

# State of South Carolina State Ethics Commission

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SEC AO2017-002

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**SUBJECT:** Campaign Services Performed by Candidate's Business, a Family Business, or Family Member

**SUMMARY:** Section 8-13-1348 has no general prohibition on a candidate paying for services to his own business, a family business, or a family member provided the services were *bona fide*. In all such cases, payment for the services provided must represent fair market value and documentation must be maintained justifying the services performed and payment made. Certain categories of payment to family members and family businesses, such as for general consulting services, are inherently suspect, and can only be made if the person receiving the payment is in the business (in addition to the fair market value and documentation requirements).

**QUESTION:**

Is it a violation of S.C. Code § 8-13-1348 or another provision of the Ethics Act for a candidate to use campaign funds to pay for services performed by a the candidate's business, a family business, or a family member?

**APPLICABLE LAW:**

S.C. Code § 8-13-1348 provides in part:

(A) No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign

materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

#### DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; S.C. Code § 2-17-15 et. seq. and S.C. Code § 8-13-100 et. seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

There is little guidance, either in the Ethics Act itself or Commission Advisory Opinions, on whether expending campaign funds for services rendered by a candidate's business, a family business, or a family member would *per se* be a "personal" campaign expenditure, and therefore violative of Section 8-13-1348. Being mindful of the principle that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature,"<sup>1</sup> the Commission must examine Section 8-13-1348 to determine if such an outright prohibition should be read into the statute. If Section 8-13-1348 is read too stridently, it can lead to some absurdities in application. For example, a candidate who owns a lawn-mowing business could not use that business to mow the lawn surrounding campaign headquarters or a candidate who owns an office supply business could not purchase pens and notepads from the store for his campaign. In our view, these are situations that the legislature could not have intended to prohibit.

Having determined that it is not *per se* impermissible, the Commission acknowledges that using campaign funds for services rendered by a candidate's business, a family business, or a family member is a practice susceptible to abuse. Accordingly, this general statement of permissibility comes with several caveats, the paramount one being that the expenditures must be *bona fide*. Put another way, the expenditures must be genuine and not an artifice to enrich a candidate's businesses with campaign funds. If campaign funds are being used for a tangible, easily documentable service, then the Commission presumes that this service is presumably *bona fide* so long as a receipt can be provided. In addition to the previously cited examples, if a candidate or his family owns a printing shop, a catering business, or a cleaning service, we do not read the Ethics Act as forcing the candidate to employ the services of a competitor. However, when wage payments for services such as "sign removal," "phone calls," "canvassing," or "general campaign work" are made to family members, due to the vague nature of this work, the potential for abuse is greater. In order to reflect the very high potential for abuse when candidates expend campaign funds on their own business, a family business, or a family member, the Commission is issuing the following guidelines to ensure that the services are indeed *bona fide*.

First, it is crucial that fair market value be paid by a candidate for campaign services under these circumstances. Fair market value for campaign payments is not a new requirement being introduced by this opinion, but it is a point worth emphasizing in this discussion. The

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<sup>1</sup> Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Commission is very concerned about a candidate circumventing the Ethics Act by overpaying for work. For example, it would violate the Ethics Act for a family member to perform \$500 worth of work for a campaign, and then be paid \$2,000 for his or her services. In that example, we would consider that an illegal conversion of campaign funds for personal use in the amount of \$1,500. Conversely, if a person was underpaid for his services, then Section 8-13-1348 would not be implicated, but it would be considered an in-kind contribution and therefore reportable.

Second, in the case of a candidate paying campaign services to his own business, a family business, or to family member, heightened scrutiny is appropriate for the Commission to verify that these payments are *bona fide*, rather than an illegal conversion to personal use. In such cases, we heretofore require additional documentation that justifies the campaign expenditures. With tangible services, a receipt may be sufficient. But in the case of wage work, a detailed statement of the work performed and payment made is required. Such documentation must be maintained and provided to the Commission upon request, and absent this information we would not presume such services to be *bona fide* campaign expenditures.

Finally, the Commission has the greatest concern with vague and ill-defined expenditures to a candidate's business, a family business, or a family member relating to "consulting," "advising," or similar services from which no tangible work product derives. In such an instance, without at least a requirement of documentation, the Commission's enforcement of Section 8-13-1348 would be near impossible. In these cases, in addition to the fair market value and documentation requirements, the person or business receiving the money must actually be in the business for which they are receiving payment. Using the example of a candidate paying his spouse \$10,000 in campaign funds for a catch-all "political consulting services," this expenditure would be permissible only if the spouse is in the political consulting business.

Therefore, the Commission issues this opinion to advise that the guidelines contained herein must be followed by all candidates within the Commission's jurisdiction.