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### ADVISORY OPINION 2019 - 2

The House Legislative Ethics Committee (Committee) received a request from a Member for an advisory opinion. The Member requested clarification regarding the use of campaign funds to cover various expenses related to campaign fundraisers. Pursuant to House Rule 4.16C(5), the Committee renders the following advisory opinion.

#### DISCUSSION

This opinion will be tailored to the Member's specific individual questions which follow:

- 1. Are gratuities associated with service provided for campaign event expenses for which campaign funds can be used?**

There is little guidance either in the Ethics Act itself or Advisory Opinions on whether gratuities would per se be a "personal" campaign expenditure, and, therefore, violate Section 8-13-1348 of the South Carolina Code of Laws<sup>1</sup>. Being mindful of the principle that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature," (Hodges v Rainey 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000), quoting Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993)), the Committee must examine S.C. Code Ann. § 8-13-1348 to determine if such an outright prohibition should be read into the statute.

S.C. Code Ann. § 8-13-1348(A) provides:

No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate

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<sup>1</sup> The "Laundry List" opinion, Advisory Opinion 2016-2, issued by the House Ethics Committee on March 27, 1996 provides a list of expenditures and whether it is permissible to use campaign funds for these items. However, gratuities are not listed in this opinion.

is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office.

S.C. Code Ann. § 8-13-1348(A) (emphasis added).

As noted in previous Advisory Opinions, including the "Laundry List" opinion (Advisory Opinion 2016-2), the State Ethics Commission (SEC) has explained that "the terms 'personal' and 'unrelated to the campaign'" with regard to expenditures, are "not defined in the Ethics Act and the Act itself provides no clear guidance on what is and what is not an acceptable expenditure from the campaign funds." See SEC AO2016-004, p. 2 (January 20, 2016).

The Committee utilizes Committee Advisory Opinion 92-3<sup>2</sup>, which provided the following test to evaluate the permissibility of a campaign expenditure:

Funds collected by a candidate for public office is money received by contributors who are attempting to help the candidate get elected. Those funds should, thus, be utilized only for the purposes of facilitating the candidate's campaign and assisting the candidate carry out his or her duties of office if elected. §8-13-1348 of the Ethics Act, which took effect January 1, 1992, specified that campaign funds may not be used "to defray personal expenses which are unrelated to the campaign or the office." Those funds may, however, be used "to defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office." Using that language as a guide, each expenditure should be judged upon whether it is an ordinary office or campaign related expense or instead a personal expense not connected to the ordinary duties of office.

Advisory Opinion 92-3 (emphasis added). Using the test set forth above, the Committee considered the specific expenditure of gratuities related to a campaign event.

The Committee finds that it is customary to pay gratuity, in addition to the basic price, to a service worker for a service performed. As such, gratuities related to a campaign event are ordinary campaign related expenses. In terms of a campaign event, the Committee finds that gratuities should be limited only to service workers such as bartenders, servers, custodial workers, and valets. The Committee notes that these expenses should also be listed as expenditures on the campaign disclosure reports.

Gratuities do not include gifts for individuals hosting campaign events, such as a gift certificate given as a thank you to the host. These such expenses are gifts. Guidance concerning gifts can be found in Committee Advisory Opinions 2015-3 and 2016-2 which utilized the test set forth above. The Committee finds that thank you gifts to a host of a campaign function is an ordinary office expense that would not exist but for the candidate's position; therefore, it is a permissible campaign expense. As a caveat, the Committee feels that there are common sense limits to such gifts, and the scope of permissible gifts will vary, depending on local customs,

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<sup>2</sup> Committee Advisory Opinion 92-3 provides the test to evaluate the permissibility of a campaign expenditure. This test has been utilized by the Committee in Opinions 2015-3 and 2016-2 (the "Laundry List" opinion).

practices, and other circumstances. As a reminder, the Member must list the expenditures for the gift with a detailed description on his or her campaign contribution report.

2. **Assuming that gratuities are allowed, are there limitations associated with the payment of those gratuities? That is may they be paid in cash, gift card, check, item purchased, etc? Are there limitations on amounts?**

The question presented concerns payment of gratuities in the context of service workers on a campaign. The Ethics Act provides clear guidance concerning acceptable form and limitations on amounts of expenditures. First turning to limitations on the form of payment, the Committee notes S.C. Code Ann. §8-13-1348(C):

(1) An expenditure of more than twenty-five dollars drawn upon a campaign account must be made by:

- (a) a written instrument;
- (b) debit card; or
- (c) online transfers.

The campaign account must contain the name of the candidate or committee, and the expenditure must contain the name of the recipient. These expenditures must be reported pursuant to the provisions of Section 8-13-1308.

(2) Expenditures of twenty-five dollars or less that are not made by a written instrument, debit card, or online transfer containing the name of the candidate or committee and the name of the recipient must be accounted for by a written receipt or written record.

S.C. Code Ann. §8-13-1348(C). Thus, expenditures of more than twenty-five dollars must be made by a written instrument, debit card, or online transfer.

Utilizing House Ethics Committee Advisory Opinion 2018-5 and S.C. Code Ann. §8-13-1348(C), the Committee notes that withdrawals of cash from a campaign account to pay for expenditures related to the campaign in excess of twenty-five dollars is clearly prohibited. Further, the Committee notes that a candidate may establish a petty cash fund pursuant to S.C. Code Ann. §8-13-1348(E). This fund is not to exceed one-hundred dollars. Expenditures from the petty cash fund may be made only for office supplies, food, transportation expenses, and other necessities and may not exceed twenty-five dollars for each expenditure.

S.C. Code Ann. §8-13-1308(F) explains the requirements for filing of certified campaign reports by candidates as follows:

Certified campaign reports detailing campaign contributions and expenditures must contain:

- (1) the total of contributions accepted by the candidate or committee;
- (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;
- (3) the total expenditures made by or on behalf of the candidate or committee;
- (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

S.C. Code Ann. §8-13-1308(F) (emphasis added). Thus, payments made to service workers, as well as, gratuities for such work must be listed as an expenditure on a member or candidate's campaign disclosure report.

Now turning to the issue of limitations on amounts of campaign expenditures, the Committee notes S.C. Code Ann. §8-13-1348(D), which states "An expenditure may not be made that is clearly in excess of the fair market value of services, materials, facilities, or other things of value received in exchange." S.C. Code Ann. §8-13-1348(D). Further, the State Ethics Commission in SEC AO2017-002 and the House Ethics Committee in Advisory Opinion 2018-9 adopted guidelines for payment of campaign funds for campaign workers. Specially, these opinions were tailored for payment of services performed by a candidate's family member, but the guidelines apply here. The SEC stated:

The Commission acknowledges that using campaign funds for services rendered by a candidate's business, a family business, or a family member is a practice susceptible to abuse. Accordingly, this general statement of permissibility comes with several caveats, the paramount one being that the expenditures must be bona fide. Put another way, the expenditures must be genuine and not an artifice to enrich a candidate's businesses with campaign funds. If campaign funds are being used for a tangible, easily documentable service, then the Commission presumes that this service is presumably bona fide so long as a receipt can be provided. [W]hen wage payments for series such as "sign removal," "phone calls," "canvassing" or "general campaign work" are made to family members, due to the vague nature of this work, the potential for abuse is greater."

SEC AO2017-002, p. 2. (emphasis added).

Accordingly, the Committee extends the three guidelines enumerated in House Ethics Advisory Opinion 2018-9 and SEC AO2017-002 to payments made to any campaign worker, regardless of a family or business relationship. Thus, a Member or Candidate who pays for work performed on the campaign with campaign funds must pay the fair market value for services rendered, the payment must be bona fide, and documentation must be maintained justifying the services performed and payment made.

**3. May campaign funds be used to rent a venue for campaign purposes? Are there limitations on amount? If the venue is a private home, how should value be determined? Is that value an in-kind contribution? If so, may that value be off-set by the use of campaign funds? Are there limitations on the form that those off-setting payments may take or must they be by check?**

Following the reasoning above stated, the Committee finds that renting a venue for a campaign event is an ordinary campaign expense. The value set must be fair market value, as more fully explained above, pursuant to S.C. Code Ann. §8-13-1348(D). A donated space, excluding a private home, would be valued as an in-kind contribution, subject to campaign contribution limits under Sections 8-13-1314 and 8-13-1316 of the SC Code of Laws. As such, it must also be listed as a corresponding and matching in-kind expenditure. Again, the Committee notes that gifts for individuals hosting campaign events, such as a gift certificate given as a thank you to the host, are

permissible campaign expenses. The Member must list the expenditures for the gift with a detailed description on his or her campaign disclosure report.

## CONCLUSION

In summary, the Member may use his campaign funds to pay for gratuities for service workers. Furthermore, the Member must itemize any expenditure on his or her applicable campaign disclosure report. Expenditures of more than twenty-five dollars for payments made to service workers must be made by a written instrument, debit card, or online transfer, while expenditures from the campaign's petty cash fund must adhere to S.C. Code Ann. §8-13-1348(E). The Committee cautions against using cash; the best practice is to pay fully invoiced expenditures with check or debit card. Additionally, a Member or Candidate who pays for work performed on the campaign with campaign funds must pay the fair market value for services rendered, the payment must be bona fide, and documentation must be maintained justifying the services performed and payment made. Finally, a Member or Candidate may use campaign funds to rent a venue for a campaign event at fair market value. A donated space, excluding a private home, would be valued as an in-kind contribution, subject to campaign contribution limits, and also must be reported as a matching in-kind expenditure. The Committee notes that thank you gifts for individuals hosting campaign events are permissible campaign expenses, which must be reported on his or her campaign disclosure report.

The Commission notes that it is better to err on the side of caution and adherence than on the side of expedience and convenience. Be mindful of the appearance of impropriety and the ramifications of such.

**Adopted January 10, 2019.**