

AOR 2011-27

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December 5, 2011

VIA FACSIMILE AND FIRST-CLASS MAIL

Office of General Counsel
 Federal Election Commission
 999 E Street NW
 Washington, DC 20463

To Whom It May Concern:

I write on behalf of New Mexico Voices for Children ("NM Voices"), a New Mexico nonprofit corporation tax-exempt under section 501(c)(3) of the Internal Revenue Code. NM Voices was established in 1987 to create systems-level sustainable change to improve the lives of New Mexico's children. As a 501(c)3 nonprofit organization, NM Voices is prohibited from supporting candidates for public office.

NM Voices' Executive Director, Eric Griego left NM Voices on October 17, 2011, and is currently campaigning as a candidate for the U.S. House of Representatives. Mr. Griego wished to enter into a leave of absence or to reduce his schedule to part-time status while he campaigned for federal office. However, given the organization's nonpartisan tax-exempt status, the Board of Directors believed it was in the organization's best interest to have Mr. Griego resign in order to avoid any appearance that the organization could influence Mr. Griego's campaign messaging or platform. Mr. Griego agreed to resign prematurely to protect the interests of the organization.

Consistent with its prior practices, the Board of Directors of NM Voices voted to approve a severance payment for a period of three months for Mr. Griego. The Board also voted to make the severance payment contingent on the Commission determining that the payment will not be deemed a contribution to Mr. Griego's campaign. As such, I write to seek an advisory opinion concerning the application of the Federal Election Campaign Act of 1971, as amended, and Commission regulations to NM Voices' proposed granting of the severance package.

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 COUNSEL

FREEDMAN BOYD HOLLANDER GOLDBERG IVES & DUNCAN P.A.

Federal Election Commission

December 5, 2011

Page 2

NM Voices currently employs 13 individuals. The organization maintains a written policy manual for its employees regarding their employment. The manual does not address severance packages. Eric Griego joined NM Voices as Executive Director on July 9, 2007. Mr. Griego does not have an employment contract with NM Voices. His salary at the time of his departure was \$96,460 per year. During his four-year tenure as Executive Director, NM Voices followed its unwritten policy of paying severance to terminated employees who departed the organization based on the needs of the organization. The regular practice of providing severance packages was instituted in 2007 when Mr. Griego joined NM Voices as Executive Director. Prior to 2007, NM Voices had occasionally given severance packages to departing employees but NM Voices did not do so as a regular practice.

During the 2007-2010 time frame, the Executive Director and/or Board of Directors had discretion in determining whether any given employee received severance upon leaving NM Voices. NM Voices granted severance payments to individuals who were asked to leave the organization based on what was considered to be in the best interest of the organization. If the separation was voluntary, no severance was paid. If the separation was due to loss of grant funding, that was considered to be beyond the control of the organization. As such, no severance was offered. If the separation was due to reorganization, organizational changes, or other factors outside the employee's control, some severance was offered. The amount of severance offered was based on the departing employee's length of service, his/her past performance and the expected length of time the employee would need to find comparable employment.

During 2007-2010, 27 employees left NM Voices. 17 resigned voluntarily. 2 were terminated for cause. 3 were terminated because of a loss of grant funding. One junior employee left in 2007 but the employee file does not state a reason for that employee's termination. The remaining 4 employees were laid off and were given severance. A junior staff member who was terminated after a reorganization was granted 2-weeks' severance. Three senior managers were laid off after reorganizations. Those employees were granted 3-month severance payments. Mr. Griego's predecessor, who retired from NM Voices, did not receive a severance payment since her resignation was voluntary.

The Board feels that Mr. Griego's resignation is similar to other employees who were terminated based on the needs of the organization. Consistent with its past practices, the Board would like to fairly compensate Mr. Griego for his service to the organization and for his stellar job performance as Executive Director for the past four years. The decision to grant Mr. Griego three months' severance is comparable to compensation that would be offered a similarly qualified professional at NM Voices.

I believe that your Advisory Opinion 2004-08 is indistinguishable from the facts of this request. Mr. Griego's severance is tied exclusively to services provided by him as part of his bona fide employment, is based on the objective criteria of granting severance to a departing

FREEDMAN BOYD HOLLANDER GOLDBERG IVES & DUNCAN P.A.

Federal Election Commission

December 5, 2011

Page 3

employee based on the needs of the organization, and is proportionate with past severance packages offered by NM Voices.

In the interest of transparency and to ensure compliance with federal law, NM Voices seeks an opinion from the FEC—before the organization disburses any payment—that the Board's decision to grant severance to Mr. Griego will not be deemed a contribution to his campaign. We look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to be 'S. Berger', with a long horizontal flourish extending to the right.

Sara Berger

cc: New Mexico Voices for Children