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MEMORANDUM

To: Commissioners

From: Staff

Re: Revision to the AG defense fund Advisory Opinion (Adv. Op. 25-03)

Date: June 24, 2026

We have learned that a statement of fact in the advisory opinion was incorrect when it stated that "The identities of donors to DAGA as a Section 527 political organization are not required to be, and will not be, publicly reported." After conferring with DAGA and the AG's Office, we now propose the following to replace that language on page 4:

> Contributors to DAGA as a Section 527 organization are publicly disclosed, but contributors cannot earmark funds to be used for the Attorney General's defense. Similarly, contributions to the associated charitable organization are publicly disclosed, but only as gifts to DAGA.

We are confident that the analysis remains the same because the Attorney General cannot learn, through any announcement by DAGA, the identity of anyone who donated to the organization with the intention to benefit her directly. If she comes to learn the identity of such a donor, she will have to return that donation and recuse herself, and we are informed that she has already done so.

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Advisory Opinion No. 25-03: Applying the State ethics laws and regulations to a legal defense fund

INTRODUCTION

It has been widely reported that Attorney General Letitia James is accepting contributions submitted through the Democratic Attorneys General Association (DAGA) to defray some or all of her legal defense expenses in connection with the federal criminal prosecution of the Attorney General in the United States District Court for the Eastern District of Virginia. The Commission on Ethics and Lobbying in Government ("Commission") has received inquiries from the public asking whether this arrangement complies with State ethics laws and, if so, how. The Commission issues this formal Advisory Opinion to explain how and why the Attorney General may receive legal defense contributions from DAGA consistent with the requirements of New York's ethics laws and the Commission's regulations and existing advisory opinions.

APPLICABLE LAW

Section 73(5)(a) of the Public Officers Law (POL) prohibits a State officer or employee from directly or indirectly soliciting, accepting, or receiving any gift where the circumstances reasonably permit an inference that the gift was intended or could be expected to influence the official, or was intended as a reward for official action on the State official's part.[1]

POL § 73(5)(b) prohibits State officials[2] from soliciting, accepting, or receiving any gift from a registered lobbyist or client, unless under the circumstances it is not reasonable to infer that the gift was intended to influence the State official.[3]

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[1] Public Officers Law § 73(5)(a).

[2] Hereinafter, "State official" shall refer to all State officers and employees including the four statewide elected officials, members and employees of the legislature, and heads of State agencies.

[3] Public Officers Law § 73(5)(b).

POL § 73(5)(c) prohibits State officials from permitting the solicitation, acceptance, or receipt of any gift from a registered lobbyist or client to a third party, including a charitable organization, under circumstances that reasonably permit an inference that the gift was intended or could be expected to influence the official.[4]

The Commission's gift regulations for State officials, set forth at Title 19 NYCRR Part 933, utilize the concept of an "Interested Source" to identify gifts that are offered or accepted under presumptively prohibited circumstances. Interested Sources include lobbyists and their clients,[5] and any other party that does or seeks to do business with the public official or the official's agency or has some other private interest in influencing the public official.[6] A gift from an Interested Source is presumptively impermissible unless all three of the following criteria are satisfied:

> (1) it is not reasonable to infer that the Gift was intended to influence the public official; and
>
> (2) the Gift could not reasonably be expected to influence the public official in the performance of his or her official duties; and

[4] Public Officers Law § 73(5)(c).

[5] All lobbyists and their clients, who are in the business of influencing government decision-making, are presumptively prohibited from offering or giving a gift to any public official regardless of whether they have specific interests pending before the official or the official's agency. However, this presumption is rebuttable based on an examination of the circumstances surrounding the gift. A lack of a particularized interested before the public official or their agency will tend to rebut the presumption. DAGA is not a registered lobbyist or the client of a lobbyist in New York.

[6] The term "Interested Source" is defined at 19 NYCRR Part 933.2(l):

> (l) Interested Source shall mean any person or entity who on his or her own behalf, or on behalf of an entity, satisfies any one of the following: (1) is regulated by, negotiates with, appears before in other than a Ministerial Matter, seeks to contract with or has contracts with, or does other business with: (i) the Legislative Member, the Legislative Employee, or the State Officer or Employee, in his or her official capacity; (ii) the State Agency with which the State Officer or Employee is employed or affiliated; or (iii) any other State Agency when the State Officer or Employee's agency is to receive the benefits of the contract; or (2) with respect to a Legislative Member or a Legislative Employee, is required to be listed on a statement of registration pursuant to § 1-e(a)(1) of article 1-A of the Legislative Law, or is the spouse or unemancipated child of any person required to be listed on a statement of registration pursuant to § 1-e(a)(1) of article 1-A of the Legislative Law; or (3) with respect to State Officers and Employees, is required to be listed on a statement of registration pursuant to § 1-e(a)(1) of article 1-A of the Legislative Law and lobbies or attempts to influence actions, decisions, or policies of the State Agency with which the State Officer or Employee is employed or affiliated; or (4) with respect to State Officers and Employees, is the spouse or unemancipated child of any individual satisfying the requirements of section 933.2(l)(3); or (5) is involved in any action or proceeding, in which administrative and judicial remedies thereto have not been exhausted, and which is adverse to either: (i) the State Officer or Employee in his or her official capacity; or (ii) the State Agency with which the State Officer or Employee is employed or affiliated; or (6) has received or applied for funds from the State Agency with which the Covered Person is employed or affiliated at any time during the previous 12 months up to and including the date of the proposed or actual receipt of the item or service of more than Nominal Value.

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(3) it is not reasonable to infer that the Gift was intended as a reward for any official action on the public official's part.[7]

A non-Interested Source is a person or entity that has no particularized interest in influencing the public official. A gift from a non-Interested Source is presumptively permissible unless one or more of the following three criteria is met:

(1) it could reasonably be inferred that the Gift was offered or given with the intent to influence the Covered Person, or

(2) the Gift could reasonably be expected to influence the Covered Person in the performance of his or her official duties, or

(3) it could reasonably be inferred that the Gift was offered or given with the intent to reward the Covered Person for any official action on his or her part.[8]

In Advisory Opinion No. 20-02, the Joint Commission on Public Ethics discussed how to analyze a gift given to a third party at the direction or request of a State official. Factors to consider in analyzing the circumstances surrounding such a gift include the nature of the solicitation, if any; the substance of any communication involving the State official; the nature and purpose of the gift; the nature and purpose of the third-party recipient; the extent of the public official's knowledge regarding the gift; the nature of any official business involving the donor that is pending before the State official; any nexus between the solicitation and the pending business; and the offeror's history of making similar gifts.

It is noted that the New York Election Law permits a State official to use campaign funds to pay legal defense costs[9], but campaign contributions are excluded from the definition of "gift" under the gift regulations, and therefore are not subject to Interested Source analysis.[10] However, this Advisory Opinion addresses contributions of funds specifically to defray legal defense costs, which would constitute gifts under the regulations, and therefore must satisfy the Interested Source test.

DISCUSSION

The Commission staff has relied on public reporting and private inquiries to develop an insider's understanding of DAGA's defense fund operations. Staff determined that DAGA is not an Interested Source with respect to the Office of the Attorney General (OAG). The mere fact that DAGA supports the Attorney General politically does not make DAGA an Interested Source under the gift regulations. DAGA has no particularized interest in any specific matter pending before the Attorney General, so the Attorney General can't take an official action intended to

[7] 19 NYCRR Part 933.3(a)
[8] 15 19 NYCRR Part 933.3(b).
[9] *See* Election Law § 14-130.
[10] *See* Title 19 NYCRR Part 933.4(a)(4), which excludes political campaign contributions from the definition of "gift."

directly benefit DAGA. Therefore, DAGA's contributions to the Attorney General's legal defense are presumptively permissible.

The next question is whether the underlying contributions to DAGA constitute prohibited third-party gifts to the Attorney General. An examination of the facts indicates they do not.

DAGA operates as a political organization under Section 527 of the Internal Revenue Code, and as a charitable organization under Section 501(c)(4). Contributors to DAGA as a Section 527 organization are publicly disclosed, but contributors cannot earmark funds to be used for the Attorney General's defense. Similarly, contributions to the associated charitable organization are publicly disclosed, but only as gifts to DAGA. Moreover, the fund offers support to multiple public officials, and Commission staff is informed that DAGA has established a three-member allocation committee to independently review requests for legal defense funding and allocate available funds. The Attorney General does not have a representative on this committee. The OAG has vetted the three members of the allocation committee and determined that none presents a conflict. The OAG has imposed a requirement that it be informed when and if any member of the committee is replaced so that the OAG can vet the new member.

The Commission is satisfied that under the described protocol, contributions to DAGA's legal defense fund do not constitute prohibited third-party gifts to the Attorney General. The Attorney General would only know – at most – that the contributions came from DAGA. Since there would be, effectively, no identifiable underlying donor to her defense, and given that DAGA itself has no specific interests pending before the OAG and is not an Interested Source, there will be no reasonable basis to infer that any contribution was given to DAGA with the intent to influence the Attorney General, or that the contribution could be expected to influence the Attorney General, or that the contribution was given with the intent to reward the Attorney General, for any official action on her part

If the Attorney General comes to learn the identity of a donor to DAGA who made such a donation with the intent that it be used in whole or in part to pay for her legal defense, the Attorney General would be obligated to recuse herself from any matter before the OAG involving the donor and return on a pro-rata basis the donation given to DAGA.

To avoid even the appearance of a conflict of interest, the Commission cautions that the Attorney General should not attend any event held for the benefit of DAGA, in whole or in part. because such an event could appear to be a de facto fundraising event for the Attorney General. The Attorney General cannot personally solicit (or direct campaign staff, governmental staff, or anyone else to solicit) legal defense contributions through DAGA from any Interested Source. On her annual statement of financial disclosure for the applicable reporting period, the Attorney General will be required to disclose DAGA's contributions to her legal defense in response to Question 9, and the Attorney General's interest in DAGA's defense fund must be disclosed in response to Question 11.

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CONCLUSION

The Commission concludes that the Attorney General can accept legal defense funds under the proposed arrangement with DAGA, consistent with this Advisory Opinion. The OAG must contact the Commission if it learns that any of the information contained herein is inaccurate or if there will be or has been a material change in the processes surrounding DAGA's legal defense fund.

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