State of South Carolina
State Ethics Commission

5000 THURMOND MALL, SUITE 250
COLUMBIA, S.C. 29201

HERBERT R. HAYDEN, JR.
EXECUTIVE DIRECTOR

SECAO 2016-004 **January 20, 2016**

SUBJECT: USE OF CAMPAIGN FUNDS TO PAY FOR MEMBERSHIP OR OTHER EXPENSES AT PRIVATE CLUBS

SUMMARY: The prohibition in Section 8-13-1348 of the Ethics Reform Act on using campaign funds to defray personal expenses extends to the use of these funds to pay for expenses associated with membership at private clubs or food and beverage not specifically associated with campaign events. Such expenses are personal in nature and not related to any campaign or office. Expenses paid to private clubs can only be interpreted as campaign-related if connected with a campaign event.

QUESTION: State Ethics Commission staff has requested a formal Advisory Opinion to provide clarity on whether campaign funds can be used to pay for costs associated with private club membership, including dues and food and beverage expenses. Commission staff has interpreted such expenditures as personal in nature and not related to any campaign or office. As several elected officials are presently using campaign funds for private club membership expenses, staff is asking for a Commission opinion to provide clarity and definitive guidance to these and all future candidates and officials. Commission staff further asks that this opinion be issued on a prospective basis only.

APPLICABLE LAW:

S.C. Code Ann. § 8-13-1348 provides in part:

> (A) No candidate…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.

(B) The payment of reasonable and necessary travel expenses or for food or beverages consumed by the candidate or members of his immediate family while at, and in connection with, a political event are permitted.

DISCUSSION:

The State Ethics Commission's ("Commission") jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; S.C. Code § 2-17-15 et. seq. and S.C. Code § 8-13-100 et. seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Several elected officials under the Commission's jurisdiction have reported on their Campaign Disclosure Reports the use of campaign money for private club membership dues and other expenses at private dining clubs.[1] In general, these clubs have a monthly or yearly base cost for membership, with the total amount of the monthly or yearly expenditures varying from period-to-period depending on overall usage. Commission staff has taken the position that using campaign funds for such expenses violates Section 8-13-1348, in that they are personal in nature and totally unrelated to any campaign or public office. Under the interpretation of staff, it is only allowable to use campaign funds for payments for expenses to private clubs when directly associated with a specific campaign event. On the other hand, at least one candidate has argued that such membership expenses do relate to the campaign because the clubs provide a forum to meet with donors and potential donors and to collect campaign contributions. However, under staff's interpretation, even a lunch with a campaign donor in which contributions are discussed, would not be considered a campaign event.

Based on a review of prior Commission Advisory Opinions, it appears that the Commission has never been asked to determine the permissibility of using campaign funds for expenses related to private clubs. Further, prior Commission Advisory Opinions interpreting Section 8-13-1348 are limited. The terms "personal" and "unrelated to the campaign" are not defined in the Ethics Act and the Act itself provides no clear guidance on what is and is not an acceptable expenditure from campaign funds.[2]

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[1] Examples of private clubs that would fit within this category include, but are not limited to, the Capital City Club and the Palmetto Club in Columbia, the Poinsett Club and the Commerce Club in Greenville, and the Harbour Club in Charleston.

[2] From time to time, the Commission has favorably cited a "Laundry List" opinion, issued by the S.C. House Legislative Ethics Committee Memorandum on March 27, 1996, which provides a list of

However, the Commission does find it instructive that federal authority prohibits the use of campaign funds for such expenses. More specifically, the Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002, provides that contributions accepted by federal candidates or officeholders may not be "converted by any person to any personal use." 2 U.S.C.A. §439a(b)(1). Under the Federal Election Commission's Personal Use Regulations, impermissible personal use of campaign funds includes specifically listed expenditures, one of which is "[d]ues, fees or gratuities at a country club, health club, recreational facility or other nonpolitical organization, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises." 11 C.F.R. § 113.1(g)(1)(i)(G).

Although no Commission authority is exactly on point with regard to expenses at private clubs, it is important to note that the Commission has prosecuted enforcement matters under Section 8-13-1348 for the purchase of meals with campaign funds. A notable example of this is the case of former Lieutenant Governor Ken Ard. That complaint matter involved, among other things, questionable reimbursement from a campaign account for food at various restaurants. These expenditures were explained by Mr. Ard because these meals were occasions to meet with past and prospective contributors to raise money for his campaign account. This justification was rejected by the Commission. In a Consent Order reached by the parties in the Ard matter, the Commission stated "[i]t is now and always has been the Commission's position that…[p]urchasing normal daily meals with campaign funds while traveling on campaign related business either before or after an election is prohibited. Such expenditures are personal."[3] In this case, the Commission sees no meaningful distinction between expenses at private clubs associated with meals and expenses for meals incurred at restaurants. In either case, the expenses must be considered as personal expenditures unless they are directly incurred for a political event in accordance with 8-13-1348(B).

In addition to the preceding authority, under the Commission's interpretation of Section 8-13-1348, we find expenses at private clubs to be wholly "personal" in nature and "unrelated to[any] campaign or…office," unless such expenses are directly related to a campaign event. The Commission rejects any argument that because a candidate collects checks or socializes with donors at an establishment that expenses at such establishment "relate[s] to the campaign or…office." If we accepted this argument, almost any entertainment expense (including meals at restaurants or tickets to sporting events) could be converted into a campaign event by virtue of candidate contact with a donor or potential donor. Such an interpretation would eviscerate the prohibitions of Section 8-13-1348. Finally, we accept the recommendation of Commission staff that this Opinion be issued on a prospective basis only.

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expenditures and whether it is permissible to use campaign funds on these items. However, expenses associated with private membership clubs are not listed on this memorandum.

[3] See Consent Order, C2011-057, Watson v. Ard (July 15, 2011).