

Senate Ethics Committee



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ADVISORY OPINION # 92-14

MEMORANDUM

To: Members, South Carolina Senate
From: Senate Ethics Committee
Re: Transfer of Political Campaign Funds to Another Campaign Account
Date: December 23, 1992

A question has arisen as to whether a member may "transfer political campaign funds to a political campaign account for a statewide constitutional office, and if the campaign for statewide office does not materialize, may the [member] then return the funds to the Senator's original campaign account?"

Section 8-13-1370(A)¹ provides that:

¹ Subsection (B) relates to committees and is virtually identical in terms of substance to subsection (A) except for subitem (1), relating to defraying ordinary expenses incurred in connection with the member's public office. The Committee recognizes that many members organized their campaign by creating a committee and although the reference to expenses associated with an office is not in subsection (B), the Committee concludes that members may expend campaign funds for the purposes outlined in subsection (A)(1) even if they organized in committee form.

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.
- [Emphasis added].

Section 8-13-1352 provides that, notwithstanding the provisions of Section 8-13-1350²:

A candidate may use or permit the use of contributions solicited for or received by the candidate to further the candidacy of the individual for an elective office other than the elective office for which the contributions were received if:

- (1) the person originally making the contribution gives written authorization for its use to further the candidacy of the

² In pertinent part, Section 8-13-1350(A) provides that "[a] candidate for elective office may use or permit the use of contributions solicited for or received by the candidate for that office to further the candidacy of the individual for a different office as long as the contributions have been received on or before December 31, 1992, and have been transferred to a campaign account for the different office on or before December 31, 1992."

individual for a specific office which is not the office for which the contribution was originally intended; and
(2) the contribution is otherwise permitted by law.

Therefore, prior to December 31, 1992, a member is free to transfer any or all funds from his Senate campaign account to a campaign account for a different office without seeking a release or authorization from each contributor. After December 31, 1992, written authorization from each contributor is required to use the funds to further the candidacy for a different office and the authorization must specify the office for which the individual intends to offer as a candidate.

The next portion of the inquiry relates to whether a member may return the transferred funds from the "new statewide campaign account" back to his original Senate campaign account. It is assumed that this transfer will take place after December 31, 1992. As stated earlier, Section 8-13-1352 specifies that, notwithstanding the provisions of Section 8-13-1350, specific written authorization is required to transfer funds from a campaign account to another campaign account "which is not the office for which the contribution was originally intended" Given that the contributions were to further the member's candidacy for the Senate, it is unnecessary to require a written authorization to return that money so that it may be used for the purpose for which it was originally intended. Thus, since funds originally removed from a candidate's Senate campaign fund may be transferred back to a Senate campaign fund without written authorization, it is essential that the funds originally removed from the Senate campaign account be distinguished from contributions made to the statewide constitutional officer account. To determine the amount of "senate funds" which may be appropriate to transfer back to the member's original account, the aggregate expenditures as well as any accrued interest should be allocated pro rata in relation to the amount of the original transfer versus the new contributions given to the statewide constitutional office account.

Contributions to the statewide constitutional officer account, however, would have to remain in that account unless a written authorization is obtained pursuant to Section 8-13-1352 to transfer those "statewide funds" to the Senate campaign account. Additionally, when transferring contributions made to the statewide constitutional account to the Senate campaign account, special consideration must be taken so as not to exceed the contribution limit of \$1,000 per donor for the election cycle which begins January 1, 1993.

Although it could be asserted that the Ethics Commission would have jurisdiction to determine the appropriateness of the transfers described above, the Committee concludes that the question relates

to what is appropriate to transfer into the campaign account of a member of the Senate, thereby coming within the purview of this Committee. When done in the manner described above, the Committee concludes that the transfer of campaign funds back to the original Senate campaign account is permissible without written authorization when the transfer relates only to funds which were taken from the senator's account prior to December 31, 1992.

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