
2009 GAB 01

CAMPAIGN FINANCE/CANDIDATES

The Government Accountability Board advises:

A campaign committee can legally pay court-ordered costs awarded to the defendant in litigation initiated by the committee and for which it was the named plaintiff, when the lawsuit was related to a political purpose, specifically, attempting to enjoin communications which expressly advocated the defeat of a candidate.

Facts

You were a candidate for a state public office with a registered campaign committee. During the course of your campaign, you filed a legal action against an organization requesting that the court issue an injunction to stop the organization from spreading misinformation about your campaign and candidacy. Your campaign committee was named as the plaintiff in the lawsuit, in which the court awarded the defendant \$500.00 in court costs.

Question

You ask whether your campaign committee can legally pay the court-ordered costs awarded to the defendant in the litigation initiated by your committee and for which it was the named plaintiff.

Discussion

The permissible uses of funds that have been raised for political purposes is set forth in s.11.25, Stats., the relevant sections of which state:

11.25 Unlawful political disbursements and obligations.

(1) No person, committee or group may intentionally receive or accept anything of value, or any promise or pledge thereof, constituting a disbursement made or obligation incurred for political purposes contrary to law.

(2)(a) No person, committee or group may make or authorize a disbursement or the incurrence of an obligation from moneys solicited for political purposes for a purpose which is other than political, except as specifically authorized by law.

The above provisions incorporate the meaning of “political purpose” as defined in s. 11.01(16), Stats., which states:

(16) An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, for the

purpose of influencing the recall from or retention in office of an individual holding a state or local office, for the purpose of payment of expenses incurred as a result of a recount at an election, or for the purpose of influencing a particular vote at a referendum. In the case of a candidate, or a committee or group which is organized primarily for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a state or local office, or for the purpose of influencing a particular vote at a referendum, all administrative and overhead expenses for the maintenance of an office or staff which are used principally for any such purpose are deemed to be for a political purpose.

(a) Acts which are for "political purposes" include but are not limited to:

- 1. The making of a communication which expressly advocates the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum.***
- 2. The conduct of or attempting to influence an endorsement or nomination to be made at a convention of political party members or supporters concerning, in whole or in part, any campaign for state or local office.*

(b) A "political purpose" does not include expenditures made for the purpose of supporting or defending a person who is being investigated for, charged with or convicted of a criminal violation of state or federal law, or an agent or dependent of such a person.

Based upon these provisions, the Board concludes that the court-ordered costs in your case do meet the political purpose test because they have been or will be incurred for the purpose of influencing the election or defeat of a clearly identified candidate, either you or your opponent. As you describe them, the communications made by the defendant which were the subject of your litigation were made for the purpose of influencing the election or defeat of a clearly identified candidate. Similarly, the legal action initiated by your campaign committee in response to those communications was also for the purpose of influencing the election or defeat of a clearly identified candidate.

Therefore, expenses incurred by your campaign committee to respond to the defendant's communications are considered campaign expenses, including the costs resulting from your committee, as a plaintiff, seeking a court injunction and any results of that litigation, specifically the court-ordered costs. Expenses that are necessary to a campaign meet the political purpose test.

While you have asked only about the court-ordered costs in your case, the Board notes that, depending on the facts and subject of litigation, other litigation expenses such as attorney fees and filing fees may similarly constitute expenses legally made for a political purpose. However, if the communications had not been a part of the campaign, but,

instead, involved a personal dispute between the candidates, then the expenses would not be a part of the campaign and would not meet the political purpose test.

Finally, the Board notes that your inquiry does not relate to the establishment or use of a legal defense fund pursuant to s. 11.64, Stats. Such a fund operates subject to separate restrictions regarding its purpose and contributions made to the fund.

Advice

The Government Accountability Board advises:

Your campaign committee can legally pay court-ordered costs awarded to the defendant in litigation initiated by the committee, for which the committee was the named plaintiff, when the lawsuit was related to a political purpose, specifically, attempting to enjoin communications which expressly advocated the defeat of your candidacy.