



KENTUCKY REGISTRY OF ELECTION FINANCE

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Executive Director
Emily Dennis
General Counsel

ADVISORY OPINION 2016-001

Any Advisory Opinion rendered by the Registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the Advisory Opinion is required. See KRS 121.135(4).

February 4, 2016

VIA FACSIMILE 859.253.1384
AND FIRST CLASS U.S. MAIL

M. Melinda Karns, CPA
Blue & Co., LLC
250 W. Main St., Suite 2900
Lexington, KY 40507

In re: Inaugural Committee/ Disbursement of Unexpended Funds
(AO 2015-002)

Dear Ms. Karns:

This Advisory Opinion is sent in response to your recent request on behalf of the Beshear-Abramson Inaugural Committee regarding disbursement of unexpended funds by an inaugural committee. The Registry received your request on January 5, 2016. As required by KRS 121.135(5)(a), your request was posted for public comment on January 11, 2016. No public comments were received.

You specifically inquire whether the Beshear-Abramson Inaugural Committee may transfer its unexpended funds pursuant to KRS 121.180. You note that KRS 121.180(10) provides the following methods for final disposition of campaign funds: (1) escheat to State Treasury; (2) return pro rata to all contributors; (3) transfer to a caucus campaign committee; (4) transfer to a state executive committee of a political party; and (5) donation to a 501(c)(3) charitable, nonprofit, or educational institution. Based on past advice from Registry staff, media

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reports, and language found in the Registry's 2006 edition of the Political Action Committees (Permanent Committees) Guide to Campaign Finance, you argue that an inaugural committee should be permitted to use any of the above methods to dispose of unexpended funds.

As noted in your request, an inaugural committee is defined under the blanket definition of "committee" in KRS 121.015(3) to mean as follows: "one (1) or more persons who receive contributions and make expenditures in support of inauguration activities for any candidate or slate of candidates elected to any state, county, city or district office." Thus, an inaugural committee is established to fund a specific event – the opening ceremony where an elected official is sworn in to public office. The purpose of an inaugural committee – the funding of a specific event - distinguishes it from other committee types defined by KRS Chapter 121.

Because of the unique purpose of an inaugural committee, the campaign finance law permits an inaugural committee greater latitude in accepting contributions. Unlike committees defined in terms of advocating in support or opposition to candidates on the ballot that are subject to contribution limits (see e.g. permanent committee, campaign committee¹, caucus campaign committee, or executive committee), an inaugural committee may receive contributions in unlimited amounts from permissible sources. Although corporate contributions to an inaugural committee are prohibited, the corporate contribution prohibition does not prohibit incorporation of an inaugural committee.²

The campaign finance law does not specifically state how unexpended inaugural committee funds may be disbursed. Regarding unexpended funds not obligated to further a political issue or the candidacy of a person, KRS 121.180(10) states as follows:

Any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to a caucus campaign committee, or to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.

See KRS 121.180(10).

¹ When authorized by a candidate, a campaign committee is subject to contribution limits set forth in KRS 121.150. An unauthorized campaign committee, by contrast, organized solely for the purpose of making independent expenditures, is not subject to contribution limitations or restrictions.

² See attached Summary and Articles of Incorporation for Bevin-Hampton Inaugural, Inc.

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To understand how KRS 121.180(10) applies to an inaugural committee requires dissection of this lengthy statutory sentence. The first section of the sentence reads as follows:

Any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, [or] be returned pro rata to all contributors,

This section of the sentence logically applies to a political issues committee, candidate campaign fund, or candidate authorized campaign committee. It cannot logically be applied to an inaugural committee, as an inaugural committee is organized to fund an event, not to further a political issue, as in the case of a political issues committee, or the candidacy of a person.

The second section of the sentence states as follows:

or, in the case of a partisan candidate, [any unexpended balance of funds may] be transferred to a caucus campaign committee, or to the state or county executive committee of the political party of which the candidate is a member . . .

This section of the sentence logically applies to a partisan candidate's campaign fund or campaign committee, but clearly cannot be applied to an inaugural committee. To permit otherwise would allow contributions in unlimited amounts to pass through the inaugural committee to a caucus campaign committee or state or county executive committee.

Finally, the last section of the sentence reads as follows:

except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.

This section of the sentence is the only part that can logically be applied to an inaugural committee. Thus, as the Beshear-Abramson Inaugural Committee has no further activities to conduct in connection with the inaugural event and there is no possibility of a future Beshear-Abramson inauguration due to term limits applicable to gubernatorial candidates, the only available option for disposal of Beshear-Abramson Inaugural Committee funds is donation of the funds to a 501(c)(3) charity.


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To the extent any past advice from Registry staff, media reports, or contrary language appears in a 2006 Registry guidebook relative to permanent committees, it is the Registry's view that this guidance was in error. To conclude otherwise would be to permit inaugural and permanent committees to be used as a conduit for excessive contributions to executive committees and caucus campaign committees, and not for the purposes as defined in KRS 121.015. In the event an inaugural committee is incorporated, it would also permit corporate funds transferred to the executive committee to be used to influence an election, in violation of KRS 121.025(25) and Section 150 of the Kentucky Constitution.

Please keep in mind that this Advisory Opinion is based on the specific facts set forth in your written request, does not cover past conduct, and only may be applied to cover the conduct in the transaction you describe. If you have any questions concerning this Advisory Opinion, please do not hesitate to contact the Registry. Thank you.

Very truly yours,



EMILY DENNIS
General Counsel

Attachment

Cc: Registry Members
John R. Steffen, Executive Director

BEVIN-HAMPTON INAUGURAL, INC.**General Information**

Organization Number	0937015
Name	BEVIN-HAMPTON INAUGURAL, INC.
Profit or Non-Profit	N - Non-profit
Company Type	KCO - Kentucky Corporation
Status	A - Active
Standing	G - Good
State	KY
File Date	11/13/2015
Organization Date	11/13/2015
Last Annual Report	N/A
Principal Office	250 WEST MAIN STREET SUITE 2900 LEXINGTON, KY 40507
Registered Agent	MICHAEL G. ADAMS 101 SOUTH FIFTH STREET SUITE 2500 LOUISVILLE, KY 40202

Current Officers**Individuals / Entities listed at time of formation**

Director	<u>KELLY KNIGHT</u>
Director	<u>JOE CRAFT</u>
Director	<u>RICK CHRISTMAN</u>
Incorporator	<u>MICHAEL G. ADAMS</u>

Images available online

Documents filed with the Office of the Secretary of State on September 15, 2004 or thereafter are available as scanned images or PDF documents. Documents filed prior to September 15, 2004 will become available as the images are created.

<u>Articles of Incorporation</u>	11/13/2015	5 pages	<u>tiff</u>	<u>PDF</u>
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Assumed Names**Activity History**

Filing	File Date	Effective Date	Org. Referenced
Add	11/13/2015 1:56:58 PM	11/13/2015	

Microfilmed Images

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0937015.09	amcray ADD
Alison Lundergan Grimes Kentucky Secretary of State	
Received and Filed: 11/13/2015 1:56 PM	
Fee Receipt: \$8.00	

**ARTICLES OF INCORPORATION
OF
BEVIN-HAMPTON INAUGURAL, INC.**

The undersigned, the sole incorporator, hereby executes these Articles of Incorporation for the purpose of forming, and does hereby form, a nonprofit corporation under the Kentucky Nonprofit Corporation Acts (the "Act") in accordance with the following provisions:

**ARTICLE I
NAME**

The name of the corporation is Bevin-Hampton Inaugural, Inc. (the "Corporation").

**ARTICLE II
PURPOSES, POWERS, PROHIBITIONS AND DISSOLUTION**

The Corporation is organized, and shall be operated, as a nonprofit corporation exclusively for the promotion of social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code of 1986, as now in effect or as may hereafter be amended (the "Code"). In particular, the Corporation's purposes are to plan, coordinate, provide a source of funds, and stage events related to the inauguration of newly elected constitutional officers in the Commonwealth of Kentucky and all activities incident or related thereto, including, without limitation, soliciting funds to defray the expenses associated with some or all of such activities.

Provisions for the regulation of the internal affairs of the Corporation, including provisions for distribution of assets on dissolution or final liquidation, are as follows:

A. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, any member, director, or officer of the Corporation, or any other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered to or for the Corporation and to make payments and distributions in furtherance of the purposes set forth in this Article.

B. Notwithstanding any other provisions of these Articles of Incorporation, the Corporation shall not, directly or indirectly, carry on any activity that would prevent it from obtaining exemption from Federal income taxation as a corporation described in Code Section 501(c)(4) or cause it to lose such exempt status.

C. In the event of dissolution or final liquidation of the Corporation, all of the remaining assets and property of the Corporation shall, after paying or making provision for the payment of all of the liabilities and obligations of the Corporation and for necessary expenses thereof, be distributed in accordance with a plan of dissolution adopted by the Board of Directors; *provided, however*, that such plan is not inconsistent with any provision of the Act or any Code provision application to a corporation described in Section 501(c)(4) of the Code.

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ARTICLE III
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the Corporation's initial registered office is 101 South Fifth Street, Suite 2500, Louisville, Kentucky 40202, and the name of the Corporation's initial registered agent at that office is Michael G. Adams.

ARTICLE IV
PRINCIPAL OFFICE

The mailing address of the Corporation's principal office is 250 West Main Street, Suite 2900, Lexington, Kentucky 40507.

ARTICLE V
MEMBERS

The Corporation shall have no members except as may be provided in bylaws hereafter duly adopted by the board of directors.

ARTICLE VI
BOARD OF DIRECTORS

The business and affairs of the Corporation are to be conducted by a board of directors, the number to be set in the manner provided in the Bylaws; *provided, however*, that the board of directors shall not consist of less than three (3) persons. The Corporation shall have three (3) initial directors whose names and addresses are listed below:

Kelly Knight
1146 Monarch Street
Lexington, Kentucky 40513

Joe Craft
1146 Monarch Street
Lexington, Kentucky 40513

Rick Christman
2400 The Woods Lane
Lexington, Kentucky 40502

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ARTICLE VII
LIMITATION OF DIRECTOR LIABILITY

The directors of the Corporation shall be entitled to the benefits of all limitations on the liability of directors that are now or hereafter become available under the Act. Without limiting the generality of the foregoing, no director of the Corporation shall have any personal liability to the Corporation for monetary damages for breach of his or her duties as a director; *provided, however*, that this provision shall not eliminate or limit the liability of a director (i) for any transaction in which the director's personal financial interest is in conflict with the financial interests of the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law, or (iii) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article shall be prospective only and shall not affect, to the detriment of any director, any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE VIII
INDEMNIFICATION

Each person who is or was a member, director, trustee, officer or employee of the Corporation, whether elected or appointed, and each person who is or was serving at the request of the Corporation as a member, director, trustee, officer or employee of another corporation, whether elected or appointed, including the heirs, executors, administrators, or estate of any such person, shall be indemnified by the Corporation to the full amount against any liability, and the reasonable cost or expense (including attorney fees, monetary or other judgments, fines, excise taxes, or penalties and amounts paid or to be paid in settlement) incurred by such person in such person's capacity as a member, director, trustee, officer, or employee or arising out of such person's status as a member, director, trustee, officer, or employee; *provided, however*, no such person shall be indemnified against any such liability, cost, or expense incurred in connection with any action, suit, or proceeding in which such person shall have been adjudged liable on the basis that personal benefit was improperly received by such person, or if such indemnification would be prohibited by law. Such right of indemnification shall be a contract right and shall include the right to be paid by the Corporation the reasonable expenses incurred in defending any threatened or pending action, suit, or proceeding in advance of its final disposition; *provided, however*, that such advance payment of expenses shall be made only after delivery to the Corporation of an undertaking by or on behalf of such person to repay all amounts so advanced if it shall be determined that such person is not entitled to such indemnification.

Any repeal or modification of this Article shall not affect any rights or obligations then existing. If any indemnification payment required by this Article is not paid by the Corporation within 90 days after a written claim has been received by the Corporation, the member, director, trustee, officer, or employee may at any time thereafter bring suit against the Corporation to recover the unpaid amount and, if successful in whole or in part, such person shall be entitled to be paid also the expense of prosecuting such claim.

The Corporation may maintain insurance, at its own expense, to protect itself and any such person against any such liability, cost, or expense, whether or not the Corporation would have the power to indemnify such person against such liability, cost, or expense under the Act or under this Article, but it

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shall not be obligated to do so. The indemnification provided by this Article shall not be deemed exclusive of any other rights which those seeking indemnification may have or hereafter acquire under any bylaw, agreement, statute, vote of board of directors, or otherwise. If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each such person to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated or by any other applicable law.

Article IX - Incorporator

The name and mailing address of the incorporator is:


Michael G. Adams, Esq.
101 South Fifth Street, Suite 2500
Louisville, Kentucky 40202

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IN WITNESS WHEREOF, the undersigned, being the sole Incorporator of the Corporation, does hereby execute these Articles of Incorporation effective as of the Effective Date.


Michael G. Adams, Sole Incorporator

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