevant county respectively.

XI. CRIMINAL PROSECUTIONS

A. [7.100] Willful Filing of False or Incomplete Information

Willful failure to file or willful filing of false or incomplete information on a report shall constitute a business offense subject to a fine of up to \$5,000. Willful filing of a false complaint under the campaign disclosure statute is a Class B misdemeanor. 10 ILCS 5/9-26.

P.A. 93-615 (eff. Nov. 19, 2003), added a provision to the verification to be signed when filing a Form D-1, Statement of Organization that makes the filing of a false or incomplete statement a business offense subject to a fine of at least \$1,001 and up to \$5,000. 10 ILCS 5/9-3(c). This appears to be clean-up language that was inadvertently omitted during passage of the State Gift Ban Act (P.A. 90-737 (eff. Jan. 1, 1999)).

B. [7.101] Prohibition on Use of Public Funds for Campaigning

Section 9-25.1 of the Election Code prohibits the use of public funds to urge any elector to vote for or against any candidate or proposition. It also prohibits the appropriation of public funds to any candidate or political organization for political or campaign purposes.

“Public funds” means any “funds appropriated by the Illinois General Assembly or by any political subdivision of the State of Illinois.” 10 ILCS 5/9-25.1(a).

The provision does not, however, prohibit the use of public funds to disseminate factual information relating to any proposition appearing on the ballot. 10 ILCS 5/9-25.1(b). It also does not prohibit the dissemination of information and arguments published in connection with a proposition to amend the Illinois Constitution. *Id.*

The Fifth District Appellate Court limited the application of §9-25.1 by restricting a person's standing to bring an action for violation of this provision. In its holding, the court narrowly

defined “use of public funds” to those funds (money or negotiable instruments) actually disbursed by the governmental entity. *Jenner v. Wissore*, 164 Ill.App.3d 259, 517 N.E.2d 1220, 1227, 115 Ill.Dec. 534 (5th Dist. 1988). A misuse of governmental resources, though possibly proscribed by other law, does not in and of itself grant standing to one who seeks to enforce this provision. *Jenner, supra*.

In addition, in *Citizens Organized to Save Tax Cap v. State Board of Elections of State of Illinois*, 392 Ill.App.3d 392, 910 N.E.2d 605, 331 Ill.Dec. 196 (1st Dist. 2009), a three-judge panel of the First Appellate District Court held that a school district that spent in excess of \$3,000 disseminating information about an upcoming referenda was not exempt from the coverage of the electioneering communication provision contained in Article 9 (requiring anyone who spends in excess of \$3,000 on such electioneering communication to file as a political committee) even though its conduct was permissible under §9-25.1. The defendant school district filed a motion for rehearing before the appellate court. The petition for rehearing en banc was denied in July and a petition for leave to appeal to the Illinois Supreme Court was denied thereafter. However, with the passage of P.A. 96-832, the definition of “electioneering communication” was amended to add the requirement that in order to constitute an electioneering communication it had to be susceptible to no reasonable interpretation other than an appeal to vote for or against a candidate or referenda. This amendment effectively negated the court’s conclusion that organizations that merely mentioned an upcoming referenda were not exempt from the coverage of Article 9.

A first-time violation is a Class B misdemeanor. A second or subsequent violation is a Class A misdemeanor. 10 ILCS 5/9-25.1(c).

C. [7.102] Prosecuting an Offense

A prosecution for any offense under the campaign disclosure statute shall be commenced by a state’s attorney or the Attorney General in the name of the people of the State of Illinois. It must be commenced within 18 months of the commission of the offense. 10 ILCS 5/9-26.

XII. RAFFLES CONDUCTED BY POLITICAL COMMITTEES

A. [7.103] Eligibility

The Raffles Act allows certain political committees to apply for a license from the State Board of Elections to conduct raffles and other games of chance for fundraising purposes. See 230 ILCS 15/8.1.

To be issued a license, the committee’s reports must be current at the time of application, and the committee must not owe the board any civil penalty. 230 ILCS 15/8.1(c)(3)(viii).

Pursuant to the Raffles Act, a political committee is ineligible for a raffle license if any of the following provisions apply:

1. any political committee that has an officer who has been convicted of a felony;

2. any political committee that has an officer who is or has been a professional gambler or gambling promoter;
3. any political committee that has an officer who is not of good moral character;
4. any political committee that has an officer who is also an officer of a firm or corporation in which a person, defined in (1), (2), or (3) above, has a proprietary, equitable, or credit interest, or in which such a person is active or employed;
5. any political committee in which a person, defined in (1), (2), or (3) above, is an officer, director, or employee, whether compensated or not;
6. any political committee in which a person, defined in (1), (2), or (3) above, is to participate in the management or operation of a raffle;
7. any committee that, at the time of its application for a license to conduct a raffle, owes the board any unpaid civil penalty authorized by §§9-3, 9-10, and 9-23 of the Election Code, or is the subject of an unresolved claim for a civil penalty under §§9-3, 9-10, and 9-23 of the Election Code; or
8. any political committee that, at the time of its application to conduct a raffle, has not submitted any report or document required to be filed by Article 9 of the Election Code and such report or document is more than ten days overdue. 230 ILCS 15/8.1(c)(3).

B. [7.104] Application

A political committee's application for a raffle license must meet the following requirements:

1. The application must be made on the form titled "License Application to Conduct a Raffle" supplied by the State Board of Elections.
2. The application must be made under oath, attesting that all the information supplied is correct and complete. The committee chairperson or treasurer must sign it.
3. The application must state, among other things, the dates that the chances are to be sold, the place that the game of chance is to occur, the date that the game of chance is to occur, and the prizes to be awarded.
4. The application must attest to the fact that the committee is eligible to receive a license. 26 Ill.Admin. Code §210.Appendix A.

Because the information on the application is under oath, the board has determined by rule that if the information is complete, it is also prima facie sufficient to support the granting of a license. 26 Ill.Admin. Code §210.10(g).

The board has 30 days to approve the granting of a license. While the board has made provision for a rapid turnaround of the application (the endorsed application serves as the license), committees should not schedule raffles in the expectation that the application will be approved and the license issued on a faster schedule. In addition, the board will not retroactively approve raffle licenses for raffles that have already been conducted, even if the committee was eligible for such a license at the time of the occurrence of the raffle.

Licenses are good for one year and may apply to one or more raffles or games of chance held on the same or different dates. When more than one raffle or game of chance is planned, information for all events must be included in the application.

C. [7.105] Enforcement Methods

The State Board of Elections contemplates two methods of enforcement of the political committee raffle statute: (1) action by the board following the hearing of a complaint filed with the board; and (2) criminal enforcement by either the appropriate state's attorney or the Attorney General. The board will hear complaints filed by third parties under its rules of procedure set out in 26 Ill.Admin. Code pt. 125. Except when the board is the complainant, it will not act as an advocate. The board's power is limited to civil administrative remedies. The board's authority is further limited to determining whether an existing license was or continues to be valid and does not reach questions of whether the committee that conducted a raffle without a license should have obtained a license. If a committee fails to abide by the Raffles Act or the terms of its license, its license will be void regardless of whether a complaint is filed with the board. 26 Ill.Admin. Code §210.10(h).

Criminal sanctions under the Criminal Code of 1961, 720 ILCS 5/1-1, *et seq.*, may also be possible. See 720 ILCS 5/28-1(a). The board, however, has no authority to enforce criminal provisions but may refer the committee's conduct to the appropriate state's attorney or Attorney General for prosecution.

XIII. BUSINESS ENTITY REGISTRATION AND PROHIBITED CONTRIBUTIONS

A. [7.106] Registration

Pursuant to P.A. 95-971 (eff. Jan. 1, 2009), business entities that have existing bids or proposals on state contracts, existing state contracts, or a combination of the two totaling in excess of \$50,000 annually must register with the State Board of Elections. 30 ILCS 500/20-160(c). Business entities that intend to submit bids or proposals on state contracts in excess of \$50,000, prior to submitting such bids or proposals, also must register with the board. 30 ILCS 500/20-160(d). Such registration must be done electronically, using the business entity registration feature located on the board's website at www.elections.state.il.us. 10 ILCS 5/9-35(b). The registration must list the name and corporate headquarters address of the business entity, the name and address of any affiliated persons or entities of the business entity along with a description of the affiliation, and the Federal Employee Identification Number (FEIN) of the

business. *Id.*; 26 Ill.Admin. Code §100.180(d)(1)(D). In lieu thereof, a sole-proprietor business may use a social security number. 26 Ill.Admin. Code §100.180(d)(1)(D). Upon successful registration, the business entity will receive a registration certificate electronically that can be downloaded and printed. 10 ILCS 5/9-35(c). This certificate must accompany any bid or proposal submitted to and every contract executed by the state. 10 ILCS 5/9-35(d); 30 ILCS 500/20-160(b).

NOTE: Any business entity that had such a contract, and/or a bid or proposal on such a contract, on the effective date of P.A. 95-971 (Jan. 1, 2009) was required to register within 30 days of the effective date. 30 ILCS 500/20-160(c). In addition, such entities had to submit the certificate of registration to the applicable chief procurement officer within 90 days of the effective date. *Id.* All registrations under P.A. 95-971 must include a verification of accuracy under penalty of perjury. 30 ILCS 500/20-160(h).

NOTE: On the effective date of this Public Act, the board did not have the capability to accept electronic registrations and to submit electronically the registration certificate. Because of this inability, the General Assembly passed an amendment (which became P.A. 95-1038 (eff. Mar. 11, 2009)) that authorized the board to adopt emergency rules to accept business entity registrations either on paper or via e-mail with a PDF attachment. 10 ILCS 5/9-35(b). This authorization expired on August 1, 2009. Currently, the board has implemented mechanisms to accept the electronic submission of all business registrations.

Every state contract or bid on a state contract must include a certification that states either that (1) the business entity is not required to register with the board, or (2) the business entity is registered with the board and acknowledges a continuing duty to update the registration in the event of a material change in information. 30 ILCS 500/20-160(b). In addition, the certification must acknowledge that the contract is voidable in the event of a violation of this certification requirement. *Id.*

B. [7.107] Duty to Update a Registration

A business entity has a continuing duty to update its registration in the event of a material change in information required to be included on its registration. Businesses that have bids or proposals on state contracts apart or combined with existing state contracts have a continuing duty to ensure the accuracy of their registrations from the date of registration up to and including the day after the contract is awarded. Any material change must be reported within five business days of the change in information, or no later than a day before the contract is awarded, whichever is earlier. 30 ILCS 500/20-160(c), 500/20-160(d). Businesses with existing state contracts (which would include those businesses in the previously mentioned category that were successful in their bid or proposal) have a continuing duty to ensure that their registration is accurate for the duration of the term of office of the public official who is responsible for awarding the contract or for two years following the expiration of the contract, whichever is later. 30 ILCS 500/20-160(e). Any material change in information must be reported on a quarterly basis, no later than ten business days following the last day in January, April, July, and October of each year. *Id.* Changes in a business entity's affiliated persons or affiliated entities are

specifically included in the duty to report material changes in information. 30 ILCS 500/20-160(f). Such changes must include a verification of accuracy under penalty of perjury. 30 ILCS 500/20-160(h).

C. [7.108] Definitions

Under the Illinois Procurement Code, 30 ILCS 500/1-1, *et seq.*, the terms “ ‘contract’, ‘State contract’, and ‘contract with a State agency’ each means any contract, as defined in this Code, between a business entity and a State agency let or awarded pursuant to this Code.” 30 ILCS 500/50-37(a). The terms “contract,” “State contract,” and “contract with a State agency” do not include cost reimbursement contracts, purchase of care agreements as defined in 30 ILCS 500/1-15.68, grants, including but not limited to, grants for job training or transportation, and grants, loans, or tax credit agreements for economic development purposes. *Id.*

“Contribution” means a contribution as defined in §9-1.4 of the Election Code, 10 ILCS 5/9-1.4. 30 ILCS 500/50-37(a).

“Declared candidate” means a person who has filed a statement of candidacy and petition for nomination or election in the principal office of the State Board of Elections. *Id.*

“State agency” means and includes all boards, commissions, agencies, institutions, authorities, and bodies politic and corporate of the state, created by or in accordance with the Illinois Constitution or state statute, of the executive branch of state government and does include colleges, universities, public employee retirement systems, and institutions under the jurisdiction of the governing boards of the University of Illinois, Southern Illinois University, Illinois State University, Eastern Illinois University, Northern Illinois University, Western Illinois University, Chicago State University, Governors State University, Northeastern Illinois University, and the Illinois Board of Higher Education. *Id.*

“Officeholder” means the Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller, or Treasurer. The Governor shall be considered the officeholder responsible for awarding all contracts by all officers and employees of, and vendors and others doing business with, executive branch state agencies under the jurisdiction of the Executive Ethics Commission and not within the jurisdiction of the Attorney General, the Secretary of State, the Comptroller, or the Treasurer. *Id.*

“Sponsoring entity” means a sponsoring entity as defined in §9-3 of the Election Code. *Id.*

“Affiliated person” means (1) any person with any ownership interest or distributive share of the bidding or contracting business entity in excess of 7.5 percent, (2) executive employees of the bidding or contracting business entity, and (3) the spouse of any such persons. *Id.*

“Affiliated entity” means (1) any corporate parent and each operating subsidiary of the bidding or contracting business entity; (2) each operating subsidiary of the corporate parent of the bidding or contracting business entity; (3) any organization recognized by the United States Internal Revenue Service as a tax-exempt organization described in §501(c) of the Internal

Revenue Code of 1986 (or any successor provision of federal tax law) established by the bidding or contracting business entity, any affiliated entity of that business entity, or any affiliated person of that business entity; or (4) any political committee for which the bidding or contracting business entity, or any §501(c) organization described in item (3) of this paragraph related to that business entity, is the sponsoring entity. *Id.*

“Business entity” means any entity doing business for profit, whether organized as a corporation, partnership, sole proprietorship, limited liability company or partnership, or otherwise. *Id.*

“Executive employee” means (1) the president, chairman, or chief executive officer of a business entity and any other individual that fulfills equivalent duties as the president, chairman, or chief executive officer of a business entity; and (2) any employee of a business entity whose compensation is determined directly, in whole or in part, by the award or payment of contracts by a state agency to the entity employing the employee. A regular salary that is paid irrespective of the award or payment of a contract with a state agency shall not constitute “compensation” under item (2) of this definition. “Executive employee” does not include any person prohibited by federal law from making contributions or expenditures in connection with a federal, state, or local election. *Id.*

D. [7.109] Notice of Registration

Within ten days of registration, business entities are required to provide the certificate of registration to all of their affiliated persons and affiliated entities that are required to be included on their registration. 10 ILCS 5/9-35(d). In addition, business entities and their affiliated persons and entities are required to provide notice of the fact that they are registered with the State Board of Elections to any political committee(s) to which they make a contribution at the time of making such contribution. 10 ILCS 5/9-35(f). Business entities are also required, by rule, to document the date such certificate or notification was provided, and failure to do so creates a rebuttable presumption of noncompliance with the notification requirements in the event of a complaint being filed against the entity on that basis. 26 Ill.Admin. Code §100.180(e)(5).

E. [7.110] Searchable Database

The State Board of Elections is required to create and maintain a searchable electronic database on its official website containing all registered business entities and all political committees on file with the board. The database must enable a visitor to search by political committee, business entity, affiliated persons and entities, state agencies, state officeholders, and candidates for state office. The name of minor children shall not appear on the website. The board also shall provide a link between any contributors who list the same residential address as an affiliated person of a business entity. The database is required to be electronically linked to any database of state contracts maintained by the Comptroller, searchable by business entity. 10 ILCS 5/9-35(g).

F. [7.111] Penalties for Violations

The State Board of Elections is empowered to assess monetary civil penalties for the following violations of the business entity registration requirements:

1. Intentional, willful, or material failure to disclose information required to be included on a business entity registration may result in a civil penalty not to exceed \$5,000. 10 ILCS 5/9-35(e); 26 Ill.Admin. Code §100.185(a). In addition, the contract can be voided if the chief procurement officer of the agency awarding the contract determines that it is in the best economic interest of the state to do so. 30 ILCS 500/20-160(h).

2. Failure to update a registration may result in a civil penalty of \$1,000 per business day for each day the information goes unreported. 10 ILCS 5/9-35(e).

3. Failure to provide timely notice of registration to an affiliated person or entity of a business entity, by that entity, may result in a civil penalty not to exceed \$1,001. 10 ILCS 5/9-35(d).

G. [7.112] Prohibited Contributions

Business entities and their affiliated persons and affiliated entities that have existing state contracts, bids, or proposals on state contracts, or a combination of the two that are valued in excess of \$50,000 are prohibited from making contributions to political committees established to support the public official responsible for awarding the contract or established to support a candidate for that office. 30 ILCS 500/50-37(b), 500/50-37(c). For purposes of this prohibition, the Office of the Governor is the public official responsible for any executive branch state agency under the jurisdiction of the Executive Ethics Commission that enters into such a state contract, other than those agencies under the jurisdiction of the Attorney General, the Secretary of State, the Comptroller, or the Treasurer. 30 ILCS 500/50-37(a).

For business entities with existing state contracts, the prohibition is in effect for the duration of the public official's term of office or two years following the expiration of the contract, whichever is longer. 30 ILCS 500/50-37(b). For business entities that have bids or proposals on state contracts, either combined with existing state contracts or standing alone, the prohibition is in effect from the date of the invitation for bids and ending on the day after the contract is awarded. 30 ILCS 500/50-37(c).

Any state contract entered into by a business entity that violates this prohibition shall result in that contract being voidable under the provisions of §50-60 of the Illinois Procurement Code. 30 ILCS 500/50-37(d). If a business entity with an existing state contract violates this prohibition more than three times within a 36-month period, all of its state contracts shall be void, and such entity shall be barred from submitting a bid or proposal on a state contract for at least three years from the date of the last violation. Notice of each violation and penalty imposed shall be published in the Procurement Bulletin and the Illinois Register. *Id.* Political committees that have received contributions in violation of this prohibition shall forfeit such contribution to the State of Illinois within 30 days of the notice of the violation being published in the Illinois Register. 30 ILCS 500/50-37(e).