House Legislative Ethics Committee

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PROPOSED ADVISORY OPINION 2019 - 10

The House Legislative Ethics Committee received a request from a Member for an advisory opinion. The Member questioned whether he or she could use his or her campaign funds to pay attorneys' fees to defend him or her or pay a counteroffer for an alleged copyright violation. Specifically, the Member stated that he or she used a picture found on Google and then put the picture in his newsletter. The newsletter was sent to his constituents in his district to keep them informed about legislative matters in this State. The Member explained that he recently received a letter from a national law firm stating that they were representing a client who made the photo at issue. The law firm noted that the firm was unable to find any record of the Member's license to use the client's work. The law firm then requested that the Member pay the client a sum of money for alleged Federal copyright infringement, citing Title 17 of the U.S. Code, for using this picture in the Member's newsletter. The Member reported that he or she did not receive any contributions or make any money from the newsletter. Thus, the Member stated that he or she believe this to be a "scam" and would like to use his or her campaign funds to defend any legal action brought against the Member.

Pursuant to House Rule 4.16C.(5), the Committee renders the following advisory opinion.

DISCUSSION

S.C. Code § 8-13-1348 provides:

> (A) 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 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 § 8-13-1348(A). Thus, campaign funds may be used for campaign expenditures or expenditures related to the office the Member holds.

Moreover, several House Ethics Committee opinions addressed the payment of legal fees from a Member's campaign funds. Specifically, House Ethics Committee Advisory Opinion 2013-2, "narrowly determined that legal expenses flowing directly from someone's campaign may be an appropriate use of campaign funds." The Committee noted, "the 2012 election caused multiple lawsuits regarding who should appear on the ballot" and that "such lawsuits cause legal expenses that likely directly stem from one's election campaign." House Ethics Committee Advisory Opinion 2013-2. The Committee cautioned that this holding does not reach lawsuits resulting from a candidate's misconduct.

In House Ethics Committee Advisory Opinion 2014-2, the Committee held that since "it would be an appropriate use of campaign funds to pay legal expenses in his instance, the Committee held that it would also be appropriate to use campaign funds to reimburse oneself for the legal expenses paid with personal funds." The candidate used his personal funds to challenge the party's decision to declare his opponent the winner and the party then placed the opponent on the ballot even though the opponent had not properly filed his candidacy paperwork. The Committee held that the candidate could use his campaign funds to reimburse himself as the lawsuit directly flowed from the candidate's campaign.

Finally, in House Ethics Committee Advisory Opinion 2018-1, the Committee found that "a Member or candidate may use campaign funds to pay attorney fees if under investigation related to the office held or a campaign. However, the Committee could seek recovery of said funds from the Member or candidate upon a guilty plea or conviction of wrongdoing." The Committee also noted, "in actions of alleged personal misconduct, legal expenses would not be covered even if they were alleged to have occurred during a campaign or at a location involving the exercise of the duties of a Member's office or a campaign location or campaign event." House Ethics Committee Advisory Opinion 2018-1, page 2. Further, the Committee commented, "where a Member or candidate is under a subpoena related to the office held or a campaign, the Member or candidate may use campaign funds for legal fees and other expenses incurred and necessary to comply with said subpoena." House Ethics Committee Advisory Opinion 2018-1, page 2.

Therefore, the Committee finds that it is a permissible expenditure from the Member's campaign funds to pay attorney fees to defend an alleged copyright infringement action, as this expenditure is related to the campaign and the office held. The Member would not be sending his or her constituents a newsletter related to legislative issues, which included a picture the Member googled, but for the office the Member holds. The Committee notes that this matter does not involve personal misconduct as found in House Ethics Committee Advisory Opinion 2018-1.

CONCLUSION

In summary, the Committee finds that the Member may use his or her campaign funds to pay attorneys' fees to defend him or her or pay a counteroffer for an alleged copyright violation.

Adopted December 16, 2019.