



COMMONWEALTH of VIRGINIA

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The Honorable Ryan T. McDougle
Member, Senate of Virginia
Post Office Box 187
Mechanicsville, Virginia 23111

Dear Senator McDougle:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You inquire regarding the application of the Virginia Campaign Finance Disclosure Act of 2006 (the Act)¹ to certain services offered by a private organization to Virginia candidates and campaigns. You specifically ask whether the provision of cybersecurity goods and services at no or reduced cost to a candidate/campaign constitutes a reportable “in-kind contribution” under the Act.

Response

It is my opinion that, under the facts presented, providing the described goods and services does not constitute a contribution or expenditure that must be disclosed and reported under the Act.

Background

You relate that a private organization holding a tax-exempt status under § 501(c)(4) of the United States Internal Revenue Code seeks to provide certain free or reduced-cost services to Virginia candidates and campaign committees, on a nonpartisan basis. The proposed goods and services include cybersecurity software and hardware, information sharing systems, and on-site and remote cybersecurity training. Eligible candidates and campaigns, as identified by the organization, include any Virginia candidate/campaign committee registered with the State Board of Elections that meets certain threshold fundraising requirements for the current election cycle, or candidates for state/local office who have secured ballot access for the general election.²

Applicable Law and Discussion

Virginia’s Campaign Finance Disclosure Act of 2006 applies “to all elections held in Virginia.”³ The Act serves generally to “regulate the receipt and expenditure of money intended for expressly

¹ VA. CODE ANN. §§ 24.2-945 to -953.5 (2016 & Supp. 2023).

² The threshold fundraising requirements established by the organization are as follows: \$2,000 for local office candidates, \$5,000 for General Assembly candidates, and \$10,000 for any statewide office candidates.

³ Section 24.2-945(A) (Supp. 2023).

advocating the election or defeat of a clearly identified candidate.”⁴ “[T]he emphasis in [the Act’s] statutory provisions is on *disclosure* of [‘contributions’ and] ‘expenditures.’”⁵

More specifically, the Act directs that “[a]ny person . . . that makes independent expenditures” totaling over a certain amount during an election cycle, “shall maintain records and report . . . all such independent expenditures made for the purpose of expressly advocating the election or defeat of a clearly identified candidate.”⁶ In similar fashion, campaigns “shall keep detailed and accurate accounts of all contributions turned over to and expenditures made by the candidate or his treasurer on behalf of the [campaign],”⁷ which must be included in the required campaign finance reports and “filed on a form prescribed by the State Board.”⁸ These reports “shall include all financial activity of the campaign.”⁹

Critically, to fall under the Act’s reporting requirements, the money or services provided or received must be a “contribution” or an “expenditure” as defined by the Act.¹⁰ A “contribution” is broadly defined as “money and services of any amount, in-kind contributions, and any other thing of value, given, . . . or in any other way provided to a candidate, campaign committee, political committee, or person *for the purpose of expressly advocating the election or defeat of a clearly identified candidate . . .*”¹¹ Pertinent to your inquiry, this definition encompasses an “in-kind contribution,” which in turn is defined as “the donation of goods, services, property, or other thing of value, other than money, including an expenditure[,] . . . that is provided for free or less than the usual and normal charge.”¹² An “expenditure” broadly includes “money and services of any amount, and any other thing of value, paid, loaned, provided, or in any other way disbursed by any candidate, campaign committee, political committee, or person *for the purpose of expressly advocating the election or defeat of a clearly identified candidate . . .*”¹³

⁴ 2023 Op. Va. Att’y Gen. No. 23-055, <https://www.oag.state.va.us/files/Opinions/2023/23-055-O’Quinn-issued.pdf>.

⁵ 2021 Op. Va. Att’y Gen. No. 21-022, <https://www.oag.state.va.us/files/Opinions/2021/21-022-McClellan-et-al-issued.pdf> (emphasis added). Unlike federal campaign finance law, *see* 52 U.S.C. §§ 30101-30146, the Act does not restrict the donation and receipt of contributions; consequently, the question here is not whether the Act permits such contributions/expenditures, but whether the Act’s reporting requirements apply to the provision of the proposed goods and services.

⁶ Section 24.2-945.2(A) (2016).

⁷ Section 24.2-947.3(E) (Supp. 2023).

⁸ Section 24.2-947.4 (2016)

⁹ *Id.*

¹⁰ Whether a company is required to report any donations made to a campaign depends more specifically on whether the donated goods/services constitute an “independent expenditure.” *See* §§ 24.2-945.2 (reporting provision applicable to “[a]ny person”); 24.2-945.1(A) (2016) (defining “independent expenditure” as an expenditure “that is not made to, controlled by, coordinated with, or made with the authorization of a candidate, his campaign committee, or an agent of the candidate or his campaign committee”). Whether a campaign is required to report the donation of any goods/services by a third party depends on whether the money or services provided or received constitute a “contribution” or an “expenditure.” *See* §§ 24.2-947.4 (setting forth the specific information that must be reported with respect to both contributions and expenditures); 24.2-945.1(A) (defining, for purposes of the Act, “contribution” and “expenditure”); 24.2-947.3(D) (excluding independent expenditures from campaign reporting requirements). Failure to timely file such required reports may result in a penalty. *See* §§ 24.2-953 to -953.5 (2016 & Supp. 2023). In light of the scope of your question, this Opinion does not address any reporting requirements of political parties or political action committees.

¹¹ Section 24.2-945.1(A) (emphasis added).

¹² *Id.*

¹³ *Id.* (emphasis added).

Statutes are to be applied according to their plain language “unless the terms are ambiguous or applying the plain language would lead to an absurd result”;¹⁴ and, absent clear contrary intent, undefined words are afforded “their ordinary meaning, given the context in which they are used.”¹⁵ Words and phrases are not to read in isolation; rather, statutes are to be applied in their entirety, giving effect to every part,¹⁶ and in accordance with their grammatical arrangement.¹⁷

Here, as a donation of goods or services at no or reduced costs, the provision of cybersecurity assistance you describe fits the Act’s definition of an “in kind contribution.”¹⁸ Nevertheless, to be a “contribution” subject to the Act’s requirements, an in-kind contribution still must be made “for the purpose of expressly advocating the election or defeat of a clearly identified candidate[.]”¹⁹ Accordingly, per the terms of the Act, only those goods and services—including those offered at no or reduced cost—that are provided “for the purpose of expressly advocating the election or defeat of a clearly identified candidate” constitute reportable contributions or expenditures.

You describe a § 501(c)(4) social welfare organization that seeks to offer cybersecurity goods and services to candidates and campaign committees “on a non-partisan basis and in a manner that would not influence Virginia elections.”²⁰ You indicate that, to do so, the company has established objective eligibility requirements to ensure that Virginia campaigns have access to the company’s goods and services on a “fair and equal basis.”²¹ You also relate that, although the goods and services will be made available to individual campaigns, the goal of providing such goods and services is to enable a receiving campaign to protect itself from cyber threats and not to endorse, promote, or favor any particular party or campaign. More specifically, as you describe the proposed activities, the company’s offerings would not be for the purpose of expressly advocating the election or defeat of a clearly identified candidate.²² I therefore conclude on that basis that, although the company would be providing goods and services at no or reduced cost, the provision of those goods and services would not constitute a “contribution” or “expenditure” under the Act.²³

¹⁴ *City of Charlottesville v. Payne*, 299 Va. 515, 527 (2021) (quoting *Boynnton v. Kilgore*, 271 Va. 220, 227 (2006)).

¹⁵ *Berry v. Bd. of Supvrs.*, ___ Va. ___, ___, 884 S.E.2d 515, 520 (2023) (quoting *City of Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236 (1993)).

¹⁶ *See Nolen v. Commonwealth*, 53 Va. App. 593, 598 (2009); 1983-84 Op. Va. Att’y Gen. 8, 8.

¹⁷ *See Kelso v. Commonwealth*, 57 Va. App. 30, 38 (2010); *Harris v. Commonwealth*, 142 Va. 620, 624 (1925).

¹⁸ Section 24.2-945.1(A).

¹⁹ *Id.*

²⁰ Although not part of your inquiry, I note that organizations that are tax exempt under § 501(c)(4) are exempt from the Act’s reporting and filing requirements provided that “in providing information to voters, [the organization] does not advocate or endorse the election or defeat of a particular candidate, group of candidates, or the candidates of a particular political party.” Section 24.2-945.1(B). *See* 2023 Op. Va. Att’y Gen. No. 23-055, *supra* note 4.

²¹ *See supra* note 2.

²² To “advocate” is “to plead in favor of” or to “support or recommend publicly.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 32; *see supra* note 4. *See also* 2001 Op. Va. Att’y Gen. 127, 128-29 (defining “purpose” as used in the Act as then in effect); 1 VA. ADMIN. CODE § 20-90-30 (defining “express advocacy” as used in the Act to mean “any communication that uses phrases such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ ‘reject,’ or any variation thereof or any communication when taken as a whole . . . that could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates”). In the scenario you present, by providing technical support, the company would not be publicly recommending or pleading in favor of any particular campaign(s).

²³ This conclusion is limited to the facts as provided and set forth herein; in responding to opinion requests, this Office does not make factual determinations or resolve factual disputes. *See* 2002 Op. Va. Att’y Gen. 321, 326; 1996 Op. Va. Att’y Gen. 102, 103.

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Conclusion

Accordingly, it is my opinion that Virginia law does not prohibit a nonprofit organization from providing free or reduced-cost cybersecurity goods/services to Virginia campaigns, and, that if such goods/services are provided on a nonpartisan basis, not for the purpose of expressly advocating the election or defeat of a clearly identified candidate, such goods/services are not reportable contributions or expenditures under the Act.

With kindest regards, I am,

Very truly yours,



Jason S. Miyares
Attorney General