

SEC AO2003-006

March 19, 2003

SUBJECT: ACCEPTABLE EXPENDITURES FROM CAMPAIGN FUNDS

SUMMARY: The Ethics Reform Act permits an expenditure from the candidate's campaign account for expenses related to the campaign or the office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office. However, charitable contributions and contributions to the political parties and their committees may only be made at final disbursement.

QUESTION: The State Ethics Commission has requested an Advisory Opinion to provide guidelines on the use of campaign fund expenditures by candidates and elected officials.

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; Section 2-17-5 et seq. and Section 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. Failure to disclose relevant information may void the opinion.

The State Ethics Commission is mindful that, unlike federal guidelines, the Ethics Reform Act does not provide a laundry list of acceptable expenditures to be made from campaign funds and prohibited expenditures. The State Ethics Commission has issued only one opinion addressing the acceptable use of campaign funds. Commission staff has relied on a House Legislative Ethics Committee Memorandum to provide guidance to candidates and public officials after the fact.¹ Each auditing cycle a number of

¹ S.C. House Legislative Ethics Committee Memorandum, March 27, 1996.

expenditures are questioned and the candidate is asked to explain the expenditure in light of the analysis set out in the House Ethics' memorandum. The State Ethics Commission seeks to provide guidance prior to a candidate or public official making the questionable expenditure.

The applicable section of the Ethics Reform Act is Section 8-13-1348 which 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.

In addition, the Act addresses expenditures at final disbursement in the following sections:

Section 8-13-1340 provides:

- (A) A candidate may not make a contribution to another candidate or make an independent expenditure on behalf of another candidate.
- (B) This section does not prohibit a candidate from:
 - (1) making a contribution from the candidate's own personal funds on behalf of the candidate's candidacy or to another candidate for a different office; or
 - (2) providing the candidate's surplus funds or material assets upon final disbursement to a legislative caucus committee or party committee in accordance with the procedures for the final disbursement of a candidate under Section 8-13-1370 of this article.
- (C) Assets or funds which are the proceeds of a campaign contribution and which are held by or under the control of a public official or a candidate for public office on January 1, 1992, are considered to be funds held by a candidate and subject to subsection (A).

Section 8-13-1370 provides:

- (A) Contributions received by a candidate that are in excess of expenditures during an election cycle must be used by the candidate upon final disbursement:
- (1) to defray ordinary and necessary expenses incurred in connection with his duties in his public office;
 - (2) to be contributed to an organization exempt from tax

under Section 501(c)(3) of the Internal Revenue Code of 1986, a political party, or a committee;

(3) to be maintained in the campaign account for a subsequent race for the same elective office;

(4) to further the candidacy of the individual for a different elective office. However, after December 31, 1992, the funds must be used in a campaign for a different elective office only as provided for in Section 8-13-1352;

(5) to be returned pro rata to all contributors;

(6) to be contributed to the state's general fund; or

(7) to be distributed using a combination of these options.

(B) No candidate may expend contributions for personal use.

(C) A committee required to file reports under this article which has an unexpended balance of funds upon final disbursement not otherwise obligated for expenditures incurred to further the committee's purposes must designate how the surplus funds are to be distributed. The surplus funds must be:

(1) contributed to the state's general fund;

(2) returned pro rata to all contributors;

(3) contributed to a political party or to another committee;

(4) contributed to an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986; or

(5) distributed using a combination of these options.

A statute must be construed in accordance with its plain and ordinary meaning. The General Assembly plainly stated in the Ethics Reform Act that expenditures to political parties and committees may be made at final disbursement. See Sections 8-13-1340(B)(2) and 8-13-1370. The General Assembly drafted Sections 8-13-1340(B)(2) and 8-13-1370 with specificity; and therefore, specifically provided for the means by which a contribution may be made to a political party or committee from a candidate's campaign account. In addition, the same specificity applies to Section 8-13-1370(A)(2) relating to expenditures to charitable organizations. Such contributions can be made from campaign funds at final disbursement, as they are not expenses related to the campaign nor are they expenses normally incurred in connection with an elective official's duties.

As Section 8-13-1348 notes, campaign funds may be used for expenses related to the campaign or the office and campaign funds may be used to "defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Section 8-13-1348 gives the public official and candidate broad discretion in determining what is an ordinary expense or related campaign expense.

Clearly, a candidate or public official may use campaign funds to pay for campaign advertising for himself, pay campaign workers, pay for polls, and pay the rent on the campaign mailbox. Equally clear, a candidate or public official may not use campaign

funds to pay his mortgage or car loan or groceries or his child's tuition. In addition, at no time may a candidate or elected official make an expenditure out of his campaign funds to another candidate's campaign.

CONCLUSION:

The Ethics Reform Act permits an expenditure from the candidate's campaign account for expenses related to the campaign or the office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office. However, charitable contributions and contributions to the political parties and their committees may only be made at final disbursement.

KEY WORDS:	expenditure
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ANNOTATIONS:	8-13-1348, 8-13-1340, 8-13-1370
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