

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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October 31, 2005

Opinion No. 05-166

Use of Campaign Funds for Legislative Trip

QUESTION

Whether excess campaign funds may be used by a state legislator to pay for the expenses of a legislative trip to study a state-regulated beverage container deposit system?

OPINION

Yes. The proposed expenditure is permitted.

ANALYSIS

The question is whether a legislator may under Tennessee law use unspent campaign funds to pay the expenses of a proposed legislative trip. According to the information provided, a trip is proposed to the State of Maine to study its state-regulated beverage container deposit system. This system is similar to a system proposed for Tennessee through legislation introduced in the 104th General Assembly. During the trip, a Tennessee legislative delegation will be meeting with Maine state officials and legislators, as well as representatives from convenience store operators, recyclers, reverse vending machine operators, grocery stores, and beer and soft drink lobbyists. The delegation would include Senators from the Senate Conservation Committee; Representatives who are officers of the State & Local Government Committee and all members of the Local Government Subcommittee; the Director of Scenic Tennessee; representatives from the Governor's Office, the Departments of Transportation and Environment and Conservation and the Farm Bureau, as well as one member of the press. The cost of the plane ticket, two nights of hotel rooms, ground transportation and meals (not to exceed \$50 per meal) for these individuals (except the press member) would be paid for using unspent campaign funds.

Tenn. Code Ann. § 2-10-114(a)(7) provides that an unexpended balance of campaign funds "may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes." Subsection (b) of this statute further provides that "no candidate for public office shall use any campaign funds either prior to, during or after an election for such candidate's own personal financial benefit or any other nonpolitical purpose as defined by federal internal revenue code." That statute does not define what constitutes "ordinary and necessary expenses," nor has the Registry of Election Finance promulgated any rules

that would provide any definition. Additionally, we have not been able to find any state or federal court decision defining what constitutes “ordinary and necessary expenses” of an officeholder.

However, the Federal Election Campaign Act (“FECA”) contains a similar provision authorizing the use of campaign funds “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” *See* 2 U.S.C.A. § 439(a)(2). The FECA also contains a similar prohibition against the conversion of campaign funds to personal use and provides that for purposes of this prohibition:

a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office, including - -

- (A) a home mortgage, rent, or utility payment;
- (B) a clothing purchase;
- (C) a noncampaign-related automobile expense;
- (D) a country club membership;
- (E) a vacation or other noncampaign-related trip;
- (F) a household food item;
- (G) a tuition payment;
- (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
- (I) dues, fees and other payments to a health club or recreational facility.

2 U.S.C.A. § 439(b).

Further, the Federal Election Commission has defined “ordinary and necessary expenses” to include:

the costs of travel by the recipient Federal officeholder and an accompanying spouse to participate in a function directly connected to bona fide official responsibilities, such as a fact-finding meeting or an event at which the officeholder’s services are provided through a speech or appearance in an official capacity.

11 C.F.R. § 113.2(a)(1).

Given the similarity in the federal and state law provisions with respect to the permitted uses of campaign funds, we think it appropriate to look to the federal law provisions for guidance in determining whether the use of campaign funds to pay for the travel expenses of the proposed legislative trip to Maine is a permitted use of campaign funds. Based upon the factual information

provided, the trip in question appears to constitute a “fact-finding” trip in that its purpose is to study Maine’s state-regulated beverage container deposit system, which is similar to a system proposed for Tennessee through pending legislation. Additionally, the expenses of this trip are not expenses that would exist irrespective of the sponsoring legislator’s official duties as an officeholder. Accordingly, use of unspent campaign funds to pay these expenses does not appear to be for the personal benefit of the sponsoring legislator or for a nonpolitical purpose. Accordingly, it is the opinion of this Office that the use of campaign funds to pay the expenses of the proposed legislative trip, as outlined above, would constitute a permissible use of unspent campaign funds pursuant to Tenn. Code Ann. § 2-10-114(a)(7). Additionally, we would note that Tenn. Code Ann. § 2-10-102(6)(B) defines “expenditure” as including “the use of campaign funds by an officeholder for the furtherance of the office of the officeholder.” Thus, the payment of the travel expenses of the proposed legislative trip would also constitute expenditures and should be disclosed on a supplemental annual campaign financial disclosure report pursuant to Tenn. Code Ann. § 2-10-106.

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