



# NORTH CAROLINA

## State Board of Elections

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**KIM WESTBROOK STRACH**  
Executive Director

December 18, 2015

Mr. Steve Long  
301 Fayetteville Street  
Suite 1400  
Raleigh, North Carolina 27601

Re: Request for further consideration of Written Advisory Opinion dated  
December 4, 2015

Dear Steve:

I understand your concern regarding the above-referenced advisory opinion issued to Michael Wiesel and appreciate your desire to seek clarification on behalf of your client, the Connect NC Committee. I also recognize that your client's desire to coordinate with candidates of different political parties is part of a bipartisan messaging effort in support of the referendum committee's primary purpose: to promote passage of the bond proposal. You have stressed that your client is not driven by a desire to support or oppose particular candidates, and that any incidental benefit a candidate may derive from coordinated airtime should have no bearing on the status of the expenditure as a *contribution*. For reasons described herein, I do not believe current law allows my office to adopt a similar view when determining whether a candidate has received a contribution from the referendum committee.

According to your letter, the Connect NC Committee hopes to feature candidates supporting the passage of the bond referendum in your client's public communications campaign. As we have discussed, North Carolina law allows referendum committees to raise unlimited contributions from both corporations and individuals. The same is not true for candidate committees. So it is not surprising that our statutes expressly prohibit referendum committees from contributing to any candidate, if that referendum committee has raised funds from entities off limits to that candidate.<sup>1</sup>

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<sup>1</sup> See G.S. 163-278.13(e1) ("No referendum committee which received any contribution from a corporation, labor union, insurance company, business entity, or professional association may make any contribution to another referendum committee, to a candidate or to a political committee").

It is your contention that a communication coordinated between a candidate and a referendum committee cannot result in a *contribution* unless the communication supports their candidacy.<sup>2</sup> Specifically, you contend that, even if the candidate coordinated with the referendum committee on an expenditure, the result of that coordination could only be a contribution to the candidate if the communication expressly advocated *for the candidate*. Your client hopes to avoid this scenario by advocating exclusively *for the bond*. General Statute § 163-278.14A identifies core factors to consider in evaluating whether a communication aims “to support or oppose the nomination or election of one or more clearly identified candidates,” making clear that expressions like “*vote pro-(policy position)* . . . accompanied by a list of candidates clearly labeled *pro-(policy position)*” would be deemed to support the identified candidate. Therefore, if a communication advocated for the passage of the bond referendum and identified a candidate or candidates as supporting the passage of the bond referendum, we are directed to consider that communication as *express advocacy* in support of the candidate or candidates. The result would be an *independent expenditure* in support of the candidate if the communication was not coordinated, or a *contribution* if the candidate and the referendum committee coordinated.<sup>3</sup>

Upon further reflection, I believe the opinion I provided Mr. Wiesel should be clarified as to a narrow exception: If the referendum committee coordinates with a candidate to make communications that do not expressly advocate passage of the bond referendum or support or oppose any candidate, the resulting communication would constitute a coordinated expenditure but would not likely be a contribution to the candidate. If the coordinated communication expressly advocates passage of the bond and clearly identifies candidates, the communication would then trigger the contribution concerns identified above. This narrow clarification is provided after reading your analysis and agreeing that current law does not clearly link a *coordinated expenditure* by a referendum committee with a *contribution* unless the coordinated expenditure supports the candidate in the manner set out in G.S. § 163-278.14A. The General Assembly may deem it advisable to correct what appears to be an incongruity in the law’s treatment of otherwise identical communications from different groups. But present law does not do so clearly.

I would also note that a referendum committee is free to clearly identify candidates, appropriate their statements, and incorporate video of the candidate in its communications without fear of making a *contribution*, so long as those efforts are not coordinated with the candidate committee. Since your request for clarification refers only to communications made by a referendum committee, which by definition cannot make *electioneering communications* as defined within

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<sup>2</sup> See G.S. § 163-278.6(6) (The terms “contribute” or “contribution” mean any advance, conveyance, deposit, distribution, transfer of funds, loan, payment, gift, pledge or subscription of money or anything of value whatsoever, made to, or **in coordination with, a candidate to support or oppose the nomination or election of one or more clearly identified candidate** . . .)(emphasis added).

<sup>3</sup> A *contribution* would be prohibited if the referendum committee has accepted funds from a corporate contributor. See n. 1, *supra*.

G.S. § 163-278.6(8j), I am not addressing your comments referring to electioneering communications. If you have future questions about entities that make electioneering communications, please understand that the clarification in this letter only applies to communications that are not deemed *electioneering communications* in our law.

The questions you pose related to the permissibility of activities by candidates that may involve the referendum committee will be addressed in a separate advisory opinion. The content of this clarification and the separate advisory opinion are issued under my authority found in G.S. § 163-278.23.

If you have questions, please feel free to let me know.

Sincerely,



Kim Westbrook Strach  
Executive Director, State Board of Elections

cc: Mollie Masich, Codifier of Rules  
Amy Strange, Deputy Director-Campaign Finance and Operations