



GOVERNMENTAL ETHICS COMMISSION

<https://ethics.kansas.gov>

Neutral Testimony on SB 485 -- Mark Skoglund, Executive Director

Wednesday, March 9, 2022

Senate Transparency and Ethics

Thank you for the opportunity to provide neutral testimony regarding SB 485. This bill would add a permissible use of campaign funds for family caregiving services for a child, disabled family member, or a senior in need of senior care services.

The Campaign Finance Act ensures that funds raised from campaign donors are spent for campaign or officeholder expenses rather than for personal use. Dependent care presents a particular challenge for this requirement. The reasonable initial inclination is to label dependent care expenses as personal use. However, there are costs regarding dependent care that would not have occurred but for the campaign or holding of office that uniquely impact the ability of a candidate to campaign or an officeholder to perform officeholding duties.

The Commission considered this question in KGEC Advisory Opinion 2018-04 (attached). After substantial discussion and consideration of the similar FEC advisory opinion 2018-06, the Commission ultimately adopted the opinion. The Commission held that for childcare specifically, an expense that would not exist absent the candidacy for office would be a permissible expense from a campaign fund.

SB 485 and KGEC Op. 2018-04 have two primary differences:

1. KGEC op. 2018-04 is specific to childcare while SB 485 expands this slightly to other dependent care expenses. The Commission has not considered these other categories but the analysis is consistent with 2018-04.
2. SB 485 places this interpretation concretely in statute. If this change is desired, on balance, statutory change is likely the superior option to an advisory opinion for this subject matter. The "but-for" test the Commission used in this highly specific case was limited to this category and is not the typical framework for evaluating personal use expenses.

Finally, the Commission would oppose SB 485 without a technical amendment clarifying that campaign funds can only be expended on dependent care in circumstances where the expense arises because of a campaign or officeholding responsibility.



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