

# State of South Carolina

## State Ethics Commission

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**SEC AO2019-001**

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**SUBJECT:** Use of Campaign Funds to Pay Fines or Penalties Imposed by the State Ethics Commission for Violations of the Ethics Act

**SUMMARY:** Section 8-13-1348 of the Ethics Act prohibits the use of campaign funds to pay fines or penalties imposed by the State Ethics Commission for violations of the Ethics Act.

**QUESTION:** State Ethics Commission staff has requested a formal Advisory Opinion to provide clarity on whether campaign funds may be used to pay fines or penalties imposed by the State Ethics Commission for violations of the Ethics Act. Commission staff asks that this opinion be issued on a prospective basis only.

**APPLICABLE LAW:**

Section 8-13-1348(A) provides:

No candidate, 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 (Commission) jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Ethics Act). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The Ethics Act permits campaign funds to be used to pay for expenses related to a campaign or public office and permits campaign funds to be used to defray any ordinary expenses incurred in connection with an individual's duties as an office holder. SEC AO2003-006. Based on a review of prior Commission Advisory Opinions, it appears that the Commission has never formally considered whether campaign funds may be used for the payment of fines or penalties imposed by the Commission for violations of the Ethics Act. "Prior Commission Advisory Opinions interpreting Section 8-13-1348 are limited. The terms 'personal' and 'unrelated to the campaign' are not defined in the Ethics Act and the Ethics Act itself provides no clear guidance on what is and is not an acceptable expenditure from campaign funds." SEC AO2016-004.

Turning to other sources of relevant, persuasive authority, the Commission recognizes that the South Carolina House Ethics Committee (HEC) has issued a number of Advisory Opinions on this subject. In HEC AO92-3, the HEC articulated the following test to evaluate the general permissibility of a campaign expenditure:

Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. [Section] 8-13-1348 . . . specifies that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expense or instead a personal expense not connected to the ordinary duties of the office.

Subsequently, the HEC specifically prohibited the use of campaign funds to pay fines and penalties received "as a result of office (for example, a fine for failing to timely file a required report)," reasoning such expenses "are related more to a member's conduct" and that "to allow a member to pay his personal fines with campaign funds would be in violation of the spirit of the Ethics Act." HEC AO2000-1; HEC AO2016-2. In contrast, the South Carolina Senate Ethics Committee (SEC) allows such fines and penalties to be paid from campaign funds provided the transaction is reported as an expense on the proper campaign disclosure report. SEC Memorandum, August 13, 2009.

Section 8-13-1348 allows campaign funds to be used for expenses related to a campaign or public office or "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Here, the Commission finds the HEC's reasoning persuasive and holds that fines or penalties imposed by the Commission are not "related to the campaign or the office," nor are such expenses "ordinary" for purposes of Section 8-13-1348. Accordingly, using campaign funds to pay fines or penalties imposed by the Commission for violations of the Ethics Act is prohibited. The Commission accepts the recommendation of Commission staff that this Opinion be issued on a prospective basis only.