

OPINION 1997-1

TO: MEMBERS OF THE SENATE OF SOUTH CAROLINA
FROM: THE SENATE COMMITTEE ON ETHICS
DATE: APRIL 3, 1997
RE: OPINION 1997-1

The Committee on Ethics has received the following request that we feel should be answered through this Opinion:

Can a Member who previously ran for the Senate in an unsuccessful campaign prior to the passage of the Ethics Act be repaid moneys lent by him to that campaign that exceed the \$10,000 cap. Further, if the Member can be repaid, can the repayment be accomplished with moneys in his current campaign account?

In answering this question, the Committee would like to direct the attention of the Members to the following Sections of *The Ethics, Government Accountability and Campaign Reform Act of 1991 with Amendments Effective January 12, 1995*.

Section 8-13-1314(A)(1)(b), "Within an election cycle, no candidate or anyone acting on his behalf may solicit or accept: (1) a contribution which exceeds: (b) one thousand dollars in the case of a candidate for any other office;" [any other office are those other than statewide, in this case Senate campaigns]

Section 8-13-1328(B), "A candidate for an elective office other than those specified in subsection(A) or a family member of a candidate for an elective office other than those specified in subsection(A) **must not be repaid**, for a loan made to the candidate, more than **ten thousand dollars** in the aggregate after the election." [emphasis added]

Section 8-13-1318, "If a candidate has a debt from a campaign for an elective office, the candidate may accept contributions to retire the debt, even if the candidate accepts contributions for another elective office or the same elective office during a subsequent election cycle, as long as those contributions accepted to retire the debt are: (1) The

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within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred; and (2) reported as provided in this article.

Article 15, Section 8, "This act takes effect January 1, 1992...Except as otherwise provided, this act governs only transactions which take place after December 31, 1991."

In researching this question, a pertinent Opinion issued by the State Ethics Commission was located. SEC Opinion A092-203 issued on May 27, 1992, speaks to a very similar situation. In its Opinion, the Commission allowed a former candidate for the office of Lieutenant Governor in 1990 to raise funds for debt retirement. The summary of this Opinion states:

"A former candidate who is retiring a debt from a 1990 election campaign is not restricted in the amount of contributions which may be accepted, in accordance with Section 8-12-1318." [emphasis added] {a copy of SEC A092-203 is attached to this opinion}

The situation we are addressing is slightly more complicated due to the fact that the debts being addressed result from a 1987 campaign and are owed to a sitting Member of the Senate. However, we must concur with the Opinion of the State Ethics Commission, outlined above, as a basis for this Opinion.

The quoted Sections of *The Ethics, Government Accountability and Campaign Reform Act of 1991 with Amendments Effective January 12, 1995*, allow candidates who incurred debts prior to January 1, 1992, to continue to operate under the previous Ethics Laws until such time as the debts are paid in full. This Opinion only applies to those Members/candidates who continue to owe money to themselves or a financial institution for campaigns conducted and debts incurred prior to January 1, 1992.

The Member can repay personal loans made prior to January 1, 1992, that exceed the \$10,000 current cap since there was no cap in effect prior to the passage of our current Ethics Act. The Member, however, cannot use funds from his current campaign account to reimburse himself for loans made prior to January 1, 1992.

Members and candidates who feel that they can exercise this option and collect contributions for debts incurred prior to January 1, 1992, should be cautious and remember that in rendering this Opinion the Committee on Ethics assumes that the

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contributions collected are solely for the purpose of retiring the debt spoken to above and that no part of the contributions will be used by the Member for future Senate campaigns.

Those who are paying off a previous campaign debt must submit to this Committee quarterly Campaign Disclosure Forms separate from those submitted for their current campaign accounts. These forms will be made a part of the Members' ethics files and, of course, will be open for public inspection.