



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Respond to:
P.O. Box 185
Trenton, New Jersey 08625-0185

(609) 292-8700 or Toll Free Within NJ 1-888-313-ELEC (3532)

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June 22, 2010

David W. Wolfe, Assemblyman
10th Legislative District
852 Highway 70
Brick, NJ 08724

Re: Advisory Opinion 01-2010

Dear Assemblyman Wolfe:

The Commission considered your request for an advisory opinion at its meeting of June 15, 2010, and directed me to issue this response. You have asked whether or not it is a permissible use of campaign funds for your single candidate committee, the Friends of Wolfe for Assembly, to make reimbursement to you of travel costs incurred in connection with an unanticipated legislative schedule change.

You seek reimbursement of round-trip airfare and one-way carfare costs which you incurred and paid in order to travel from a vacation, which you had planned prior to the change in the legislative calendar, to attend and vote at an additional legislative session. The campaign has not paid for these costs at the time of this request.

Question Presented

Is the use of campaign funds to pay for travel expenses incurred by an officeholder in connection with an unanticipated legislative schedule change an "ordinary and necessary" use? The Commission has not previously considered the specific question concerning the proposed use of campaign funds.

Commission Response

The Commission hereby advises you that the use of campaign funds to reimburse your travel expenses incurred in connection with an unanticipated legislative schedule change is a permissible use of funds.

Submitted Facts

You state that you had made vacation plans based upon a published schedule dated January 12, 2010, issued from the Speaker's office, of legislative committee meetings and voting sessions for January 2010 through April 2010. Based upon the schedule indicating that the last scheduled voting session was March 15, 2010, you had made plans for a vacation of approximately one week with your wife, beginning March 19, 2010 and lasting until March 25, 2010.

You further state that on March 8, 2010, a revised schedule of committee meetings and voting sessions was released, which included new voting sessions on March 22 and March 29, 2010. In order to attend the voting session on March 22, you made round trip arrangements to fly back to New Jersey from your vacation in New Mexico, and then to return to complete your vacation. In addition, you note that you are Deputy Republican leader and expected to be in attendance at the voting sessions.

As supporting documentation, you have also submitted copies of the two legislative schedules, and copies of the electronic confirmation for the airfare and the receipt for the carfare. Your candidate committee has not paid for these expenditures at the time of your request, nor have you received reimbursement from any other source.

Applicable law

The Reporting Act restricts a candidate committee in the use of its funds to six permissible uses, including the payment of ordinary and necessary expenses of holding public office. N.J.S.A. 19:44A-11.2a(6). In its rulemaking, the Commission has defined "ordinary and necessary" as any expense that "reasonably promotes or carries out the responsibilities of a person holding elective public office." N.J.A.C. 19:25-6.7(a).

Pursuant to N.J.A.C. 19:25-6.7(e)4, "ordinary and necessary" expenses of holding public office, include costs of travel by means other than a vehicle "when such travel is undertaken in connection with the performance of duties as an elected officeholder, provided that such travel is not undertaken for any purpose resulting in a personal or financial benefit to the candidate or officeholder." Other permissible uses as "ordinary and necessary" include the costs of registration and attendance at conferences and seminars attended in connection with officeholding duties, including the reasonable expense of travel. N.J.A.C. 19:25-6.7 (e)3. Pursuant to N.J.A.C. 19:25-6.8, a candidate committee may reimburse a candidate or officeholder for use of a vehicle owned by that candidate, provided that the candidate or officeholder provides the committee with written documentation including the purpose of the use, which purpose must be for travel for campaign or officeholding duties.

Finally, since the Reporting Act also prohibits payment of expenses for items or services which may reasonably be considered to be for the "personal use" of a candidate, the Commission has defined "personal use" by regulation to mean "any use of contributions to pay or fulfill a commitment, obligation or expense of any person that would arise or exist irrespective of the candidate's campaign or irrespective of the candidate's ordinary and necessary expense of holding public office." N.J.A.C. 19:25-6.5(c).

The Commission has issued Advisory Opinions in accordance with the above regulations, or which provided a basis for the above regulations. See Advisory Opinion 01-1994, wherein the Commission advised an officeholder that contributions received by a candidate may be used for reimbursement for use of a personal vehicle that the candidate owns, or is leasing; and Advisory Opinions 05-1999, 09-1994, and 06-1994, permitting the use of campaign funds to pay reasonable costs of travel for attendance at conferences in connection with officeholding duties.

Discussion

Based upon the information submitted, the officeholder made reasonable plans for a one-week vacation based upon a published schedule. The Commission does not believe that the officeholder could have reasonably foreseen that the schedule would change and require travel from a location other than from his home district, thereby resulting in additional cost. Certainly the travel was undertaken in connection with his duties as an officeholder and for a necessary purpose, that is, to participate in a voting session as a member of the Legislature. It was not undertaken for a purpose resulting in a personal or financial benefit but instead to fulfill his legislative duties. The Commission therefore concludes that the proposed use of campaign funds under the facts and circumstances presented in this request is a permissible use as an ordinary and necessary expense of holding public office.

The Commission recognizes that the approved result bears a certain potential for misuse. As the Commission first noted when it proposed the regulations described above, the Commission cannot anticipate all circumstances under which officeholders may wish to expend campaign funds, and therefore relies on officeholders to seek advisory opinions from the Commission as new or unanticipated circumstances arise. 26 N.J.R. 2754 (July 5, 1994).

Conclusion

The Commission hereby advises you that the use of campaign funds as reimbursement of your travel expenses to attend a voting session under the described circumstances involving an unanticipated change in legislative schedule is permissible as an ordinary and necessary expense of holding public office. You should submit records to your campaign treasurer that document your expenditures. Further, since the airfare expenditure was made using a credit card, the reporting should comply with the reporting requirements of N.J.A.C. 19:25-12.4.

The Commission thanks you for your inquiry and for your extension of time to answer.

Very truly yours,
Election Law Enforcement Commission

By: _____
Carol L. Hoekje, Esq.



Advisory Opinion Request
For Candidates and Committees

NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION
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MAY 17 2010

PLEASE PROVIDE THE INFORMATION REQUESTED BELOW

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full name of Person, Committee, or Entity:

Friends of Wolfe for Assembly

Mailing Address:

40 Bey Lea Road
Suite A101
Toms River, NJ 08753

*Day Telephone Number:

732-349-6880

*Evening Telephone Number:

2. Indicate if the above named person, committee, or entity currently files reports with the Commission:

[X] Yes [] No

a. If yes, indicate in what capacity it is filing:

Candidate committee

[X]

Recall committee

[]

Joint candidates committee

[]

Recall defense committee

[]

Political committee

[]

Personal financial disclosure statement

[]

Continuing political committee

[]

Other (please describe):

[]

Political party committee

[]

Legislative leadership committee

[]

b. If no, indicate if the above named person, committee, or entity has in the past filed reports with the Commission, giving elections (i.e., 2005 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in Question #1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

The applicability of ordinary and necessary office holding expenses

NJAC 19:256.7

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry. Your statement must affirmatively state that the contemplated activities have not already been undertaken by the person, committee, or entity requesting the opinion, and that the person, committee, or entity has standing to seek the opinion, that is the opinion will affect the person's or committee's reporting or other requirements under the Act. Attach additional sheets if necessary.

Statement of Facts:

I am a member of the New Jersey General Assembly representing the 10th Legislative District. (Ocean-Monmouth)

On January 12, 2010 a schedule of committee meetings and voting sessions for January 2010 thru April 2010 was sent to the members from Speaker Sheila Oliver. The last scheduled voting session was March 15, 2010.

My wife Carol and I scheduled a brief visit to Albuquerque, NM from Friday, March 19 until Thursday, March 25.

On March 8, 2010 a revised schedule of committee meetings and voting sessions was released by Speaker Oliver. It included March 16 for the Governor's Budget Address and new voting sessions on March 22 and 29.

As Deputy Republican Leader, I am expected to be in attendance at the voting sessions. Consequently, I made arrangements to return from Albuquerque via Philadelphia on March 21 and return on March 22.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result:

I am requesting reimbursement of the personal expense of the round trip flight. - Total \$559.30 -and transportation to my home in Brick, NJ from Philadelphia Airport -\$104.00- from my Candidate Committee Account.

Flight information: March 21, 2010 - United Airlines Flight # 6064 - Albuquerque to Denver. - United Airlines Flight # 448 - Denver to Philadelphia.

March 22, 2010 - Delta Airlines Flight # 1107 - Philadelphia to Salt Lake City - Delta Airlines Flight # 4563 - Salt Lake City to Albuquerque.

I have enclosed my receipt.

6. Person who is submitting this advisory opinion request on behalf of the committee or entity listed in Question #1:

Full Name: David W. Wolfe

Mailing Address: 107 Waters Edge Court
Brick, NJ 08724

*Day Telephone Number: 732-267-0901

*Evening Telephone Number:

Fax Number:

a. Official Capacity of Person Requesting Opinion:

- Candidate
- Treasurer
- Organizational Treasurer
- New Jersey Attorney representing requesting person, committee, or entity
- Other (please describe):

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request.

(CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

5/14/10
Dated:

David W. Wolfe
Signature:

*Leave this field blank if your telephone number is unlisted. Pursuant to N.J.S.A. 47:1A-1.1, an unlisted telephone number is not a public record and must not be provided on this form.