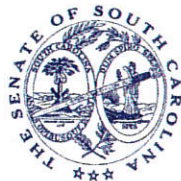


Senate Ethics Committee

SEAN M. BENNETT
CHAIRMAN



J. J. GENTRY
COUNSEL

MARGARET WRIGHT
EXECUTIVE ASSISTANT

205 GRESSETTE BUILDING
P.O. BOX 142
COLUMBIA, SOUTH CAROLINA 29202
(803) 212-6410
SETHICSCOMM@SCSENATE.GOV

ADVISORY OPINION 2020-2

DATE: March 11, 2020

SUBJECT: CAMPAIGN BANK ACCOUNTS

SUMMARY:

A candidate is required to establish a campaign bank account. A candidate shall not use a personal bank account as a campaign bank account. A candidate is required to establish a campaign bank account prior to paying a campaign expense, except an election filing fee, within ten days of receiving a campaign contribution, or within fifteen days of filing for election, whichever comes first.

QUESTIONS:

Is a candidate required to establish a campaign bank account? May a candidate use a personal bank account as a campaign bank account? When is a candidate required to establish a campaign bank account?

DISCUSSION:

South Carolina Code Section 8-13-1312 provides the statutory requirements for a campaign bank account.

“Except as is required for the separation of funds and expenditures under the provisions of Section 8-13-1300(7), a candidate shall not establish more than one campaign checking account and one campaign savings account for each office sought, and a committee shall not establish more than one checking account and one savings account unless federal or state law requires additional accounts. For purposes of this article, certificates of deposit or other interest bearing instruments are not considered separate accounts. A candidate's accounts must be established in a financial institution that conducts business within the State and in an office located within the State that conducts business with the general public. The candidate or a duly authorized officer of a committee must maintain the accounts in the name of the candidate or committee. An acronym must not be used in the case of a candidate's accounts. An acronym or abbreviation may be used in the case of a committee's accounts if the acronym or abbreviation commonly is known or clearly recognized by the general public. Except as otherwise provided under Section 8-13-1348(C), expenses paid on behalf of a candidate or committee must be drawn from the campaign account and issued on a check signed by the candidate or a duly authorized officer of a committee. All contributions

received by the candidate or committee, directly or indirectly, must be deposited in the campaign account by the candidate or committee within ten days after receipt. All contributions received by an agent of a candidate or committee must be forwarded to the candidate or committee not later than five days after receipt. A contribution must not be deposited until the candidate or committee receives information regarding the name and address of the contributor. If the name and address cannot be determined within seven days after receipt, the contribution must be remitted to the Children's Trust Fund." (S.C. Code Section 8-13-1312)

Is a candidate required to establish a campaign bank account?

Section 8-13-1312 provides that a candidate shall not establish more than one campaign checking account and one campaign savings account for each office sought. Use of the phrase "more than one" indicates the intent that a candidate is required to establish at least one campaign bank account. Likewise, the specific requirements that a candidate establish the campaign bank account in a South Carolina financial institution, maintain the campaign bank account in the candidate's name, pay campaign expenses from the campaign bank account, and deposit campaign contributions in the campaign bank account indicate the intent that a candidate is required to establish a campaign bank account.

Also, South Carolina Code Section 8-13-1308(B) provides that a candidate shall file campaign reports until the campaign bank account undergoes final disbursement. If a candidate were not required to establish a campaign bank account, there would be no way to determine when the candidate is no longer required to file campaign reports.

As well, Section 8-13-1348(C)(1) provides that a candidate shall use a written instrument, debit card, or online transfer to pay expenditures of more than twenty-five dollars drawn upon a campaign account. If a candidate were not required to establish a campaign bank account, there would be no mechanism for a candidate to pay campaign expenditures.

Moreover, Section 8-13-1370(A)(3) provides that a candidate may maintain campaign contributions in a campaign bank account that are in excess of expenditures during an election cycle for a subsequent race for the same elective office. If a candidate were not required to establish a campaign bank account, the candidate would not be able to maintain campaign contributions for a subsequent race.

Furthermore, Senate Ethics Committee Advisory Opinion 2016-2 requires that a candidate submit copies of monthly campaign banking statements to the Senate Ethics Committee for the purpose of conducting an audit of the candidate's campaign reports. If a candidate were not required to establish a campaign bank account, the candidate would not be able to submit copies of monthly campaign banking statements, and, in turn, the Senate Ethics Committee would not be able to audit the candidate's campaign reports.

Therefore, a candidate is required to establish a campaign bank account.

May a candidate use a personal bank account as a campaign bank account?

South Carolina Code Section 8-13-1348(A) provides that a candidate shall not use campaign funds to defray personal expenses that are unrelated to the campaign nor may a candidate convert campaign funds for personal use. If a candidate were allowed to commingle personal funds with campaign funds in a personal bank account, there would be no way to determine if the candidate is using the funds to defray personal versus campaign expenses. A candidate could easily convert campaign funds for personal use.

Similarly, South Carolina Code Section 8-13-1340 provides that a candidate shall not make a contribution to or an expenditure on behalf of another candidate from the candidate's campaign account. A candidate is not prohibited from making a contribution from the candidate's own personal funds. If a candidate were allowed to use a personal bank account as a campaign bank account, there would be no way to determine which funds are personal and which funds are campaign funds for purposes of making a contribution to another candidate.

Furthermore, because Senate Ethics Committee Advisory Opinion 2016-2 requires that a candidate submit copies of monthly campaign banking statements to the Senate Ethics Committee for the purpose of conducting an audit of the candidate's campaign reports, a candidate would be required to submit personal banking statements. By doing so, the candidate would be submitting personal information to the Senate Ethics Committee that would become public information pursuant to South Carolina Code Section 8-13-1366.

Therefore, a candidate shall not use a personal bank account as a campaign bank account.

When is a candidate required to establish a campaign bank account?

Section 8-13-1312 provides that a candidate shall deposit all contributions in a campaign bank account within ten days after receipt. Thus, at a minimum, a candidate is required to establish a campaign bank account within ten days of receiving a contribution.

Likewise, Section 8-13-1312 and Section 8-13-1348(C) provide that a candidate shall pay campaign expenses from a campaign bank account issued on checks signed by the candidate. Thus, at a minimum, a candidate is required to establish a campaign bank account prior to paying a campaign expense. The exception to this requirement is that a candidate is not required to establish a campaign bank account prior to paying an election filing fee. This exception is based on the practical basis that a candidate may not have time to establish a campaign bank account prior to filing for election. However, a candidate shall establish a campaign account within fifteen days of filing for election. In addition, if a candidate reimburses himself or herself for the election filing fee from the campaign bank account, the candidate shall report the reimbursement as a campaign expenditure on the candidate's campaign disclosure report.

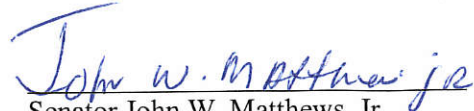
Therefore, a candidate shall establish a campaign bank account prior to paying a campaign expense, except an election filing fee, within ten days of receiving a campaign contribution, or within fifteen days of filing for an election, whichever comes first.

CONCLUSION:

A candidate is required to establish a campaign bank account. A candidate shall not use a personal bank account as a campaign bank account. A candidate shall establish a campaign bank account prior to paying a campaign expense, except an election filing fee, within ten days of receiving a campaign contribution, or within fifteen days of filing for election, whichever comes first.



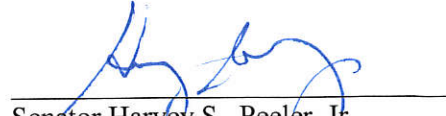
Senator Sean M. Bennett, Chairman



Senator John W. Matthews, Jr.



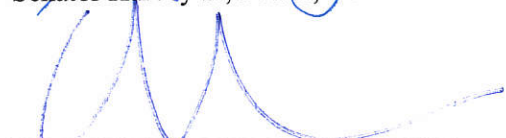
Senator Paul G. Campbell, Jr.




Senator Harvey S., Peeler, Jr.



Senator Brad Hutto



Senator Luke A. Rankin



Senator Darrell Jackson



Senator Glenn G. Reese



Senator Hugh K. Leatherman, Sr.



Senator Nikki G. Setzler