

Senate Ethics Committee

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ADVISORY OPINION #93-7

To: Members of the Senate

From: Hugh K. Leatherman, Sr., Chairman
Ethics Committee

Re: Ordinary Expenses

Date: November 16, 1993

A question has again come before the Committee concerning the proper application of Section 8-13-1348. This provision provides that a candidate may not use campaign funds to defray personal expenses unrelated to the campaign but allows the expenditure of campaign funds to "defray any ordinary expenses incurred in connection with an individual's duties as a holder of elective office."

An expenditure for a family vacation would clearly be inappropriate whereas a contribution to the local chapter of Young Democrats or Young Republicans would be entirely appropriate. Although the principle underlying this code section is simple to express, when applied to factual situations that do not clearly fall at one of these polar extremes, a proper interpretation of this provision quickly and frequently becomes a conundrum.

Other related provisions within the same act can often provide meaning or insight when interpreting a vague provision. Section 8-13-1370 expressly authorizes an expenditure of campaign funds for charitable and other purposes upon final disbursement. One could reason that the presence of such specific language in Section 8-13-1370 and its omission from Section 8-13-1348 means that a contribution to a charitable organization prior to final disbursement is not appropriate. This reasoning, however, ignores the fact that Section 8-13-1370 expressly restricts disbursement to several specified items, while Section 8-13-1348 is devoid of such restrictions. Logic dictates that those acts that are not

prohibited should be considered appropriate.¹

In short, Section 8-13-1370, like most other provisions of the Ethics Reform Act, provides what is commonly referred to as bright-line tests which a member may use to determine what conduct is permissible or impermissible. By contrast, Section 8-13-1348 contains no such bright-line test.² That the Committee has only issued twenty one advisory opinions given the comprehensive scope of the Ethics Reform Act is evidence that most provisions of this legislation provide clear, definitive guidance and that, upon a careful reading, the act is not an impenetrable labyrinth. Section 8-13-1348, however, provides little meaningful guidance to assist in determining what is an ordinary expense "incurred in connection with an individual's duties as a holder of elective office."

In those instances where the act does not clearly enumerate permissible and impermissible conduct, disclosure becomes a mechanism for public scrutiny and accountability. The Committee recognizes that what may be an "ordinary expense" in one district or area of the state may not be viewed as an "ordinary expense" in another, and public disclosure of these expenses should provide adequate limitations on unreasonable or inappropriate expenditures. Although this Committee recognizes its responsibility to provide advisory opinions to members of the Senate, upon reflection, the Committee concludes that each individual member, rather than this Committee, must determine what expenses are ordinarily incurred in connection with an individual's duties as an office holder.³ Notwithstanding the placement of this responsibility, as a matter of prudence, this Committee strongly suggests that in those instances that present a close question, the member would be wise to not make the expenditure.

The wisdom of the suggested course of action is further reinforced by the fact that while the Committee is removing itself from an initial determination on expenditures made in reliance upon Section 8-13-1348, the Committee may be compelled to resolve the matter if and when a complaint against a member is filed.

¹ Section 8-13-1348 is particularly troublesome because, unlike other provisions of the Ethics Reform Act, it provides no safe harbors or specific examples of expenditures which a member would objectively know are proper.

² This sentence should not be taken to mean that one is permitted to do indirectly that which the act directly prohibits or that conduct inconsistent with the principles of the act would be condoned by this Committee.

³ Therefore, while members may find Advisory Opinions #93-2 and #93-4 instructive, the Committee will not necessarily use these opinions as the bench mark in evaluating conduct, as this opinion shifts that burden to each member.