

SUBJECT: FORMER PUBLIC OFFICIAL'S USE OF CAMPAIGN FUNDS TO PAY LEGAL EXPENSES INCURRED DEFENDING LAW SUIT RELATIVE TO OFFICIAL ACTIONS WHILE IN OFFICE

SUMMARY:

A former county council member may use her excess campaign funds to defray legal expenses stemming from the defense of a law suit directly related to her official vote on a county reapportionment plan. The former council member may also deposit unsolicited contributions for her legal defense into her campaign account and report them on her Disclosure Form.

QUESTION:

Two members of the Richland County Council have sued six other present and former members seeking both actual and punitive damages against the six defendants personally. The law suit is based upon the defendant's votes in open sessions of Council regarding a proposed county redistricting plan. One of the defendants, who is no longer on county council, requests an advisory opinion concerning her campaign account.

DISCUSSION:

This opinion is rendered in response to a letter dated January 4, 1993 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

**1. I have money left in my Political Fund that I would like to apply to my legal fees which are not covered by the South Carolina Insurance Reserve Fund. Already, the six defendants have incurred legal fees of almost \$5,000, and the case has not been heard yet. Is this applicable?**

Section 8-13-1348(A) provides as follows:

(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 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** (emphasis added).

Similarly, Section 8-13-1370(A)(1) provides that amounts received by a candidate as campaign

contributions which are in excess of expenditures may be used by the candidate upon final disbursement "to defray ordinary and necessary expenses **incurred in connection with his duties in his public office**" (emphasis added).

"Candidate" is defined in Section 8-13-1300(4) as follows:

'Candidate' means a person who seeks appointment, nomination for election, or election to a statewide or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election. 'Candidate' does not include a candidate within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976.

In accordance with this definition, an individual may be deemed a "candidate" when he authorizes or knowingly permits either the collection or disbursement of money to promote his candidacy or election. Thus, it is not necessary for one to be holding office or actively seeking nomination for election or election to an office in order to be considered a "candidate". Based on the facts submitted, the former council member appears to fall within this definition since she has knowingly maintained her campaign account and desires to make disbursements therefrom. The remaining salient issue, therefore, is whether the purpose of the expenditure is deemed to be an ordinary and necessary expense incurred in connection with the former member's duties as a holder of elective office. Although the term "ordinary and necessary" is not defined within the Ethics Reform Act, the State Ethics Commission notes that it is difficult to imagine a more ordinary and necessary duty of a county council member than casting official votes. Thus, a law suit which emanates solely from a public official's vote on a measure legitimately before that public body cannot be considered "unrelated to the office" within the meaning of Section 8-13-1348(A). For all these reasons, the State Ethics Commission advises that the former council member may use her excess campaign funds to defray legal expenses stemming from the defense of a law suit directly related to her vote on the county reapportionment plan. Any such payments, of course, should be reported and clearly identified as an expenditure on the appropriate Campaign Disclosure Form.

**2. I sent a letter of explanation concerning this law suit to constituents and supporters. As a result, although I did not ask for contributions, I have received five or six checks. May I deposit these in my Political Fund and report them on the Disclosure Form, or should they be kept separately?**

Section 8-13-1312 provides in part that, "All contributions received by the candidate or committee, directly or indirectly, must be deposited in the campaign account by the candidate or committee within ten days after receipt." Again, the use of the term "candidate" with respect to a former office holder is not a stumbling block vis-a-vis the application of this code section for the reasons previously discussed.

"Contribution" is defined in Section 8-13-1300(7) as follows:

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'Contribution' means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money, or anything of value made to a candidate or committee to influence an election or ballot measure; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge.

The State Ethics Commission notes that the first clause of this definition makes a contribution dependent upon whether the "...gift, subscription, loan ...[is] made ...to influence an election or ballot measure." The Commission recognizes that the payment of a public official's legal expenses ordinarily would not be made to influence an election or ballot measure, and thus arguably, not a "contribution". However, the Commission also notes that the second clause of the above-quoted definition, which begins after the semicolon, does not appear to be modified by the language concerning a necessary intent to influence. In fact, the second clause includes within the definition of "contribution", "...payment or compensation for the personal service of another person (such as an attorney) which is rendered **for any purpose** (emphasis added) to a candidate ...without charge". The State Ethics Commission believes this clause principally refers to compensating a volunteer for services performed on behalf of a candidate; nevertheless, given the breadth of this language as well as the Ethics Reform Act's partiality for maintaining accountability, the Commission advises that such amounts paid to offset a candidate's legal expenses should be regarded as "contributions" for the purposes of the Act. Furthermore, in accordance with Section 8-13-1312, these amounts should be deposited in the former council member's campaign account within ten days of receipt and duly reported on the appropriate Campaign Disclosure Form.