

Senate Ethics Committee

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ADVISORY OPINION #93-4

To: Members, South Carolina Senate

From: Hugh K. Leatherman, Sr.
Chairman, Senate Ethics Committee

Date: April 29, 1993

Re: Guidelines for Determining Permissible Use of Excess
Campaign Funds

The Committee is increasingly being asked to decide whether a particular expenditure is permissible under Section 8-13-1348(A). That section prohibits expenditure of excess campaign funds for personal use but allows expenditures "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office."

The Committee believes that the phrase "ordinary expenses incurred in connection with an individual's duties" as an officeholder is intentionally broad and that the determination whether a particular expense is permissible is by design left largely to the discretion of the member. While the Committee will continue to address requests for advisory opinions on specific expenditures of excess campaign funds, the Committee believes it may be more helpful to members to offer the following guidelines to aid members in expending excess campaign funds.

In determining whether a particular expenditure is permissible, a member should ask: (A) Is the expenditure "ordinary", that is, is the expense something "commonly encountered" or "usual" for a holder of public officer in the member's position?¹; (B) is the expense incurred in connection with a member's duties as an officeholder, that is, would the member make the expenditure if he or she were not a holder of public office?; and (C) will the member realize no personal gain, aside from any benefit received by the public at large, from making the expenditure?

¹The American Heritage Dictionary, 2d ed. (Boston: Houghton Mifflin Company, 1985), p. 875.

The first question takes into account local or cultural differences related to what is expected of an elected official in a particular district. A member should determine whether an expenditure is customary or usual for his district. The second question addresses directly the requirement that the expense be office or campaign related. If the member would not be making the expense but for his office, then the expense is office or campaign related. The third question addresses whether a member is indirectly converting campaign funds to personal use. The member should receive no personal benefit from the use of campaign funds.

The following hypothetical situations illustrate how the guidelines might be applied.

Example A. A member receives an invitation to a wedding or graduation which he otherwise would not receive except for his office. The member may choose to purchase wedding gifts from his campaign funds because the member has ascertained that it is common or usual for members in his position to receive invitations from persons with whom he has no personal relationship, that he would not receive or respond to such invitation were it not for his office, and that he will receive no personal benefit from responding to the invitation.

A similar situation exists when members purchase flowers or other memorials for funerals of constituents from campaign funds but use personal funds when the deceased is a relative or close friend of the member.

Example B. A member joins a civic organization as a way to keep in touch with the civic leaders in her district. The member would not otherwise be a member of the organization except for her office and receives no personal gain from being a member. The member may pay the dues of the organization from her campaign funds.

Assume the same facts except that the Senator was a member of the civic organization prior to being elected. The expenditure from campaign funds to renew her membership would probably not be appropriate because the member cannot say that she would not have made the expenditure but for her office.

Example C. A member makes a large contribution to a university athletic organization and in return gets preferred parking at games or special access to tickets. Because the member realizes personal gain as a result of this contribution, the contribution should not be made from campaign funds.

Example D. A member takes a group of civic leaders, including friends of the member, out to dinner for campaign or politically related reasons. The member may pay for the dinner from campaign funds.

A member goes to dinner with the same civic leaders who are his friends but the dinner is purely personal. The member should not pay from his campaign funds.

Example E. A member takes a trip to California with his family and goes to Disneyland and other tourist attractions. While on the trip, the member goes to the library and reviews a book on campaigning or government. The member should not pay for this trip from campaign expenses because it is not usual or customary and because the member realizes personal benefit from the trip.

The above examples point to the difficulty of fashioning a set rule to cover every conceivable situation. As stated earlier, the Committee believes that the Ethics Act intentionally grants each member the discretion to make good faith determinations on how to use his or her excess campaign funds. The Committee is confident that the strict reporting and disclosure requirements of §8-13-1358 make members ultimately accountable to the public, constituents, and contributors for those determinations.