

OPINION 1997-4

SENATE COMMITTEE ON ETHICS

NOVEMBER 13, 1997

The Senate Committee on Ethics has received the following question which we feel should be answered through this Opinion:

"Can a Member use campaign funds for publishing a newspaper column or the printing and distribution of a newsletter to constituents?"

To answer this question, we direct the Member's attention to the following quoted Section of *The Ethics, Government Accountability, and Campaign Reform Act of 1991 With Amendments Effective January 12, 1995* and several quoted sections from previously issued Opinions of this Committee:

SECTION 8-13-1348

Use of campaign funds for personal expenses; certain expenditures to be in writing; expenditures not to exceed fair market value; petty cash funds.

(A) No candidate, committee, 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. [emphasis added]

ADVISORY OPINION #93-4, says in part,

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

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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 © will the member realize no personal gain, aside from any benefit received by the public at large, from making the expenditure?

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.

ADVISORY OPINION #93-7, says,

A question has again come before the Committee concerning the proper application of Section 8-13-1348. This provision provides that a candidate may not use campaign funds to defray personal expenses unrelated to the campaign but allows the expenditure of campaign funds to "defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office."

An expenditure for a family vacation would clearly be inappropriate whereas a contribution to the local chapter of Young Democrats or Young Republicans would be entirely appropriate. Although the principle underlying this code section is simple to express, when applied to factual situations that do not clearly fall at one of these polar extremes, a proper interpretation of this provision quickly and frequently becomes a conundrum.

Other related provisions within the same act can often

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

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provide meaning or insight when interpreting a vague provision. Section 8-13-1370 expressly authorizes an expenditure of campaign funds for charitable and other purposes upon final disbursement. One could reason that the presence of such specific language in Section 8-13-1370 and its omission from Section 8-13-1348 means that a contribution to a charitable organization prior to final disbursement is not appropriate. This reasoning, however, ignores the fact that Section 8-13-1370 expressly restricts disbursement to several specified items, while Section 8-13-1348 is devoid of such restrictions. Logic dictates that those acts that are not prohibited should be considered appropriate.²

In short, Section 8-13-1370, like most other provisions of the Ethics Reform Act, provides what is commonly referred to as bright-line tests which a member may use to determine what conduct is permissible or impermissible. By contrast, Section 8-13-1348 contains no such bright-line test.³ That the Committee has only issued twenty one advisory opinions given the comprehensive scope of the Ethics Reform Act is evidence that most provisions of this legislation provide clear, definitive guidance and that, upon a careful reading, the act is not an impenetrable labyrinth. Section 8-13-1348, however, provides little meaningful guidance to assist in determining what is an ordinary expense "incurred in connection with an individual's duties as a holder of elective office."

In those instances where the act does not clearly enumerate permissible and impermissible conduct, disclosure becomes a mechanism for public scrutiny and accountability. The Committee recognizes that what may be an "ordinary expense" in one district or area of the state may not be viewed as an "ordinary expense" in another, and public disclosure of these expenses should provide adequate limitations on unreasonable or

² Section 8-13-1348 is particularly troublesome because, unlike other provisions of the Ethics Reform Act, it provides no safe harbors or specific examples of expenditures which a member would objectively know are proper.

³ This sentence should not be taken to mean that one is permitted to do indirectly that which the act directly prohibits or that conduct inconsistent with the principles of the act would be condoned by this Committee.

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inappropriate expenditures. Although this Committee recognizes its responsibility to provide advisory opinions to members of the Senate, upon reflection, the Committee concludes that each individual member, rather than this Committee, must determine what expenses are ordinarily incurred in connection with an individual's duties as an office holder.⁴ Notwithstanding the placement of this responsibility, as a matter of prudence, this Committee strongly suggests that in those instances that present a close question, the member would be wise to not make the expenditure.

The wisdom of the suggested course of action is further reinforced by the fact that while the Committee is removing itself from an initial determination on expenditures made in reliance upon Section 8-13-1348, the Committee may be compelled to resolve the matter if and when a complaint against a member is filed.

Ordinary expenses used for purposes in connection with an individual's duties as a Member of The Senate of South Carolina are allowed. This would include the publishing of a newspaper column or the printing and distribution of a newsletter to constituents. In many districts this type of activity by elected representatives on all levels of government is expected.

With this Opinion we re-confirm our previously-issued Opinions. A Member can use campaign funds for the publishing of a newspaper column or the printing and distribution of a newsletter to constituents.

⁴ Therefore, while members may find Advisory Opinions #93-2 and #93-4 instructive, the Committee will not necessarily use these opinions as the bench mark in evaluating conduct, as this opinion shifts that burden to each member.