



March 1, 2013

Colorado Independent Ethics Commission
1300 Broadway, 12th Floor
Denver, Colorado 80203

Re: Supplemental Comments Regarding the Request for an Advisory Opinion Regarding the Establishment of a Legal Defense Fund for Public Officials

This letter is intended to supplement the Colorado Common Cause letter dated January 22, 2013 opposing Secretary of State Scott Gessler's request for an advisory opinion allowing covered officials to establish legal defense funds and expressing the view that it would be a violation of the gift ban in Amendment 41. In addition to the arguments made with respect to Amendment 41 in our January 22, 2013 letter, we wish to bring to the attention of the Commission Section 24-6-203(3.5)(a) of the Colorado Sunshine Law.

Section 24-6-203(3.5)(a) provides that each incumbent in or candidate elected to statewide elected office is prohibited from knowingly receiving or accepting from any other person, in connection with the public service of the incumbent or elected candidate:

- (I) A gift of any money, including but not limited to a loan, pledge or advance of money, a guarantee of a loan of money, or any monetary payment given, directly or indirectly, for the purpose of defraying any expenses related to the official duties undertaken by the incumbent or elected official; or
- (II) Any in-kind gift.

We believe that the establishment and funding of a criminal defense fund would constitute an indirect payment of money to the Secretary of State in violation of the prohibition contained in Section 24-6-203(3.5)(a).

Pursuant to Section 24-6-203(1)(b)(III), "public office" includes the Office of the Secretary of State. Moreover, we believe that it is the Secretary of State's position that he was performing official duties of his office that are being examined in a criminal investigation by the Denver District Attorney's office. Thus, we believe that the strict prohibition on monetary gifts provided in Section 24-6-203(3.5)(a) would apply to a criminal defense fund established on behalf of the Secretary of State.

Thank you for your consideration of our comments. Please let me know if you have questions or would like additional information.

Elena Nunez
Executive Director
enunez@commoncause.org
(303) 292-2163 w / (720) 339-3273 c