

A Guide to Legislators' Rights & Responsibilities: Knowing the Laws that Protect and Affect You

An overview presentation to new Legislators of the Sixty-eighth General Assembly



Presented by the Office of Legislative Legal Services November 5, 2010

Open Meetings

Policy

It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

§24-6-401, C.R.S.

Open Meetings

What Meetings Are Covered?

"Meeting" means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

§24-6-402 (1) (b), C.R.S.

A meeting must be open if two or more members of the General Assembly are present and

- Public business is discussed; or
- Formal action is taken.

§24-6-402 (2) (a), C.R.S.

Open Meetings

When Must Notice Be Given?

Notice must be given for any meetings at which:

- The adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs; or
- A majority or quorum of the body is in attendance, or is expected to be in attendance.

§24-6-402 (2) (c), C.R.S.

Open Meetings

Are There Any Exceptions?

A state public body can go into executive session upon a vote of two-thirds of its members to discuss certain topics. These topics include:

- Purchase or sale of property;
- Discussions with attorneys relating to matters that are the subject of pending or imminent court action or to receive legal advice on specific legal questions;
- Matters required to be kept confidential by state or federal law; and
- Security arrangements.

§24-6-402 (3), C.R.S.

Open Meetings

What If The Statute Is Not Followed?

Any formal action taken at a meeting that does not comply with the statute is invalid.

§24-6-402 (8), C.R.S.

Public Access to Legislative Documents

Policy

It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

§24-72-201, C.R.S.

Public Access to Legislative Documents

What Documents That Are Prepared By Or For Or Received By A Legislator Constitute Public Records?

- All bills and amendments once they are introduced;
- Certain correspondence, including electronic mail; and
- Certain memoranda prepared for members.

§24-72-202 (6), C.R.S.

Public Access to Legislative Documents

What Documents That Are Prepared By Or For Or Received By A Legislator Can Be Kept Private?

- Bills and amendments that are not introduced;
- Documents related to the drafting of all bills and amendments;
- Legal opinions from the Office of Legislative Legal Services;
- Certain other memoranda;
- Drafts of all memoranda; and
- Certain correspondence, including electronic mail.

§24-72-202 (6), C.R.S.

Public Access to Legislative Documents

What Documents That Are Prepared By Or For Or Received By A Legislator Can Be Kept Private?

Correspondence:

- Work product;
- Nonlegislative;
- Certain constituent correspondence; and
- Confidential pursuant to other law.

§24-72-202 (6), C.R.S.

Thursday, December 2, 2010

- **Contribution and expenditures report** due with Secretary of State.
 - Reporting period: 10/28/2010 – 11/30/2010
- **Unexpended campaign contributions** held by a candidate committee are counted and reported as contributions from a political party in the next election cycle.

Thursday, December 2, 2010

Do unexpended campaign contributions (“UCC”) exceed the limits?

- Political party contribution limits (“PPL”):
 - Senate: **\$19,080** per election cycle
 - House: **\$13,780** per election cycle
- If UCC exceeds the PPL, there is a violation of the campaign finance law.
 - Solution: Donate or spend down to PPL prior to December 2, 2010.
- PPL minus UCC as of December 2, 2010 equals PPL for next election cycle.

Example

- Political Party Contribution Limit (PPL) for House: **\$13,780** per election cycle
- House member's unexpended campaign contributions (UCC) as of 12/2/10 = **\$5,000**

PPL - UCC = PPL for next election cycle



\$13,780 - \$5,000 = \$8,780

Unexpended campaign contributions may be:

- **Contributed** to a political party;
- **Contributed** to a candidate committee established by the same candidate for a different public office, subject to limitation;
- **Donated** to charitable organizations;
- **Returned** to contributors; or
- **Retained** by the candidate committee for use in a subsequent campaign.

Unexpended campaign contributions may be used:

- To defray expenses for constituent mailings and similar communications;
- For voter registration;
- For political issue education;
- For post-secondary educational scholarships; or
- **To pay expenses that are directly related to the member's official duties as an elected official.**

Unexpended campaign contributions may NOT be used:

- For personal purposes not reasonably related to supporting the election of the member.

REPORT OF CONTRIBUTIONS AND EXPENDITURES
S.B. 2008-001

Full Name of Committee/Person: _____
 Address of Committee/Person: _____
 City, State & Zip Code: _____
 Committee Type: _____
 Name and Address of Principal Institution: _____

SEN ID NUMBER (use and verify carefully): _____

Type of Report:
 Regularly Scheduled Filing
 Amended Filing. This amendment report must be filed _____
 Joint Amended Report. This amendment report MUST show a Net Change of Zero in Line 2.
 Check this box if this Report Contains Electronic/Networking Communications Information

Reporting Period Covered: _____

Declared Total Spending (per 2008-001, Sec. 100.10, N.Y.S. Election Law): _____

1. Funds on Hand at the Beginning of Reporting Period (see instructions)	2. Total Monetary Contributions (see 100.10)	3. Total Disbursed (see instructions)
4. Total Monetary Contributions With General Account (see 100.10)	5. Total Monetary Contributions (see 100.10)	6. Total Monetary Contributions (see 100.10)
7. Funds on Hand at the End of Reporting Period (see instructions)	8. Total Monetary Contributions (see 100.10)	9. Total Monetary Contributions (see 100.10)

Advertisement: This report is submitted to the Board of Elections and the Board of Campaign Finance, I hereby certify and declare under penalty of perjury that to the best of my knowledge and belief, the information reported herein is true and correct, and I have provided all information required by law to be reported. I understand that any false, misleading, or incomplete information reported herein may constitute a criminal offense.

Print Registered Agent's Name: _____ Date: _____
 Registered Agent's Signature: _____
 Print Candidate Name: _____ Date: _____
 Candidate Signature: _____

Canada Secretary of State, New York, Nov. 2008

Monday, January 10, 2011

- **Personal financial disclosure statement** due with Secretary of State
 - Items included in financial disclosure statement are specified by statute and on Secretary of State's forms.

Limits On The Use Of State Equipment, Services, and Legislative Aides

Legislative Aides

A legislative aide may engage in political activity such as distributing campaign literature or soliciting campaign contributions if:

- The aide does not receive compensation from the state for the work, i.e., it is done “off the clock” or paid for by the member with non-state funds; *and*
- The work is not done on the premises of the state capitol building; *and*
- No state equipment or supplies are used.

Defamation

Definition

- What is defamation?
 - ▶ Black's Law Dictionary: "An intentional false communication, either published or publicly spoken, that injures another's reputation or good name."
 - ▶ Libel is written defamation.
 - ▶ Slander is spoken defamation.
- A thick skin and the truth are often your best defenses.

Defamation

Constitutional Provisions That Protect Speech

- First Amendment to the U.S. Constitution: "Congress shall make no law . . . abridging the freedom of speech, or of the press."
- U.S. Supreme Court: "It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."

Defamation

Constitutional Provisions That Protect Speech

- Article II, section X of the Colorado Constitution: "No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish whatever he will on any subject, being responsible for all abuse of that liberty; and in all suits and prosecutions for libel the truth thereof may be given in evidence, and the jury, under the direction of the court, shall determine the law and the fact."

Defamation

Elements Of A Defamation Claim

- To prove defamation, any plaintiff must show that it is more likely than not that:
 - ▶The defendant knowingly, recklessly, or negligently made a false statement about the plaintiff;
 - ▶The statement was made in a public context;
 - ▶The statement damaged the plaintiff's reputation.

- A plaintiff who is a public official must also prove that by clear and convincing evidence that the defendant made the statement with "actual malice". This is a heavy burden of proof.

Defamation

Actual Malice

- What is "actual malice"?
 - ▶ U.S. Supreme Court: Publication of a defamatory statement "with knowledge that it was false or with reckless disregard of whether it was false or not."
 - ▶ Failure to investigate a claim is not, in and of itself, "actual malice", but willful avoidance of truth may be.
- Why must a public official prove actual malice?
 - ▶ U.S. Supreme Court: With respect to criticism of public officials, "the interest in private reputation is overborne by the larger public interest, secured by the Constitution, in the dissemination of truth."

o Does the "actual malice" standard promote dissemination of truth?

Legislative Immunity

Origin And Development Of Legislative Immunity

- Legislative immunity:
 - Developed from English common law and is provided for in the U.S. and Colorado Constitutions.
 - Ensures the independence of the legislature and the legislative process by preventing judicial or executive intimidation of legislators.
 - Precludes most legal proceedings against, or official questioning of, legislators with respect to legislative acts performed in the sphere of legitimate legislative activity.

Legislative Immunity

What Protection Does Legislative Immunity Afford?

- A member of the General Assembly whose actions fall within the sphere of legitimate legislative activity has immunity, with respect to those actions, from:
 - Civil lawsuits;
 - State criminal prosecution; and
 - Being compelled to testify or produce documents in a legal proceeding;
- Legislative immunity does not protect members of the General Assembly from federal criminal prosecution.

Legislative Immunity

The "Sphere of Legitimate Legislative Activity"

- Legislator: A person who creates or enacts laws.
- "The sphere of legitimate legislative activity" thus generally includes activities that are a necessary part of making laws or conducting the legislature's business.
- The "sphere" generally does not include political activities that are not a necessary part of the legislative process.
- The boundaries of the "sphere" can be fuzzy.

Legislative Immunity

Activities that Generally Fall Within The Sphere Of Legitimate Legislative Activity

- Actions taken during formal legislative proceedings.
 - E.g., Sponsorship, debate, testimony, and voting on pending legislation.
- Committee investigation activities.
 - E.g., Authorizing or engaging in an investigation, issuing subpoenas, and questioning witnesses.
- Actions taken during impeachment proceedings.
- Enactment and enforcement of legislative rules.

Legislative Immunity

Actions That Typically Fall Outside The Sphere Of Legitimate Legislative Activity

- Publishing newsletters, press releases, and campaign materials.
- Giving speeches outside the legislature.
- Meeting with or influencing executive branch employees or officials, which may include testifying at a public hearing of a local governmental body.
- Republishing protected legislative speech to the general public. But issuing attachments to committee minutes is probably protected.
- Engaging in improper committee activities.


