



GOVERNMENTAL ETHICS COMMISSION

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Neutral Testimony for SB 63 -- Mark Skoglund, Executive Director

Wednesday, February 15, 2023

Senate Committee on Transparency and Ethics

Thank you for the opportunity to provide testimony regarding SB 63.

SB 63 would permit campaign funds to be used for family caregiving services when those expenses arise from a campaign or from officeholder duties. Family caregiving services is defined as care for an immediately family member who is under 13, who has a disability, or who qualifies for senior care services.

CURRENT LAW

Currently, candidates may use their campaign fund for childcare when such expenses arise due to a campaign or officeholder duty. This interpretation was established in Ethics Commission advisory opinion 2018-04. That opinion is attached as reference. The conclusion of that opinion finds "In taking a similar stance on childcare expenses as the FEC concluded in Advisory Opinion 2018-06, we opine campaign funds may be used for childcare expenses if (1) the need for childcare would not exist irrespective of the candidacy for public office and (2) the expenses have a direct connection with or effect upon the campaign of the candidate."

SB 63 CHANGES

This bill would have three primary effects.

First, SB 63 would cement the advisory opinion interpretation into statute. This ensures that no later Commission could alter that opinion.

Second, this bill would expand the permissible scope of campaign funds to use them for a family member with a disability and senior care services.

Third, SB 63 would create a limit on what "childcare" means by setting an age limit on who requires childcare. The advisory opinion did not delve into what constitutes a child that necessitates childcare, and the statute would resolve this potential question.



Ethics Opinion Search

August 22, 2018

Opinion No. 2018-04

Synopsis: If childcare expenses would not exist irrespective of the candidacy for public office, and those expenses have a direct connection with or effect upon the campaign of the candidate, then they may be paid with campaign funds.

Cited herein: K.S.A. 2017 Supp. 25-4157a, 52 U.S.C. § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2.

TO ALL INTERESTED PERSONS:

Pursuant to K.S.A. 25-4159, the Kansas Governmental Ethics Commission issues this opinion regarding expenditure of campaign funds for childcare expenses.

ISSUE:

In general, candidates subject to the requirements of the Kansas Campaign Finance Act may have personal situations affected by a campaign. Paid childcare may be a necessary accommodation for campaigning candidates and officeholders. May campaign funds be used to pay for childcare?

ANALYSIS AND OPINION

Permitted use of campaign funds is provided in K.S.A. 25-4157a(a) which provides:

No moneys received by any candidate or candidate committee of any candidate as a contribution under this act shall be used or be made available for the personal use of the candidate and no such moneys shall be used by such candidate or the candidate committee of such candidate except for legitimate campaign purposes, for expenses of holding political office or for contributions to the party committees of the political party of which such candidate is a member.

...

For the purposes of this section, expenditures for "personal use" shall include expenditures to defray normal living expenses for the candidate or the candidate's family and expenditures for the personal benefit of the candidate having no direct connection with or effect upon the campaign of the candidate or the holding of public office.

In Opinion No. 96-16, we stated:

To be a permissible use of campaign funds, an expenditure must be for a legitimate purpose, an expense of holding political office or a contribution to a party committee. *In order to be a "legitimate campaign purpose or an expense of holding political office", the expenditure must have a "direct connection with or effect upon the campaign of the candidate or the holding of public office".* All other expenditures are for personal use, and thus are prohibited. [emphasis added]

In the same opinion we provided non-exhaustive lists of permissible and non-permissible uses of campaign funds. For uses of campaign funds not listed, we determine, on a case-by-case basis, whether a use is permitted.

The Federal Election Commission (FEC) recently considered the same issue. In FEC Advisory Opinion 2018-06, dated May 10, 2018, a Congressional candidate, prior to becoming a candidate, worked at home as a consultant while caring for her young children full time. Her husband worked full time. Since becoming a candidate, she has forgone income from her work and hired a part-time care-giver for her children so that she could fulfill responsibilities as a federal candidate. The candidate anticipates full-time care for her children as well as additional childcare support on evenings and weekends will be necessary so that she can devote the time necessary to run her campaign.

The relevant federal law is similar to Kansas law in that expenditures of campaign funds must be for (1) a listed permissible use, or a use determined to be permissible on a case-by-case basis, and (2) specific purposes, including “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of [f]ederal office,” and “any other lawful purpose” (i.e., not a personal use). See 52 U.S.C. § 30114(a), (b); 11 C.F.R. §§ 113.1, 113.2. “Personal use” is use of campaign funds “to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or duties as a federal office holder.” 52 U.S.C. §30114(b)(2); 11 C.F.R. § 113.1(g). The FEC concluded that the described childcare expenses, to the extent such expenses are incurred as a direct result of campaign activity, would not exist irrespective of the election campaign, and thus may be paid with campaign funds.

To highlight this key distinction drawn in the FEC opinion, which we view as an important consideration when interpreting whether a direct connection with, or effect upon the campaign exists under K.S.A. 25-4157a(a), we provide this example: if a candidate typically pays for childcare before becoming a candidate, this would not be a permissible expense for use of campaign funds after becoming a candidate. However, if additional childcare is needed because of the new campaign’s demands upon the candidate, the increase in expenses would be a permissible use of campaign funds, but not those existing prior to becoming a candidate.

Expenditures to defray normal living expenses for the candidate or the candidate’s family are personal. So are expenditures for personal benefit having no direct connection with or effect upon the campaign of the candidate or holding of public office. However, if childcare expenses would not exist irrespective of the candidacy for public office, then such expenses would have a direct connection with or effect upon the campaign of the candidate. In circumstances where facts demonstrate such a nexus between constraints imposed by a campaign or holding office, and childcare, we opine use of campaign funds to pay for childcare expenses is permitted.

In closing, the Commission suggests that candidates and office holders seek guidance from the Commission’s staff prior to using any campaign fund for expenses that may be considered questionable. Nothing in this opinion precludes a candidate or office holder from using their own personal funds for the payment of childcare expenses.

CONCLUSION

In taking a similar stance on childcare expenses as the FEC concluded in Advisory Opinion 2018-06, we opine campaign funds may be used for childcare expenses if (1) the need for childcare would not exist irrespective of the candidacy for public office and (2) the expenses have a direct connection with or effect upon the campaign of the candidate.

Sincerely,

G. Daniel Harden, Chairman

By Direction of the Commission