



Legislation Text

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Int. No. 2153

By Council Member Kallos

A Local Law to amend the New York city charter, in relation to determining whether an expenditure is independent

Be it enacted by the Council as follows:

Section 1. Subparagraph a of paragraph 15 of subdivision a of section 1052 of the New York city charter, as amended by local law number 15 for the year 2013, is amended to read as follows:

15. (a) For purposes of this paragraph, the following terms shall have the following meanings:

Covered election. The term “covered election” means any primary, run-off primary, special, run-off special or general election for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council.

Entity. The term “entity” means any corporation, limited liability company, partnership, limited liability partnership, political committee, political party or party committee, employee organization or labor organization, association, club or other organization.

[(i) “Independent expenditure” shall mean] Independent expenditure. The term “independent expenditure” means a monetary or in-kind expenditure made, or liability incurred, in support of or in opposition to a candidate in a covered election or municipal ballot proposal or referendum, where no candidate, nor any agent or political committee authorized by a candidate, has authorized, requested, suggested, fostered or cooperated in any such activity.

(i) Financing the dissemination, distribution or republication of any broadcast, or any written, graphic or other form of campaign materials prepared by a candidate shall be presumed to be a non-independent

expenditure unless such candidate can show that the activity was not authorized, requested, suggested, fostered or cooperated in by the candidate, or any agent or political committee authorized by such candidate.

(ii) The board may otherwise determine by a preponderance of evidence that an expenditure was not independent upon consideration of any evidence provided by the candidate, or by the individual or entity making the expenditure, and upon consideration of factors including, but not limited to:

(1) whether the individual or entity making the expenditure is also an agent of a candidate;

(2) whether any individual authorized to accept contributions, loans or any other payment, or make expenditures for the individual or entity making the expenditure is also an agent of a candidate;

(3) whether a candidate has authorized, requested, suggested, fostered or cooperated in any way in the formation or operation of the individual or entity making the expenditure;

(4) whether an individual or entity making an expenditure has been established, financed, maintained or controlled by any of the same individuals or entities as those that have established, financed, maintained or controlled a political committee authorized by a candidate;

(5) whether a candidate shares or rents space for a campaign-related purpose with or from an individual or entity making an expenditure;

(6) whether a candidate has solicited or collected funds on behalf of the individual or entity making an expenditure, during the same election cycle in which an expenditure is made;

(7) whether a candidate, or any public or private office held or entity controlled by a candidate, including any governmental agency, division or office, has retained the professional services of an individual making an expenditure or a principal member or professional or managerial employee of an entity making an expenditure, during the same election cycle in which an expenditure is made; and

(8) whether a candidate and an individual or entity making an expenditure have each consulted or otherwise been in communication with the same third party or parties, if such candidate knew or should have known that the candidate's communication or relationship to such third party or parties would inform or result

in expenditures to benefit the candidate.

(iii) The term “independent expenditure” shall not include:

(1) the value of services provided without compensation by individuals who volunteer a portion or all of their time,

(2) the use of real or personal property and the cost of invitations, food and beverages voluntarily provided by an individual, to the extent such services do not exceed five hundred dollars in value,

(3) the travel expenses of any individual who on his or her own behalf volunteers his or her personal services, to the extent such expenses are unreimbursed and do not exceed five hundred dollars in value,

(4) any expenditure made, or liability incurred, that is considered to be a contribution to a candidate under any provision of this charter or local law, or under any rule promulgated by the board, and

(5) any communication by a labor or other membership organization aimed at its members, or by a corporation aimed at its stockholders. This exemption does not apply to party committees, constituted committees, political clubs, or other entities organized primarily for the purpose of influencing elections. For purposes of this subparagraph:

(A) “member” shall mean (I) any individual who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or directors or an officer or officers or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution; (II) any individual who is designated in the articles or bylaws as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under section 501(c) of the Internal Revenue Code of 1986; or (III) any individual who resides within the same household as a “member” as defined in this paragraph;

(B) members of a local union shall be considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national or international union is

affiliated; and

(C) “stockholder” shall mean any individual who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends, or any individual who resides within the same household as a “stockholder” as defined in this paragraph.

(6) any de minimis, incidental communication by a labor or other membership organization or corporation with non-members or non-stockholders, provided that the labor or other membership organization or corporation uses reasonable efforts to restrict the communication to its members or stockholders.

[(ii) “Entity” shall mean any corporation, limited liability company, partnership, limited liability partnership, political committee, political party or party committee, employee organization or labor organization, association, club, or other organization.

(iii) “Covered election” shall mean any primary, run-off primary, special, run-off special or general election for nomination for election, or election, to the office of mayor, public advocate, comptroller, borough president or member of the city council.]

§ 2. This local law takes effect immediately.

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