
2018 ETH 01

CAMPAIGN FINANCE – USE OF CAMPAIGN FUNDS FOR CHILDCARE

You are the campaign manager for a candidate for statewide office. You have asked for an advisory opinion regarding the use of campaign funds for occasional, part or full-time childcare that is required as a result of the travel and time commitments directly related to campaigning and would not otherwise be required if the candidate were not campaigning.

Summary:

It is the opinion of the Commission that a candidate is permitted to use campaign funds for childcare expenses to the extent that such expenses would be incurred only as a direct result of campaign activity and would not otherwise exist.

Analysis:

Wisconsin law does not specifically address the issue of a candidate committee paying for the childcare expenses of its candidate. The only relevant provision is WIS. STAT. § 11.1208(2)(a), which states:

“Except as provided in pars. (b) and (c), a committee may not make a disbursement or incur an obligation for the committee's or an individual's strictly personal use.”

The intent of the prohibition on disbursements for strictly personal use is clear. A candidate should not be permitted to convert campaign contributions into his or her own personal funds. The term “strictly personal use” is not defined in statute. The analogous federal restriction that most other states have emulated uses the term “personal use” instead. However, the addition of the word “strictly” would imply that the Wisconsin standard should be more permissive than the federal standard.

In determining whether an expense is personal or campaign-related the Federal Elections Commission (“FEC”) uses a test called the “irrespective test.” Under the “irrespective test,” personal use is any use of funds in a campaign account of a candidate to fulfill a commitment, obligation, or expense of any person that would exist irrespective of the candidate’s campaign or responsibilities as an officeholder. As Wisconsin’s standard is more permissive than the federal standard, it stands to reason that if an expense is permissible under federal law, it should also be permissible under the Wisconsin standard.

The FEC has recently addressed the issue of childcare expenses in Advisory Opinion 2018-06. In that opinion, the FEC considered whether a Congressional candidate could use campaign funds to pay for childcare expenses during the pendency of her campaign. Relying on prior advice issued in Advisory Opinion 1995-42, the FEC concluded that the candidate was permitted to use campaign funds for childcare to the extent that such expenses would be incurred only as a direct result of campaign activity and would not otherwise exist.

The Commission has had two prior occasions on which to deliberate regarding questions of personal use of campaign funds: a request for advice and a complaint. In the request for advice, the Commission held that a candidate may not draw a general salary from campaign funds as it is not compensation for any particular item or service provided to the committee. *See* RA-2016-001 in the Ethics Commission's 2017 Annual Report, at page 19. However, in the complaint, the Commission did not find reasonable suspicion of a violation when a candidate allegedly received teeth whitening services as an in-kind contribution as the expense would not have been incurred but for the candidate's campaign for office. In the present matter, the Commission holds that a candidate is permitted to use campaign funds for childcare expenses to the extent that such expenses would be incurred only as a direct result of campaign activity and would not otherwise exist. As with any disbursement, the expenditure should be reported by date made and include the full name and address of the recipient, along with the specific purpose for which the disbursement was made. WIS. STAT. § 11.0204(1)(a)8. To ensure compliance with this opinion, the committee should also include a comment with the transaction detailing the campaign activity that required the childcare expense.

From: [REDACTED]
To: [WI Campaign Finance](#)
Subject: Campaign Finance Restrictions and Childcare
Date: Tuesday, May 29, 2018 3:00:14 PM

Hello,

I would like to request a formal opinion from the Wisconsin Ethics Commission regarding use of campaign committee funds for candidate's childcare. Specifically for occasional, part-time, or full-time childcare that is required as a result of the travel and time commitments directly related to campaigning and would not otherwise be required if the candidate were not campaigning.

I am making the request on behalf of [REDACTED], a candidate for [REDACTED] [REDACTED]. Your office has previously been in contact with my colleague [REDACTED] regarding this matter. Please contact me if you require further information.

[REDACTED]