

Wallace H. "Jay" Jordan, Jr.
Chairman

J. David Weeks
Vice-Chairman

House Legislative Ethics Committee

Beth E. Bernstein
Secretary

Paula Rawl Calhoun
Micajah P. "Micah" Caskey IV
Neal A. Collins

Julia J. Foster
Chief Legal Counsel

Lauren G. Trask
Assistant Legal Counsel



John Richard C. King
Robert Robbins
J. Todd Rutherford
Leonidas E. "Leon" Stavrinakis

Kiara Richardson
Executive Assistant

P.O. BOX 11867
519 BLATT BUILDING
COLUMBIA, SC 29211
TELEPHONE: (803) 734-3114
FAX: 803-734-8795

ADVISORY OPINION 2024 - 1

The House Legislative Ethics Committee has received questions from Members concerning third party processors and the filing requirements for processing fees when contributors pay them directly, as opposed to when the fees are deducted by the third party processor from the contribution.

Pursuant to House Rule 4.16C(5), the Committee renders the following advisory opinion.

DISCUSSION

Previously, the Committee advised in HEC 2018-6 that "a candidate or a Member may use a Third-Party On-Line account to receive campaign contributions; provided that the Third Party is able to provide to the candidate or Member the required information for the candidate or Member to meet all of the disclosure requirements set forth in the Ethics Act provisions." The Committee also noted "[d]ue to the differences in the electronic transfer platforms, Members and Candidates are cautioned to carefully review their system of choice to ensure that information required under South Carolina's Ethics Government Accountability and Campaign Reform Act of 1991 (the Ethics Act) provisions are captured and available for required reports."

When addressing the processing fees of the third-party processors, many states differ in their reporting requirements as to whether or not a fee paid by a contributor must be reported as an expenditure on a campaign disclosure report. Some states see this fee paid by the contributor as an additional contribution, even though it never reaches the candidate's or Member's campaign bank account, while other states view this as a separate business transaction between the contributor and the third-party processor. Pursuant to S.C. Code Ann. § 8-13-1308 and S.C. Code Ann. § 8-13-1312, any payments made out of a candidate's or Member's campaign bank account must be reported as an expenditure on his or her campaign disclosure report. Therefore, if a processing fee is paid out of a campaign bank account, it must be reported as an expenditure. However, a processing fee, required by the third-party processor, paid prior to the contribution being transferred from the third-party processor to a candidate's or Member's campaign bank account would not be reflected in the bank account statement of the candidate or Member based

on that amount being retained by the third-party processor prior to the contribution transfer. If the processing fee was taken out of the contribution prior to transfer by the third-party processor (not paid separately by the contributor), then this processing fee must be reported as an expenditure on a candidate's or Member's campaign report.

Additionally, as HEC 2018-6 noted, Montana adopted the Administrative Rule 44.11.408, which clarified the rules regarding electronic contribution reporting. Specifically, this Administrative Rule provided:

(1) A candidate or political committee may accept electronic contributions from online payment service providers and payment gateways as contributions.

...

(b) A contribution made through an online service provider, such as Paypal or Google Wallet, shall be deposited in the campaign account.

...

(2) All electronic contributions shall be reported according to the requirements for contributions set out in these rules.

(a) An electronic contribution shall be reported as received on the day the electronic contribution is made to the online service provider or payment gateway, regardless of whether the contribution has actually been received.

(b) The full value of the contribution shall be reported as received from the contributor, not the amount as received from the service.

(c) Each service charge or conversion fee incurred or discounted by the payment service provider shall be reported as a campaign expenditure in accordance with these rules.

...

(4) If the electronic contribution amount exceeds the candidate contribution limit, the contributor must be issued a refund for the excess funds via check or through an online payment system from the campaign account. If it is not possible to return only a portion of the funds, the entire contribution must be returned.

(5) All candidates and political committees that receive electronic contributions are subject to the same limits, prohibitions, reporting, and disclosure requirements as monetary contributions, as outlined in these rules.

(5) All candidates and political committees that receive electronic contributions are subject to the same limits, prohibitions, reporting, and disclosure requirements as monetary contributions, as outlined in these rules.

Montana Administrative Rule 44.11.408. (Emphasis added).

CONCLUSION

The Committee has already noted in HEC 2018-6 that “the full value of the contribution received online must be reported on the candidate or Member’s CD report. Also, the service charge or maintenance fee incurred must also be reported under ‘expenditures’ on the candidate or Member’s CD report. The total amount of the maintenance fees for the quarter can be reported rather than the individual maintenance fee for each contribution.” The Committee would clarify that expenditures from a third-party processor account prior to the monies being transferred to a

campaign bank account are not allowed with an exception, however, for the processing or maintenance fees that may be automatically withdrawn by the third party processor. As previously noted, these fees must be reported as an expenditure on the campaign disclosure report of the candidate or Member. Finally, if the processing fee is paid separately by the contributor to the third-party processor, then that processing fee should not be noted on the candidate's or Member's campaign disclosure report.

Adopted April 25, 2024.