

September 9, 2008

**Commissioner of Elections Opinion 2008-01**

You have asked for an advisory opinion on the legal ramifications of having a political committee advertise or distribute communications relating to candidates for office under specified conditions. Specifically, you intend to form a political committee that would not be affiliated with any political party or single candidate. The committee may advertise or distribute communications relating to candidates for office but would not expressly advocate the election or defeat of any candidate. The committee may coordinate fundraising and/or communications with one or more candidates.

You are aware of the background of the issue. In Attorney General's Opinion No. 00-IB17, dated October 25, 2000, 2000 WL 1920140 (Del. A.G.), the Attorney General's office determined that "monies spent on issue advocacy, put forth by a party, a *political committee*, or an independent organization or individual, are neither 'contributions' nor 'expenditures' under Section 8002." (emphasis added). *Id.* at \*6. The Attorney General's office wrote, "Section 8002's definitions of 'expenditure' and 'contribution' must be interpreted to apply only to 'express advocacy.'" *Id.* at \*3.

The issue surfaced again in 2006 after the United States Supreme Court decision in *McConnell v. FEC*, 540 U.S. 93 (2003), which construed the Bipartisan Campaign Reform Act of 2002. In an advice letter dated October 12, 2006, the Attorney General's office determined that the express/issue distinction is still the applicable law for a statute that, like Delaware's, is vague. It determined that the 2000 Attorney General's Opinion continues to correctly state Delaware law.

Based on the above, as well as recent consultations with the Attorney General's office, I conclude that, for purposes of contribution calculations, a political action committee should be treated as the 2006 Attorney General's opinion outlined for political parties. Should you have any questions, please contact me.