

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

July 15, 2003

Opinion No. 03-089

Paying Off Campaign Debt

QUESTIONS

1. Under the Campaign Contribution Limits Act of 1995, may a candidate transfer campaign debt to a future election, collect monies for this election, and pay off the transferred debt with these monies even if the candidate is not sure he or she will actually be a candidate in the future election?
2. Assuming the answer to Question 1 is yes, a candidate may use contributions attributable to one election and subject to a separate limitations cap to pay off campaign debts attributable to a previous election cycle, and then decide not to run for office. In that case, should the contributions received and attributed to that election cycle be attributed to the previous election cycle?

OPINIONS

1. No, a candidate may not transfer debt properly attributable to an earlier election cycle to a later election account and use contributions collected during the later election cycle to pay off the outstanding debts from the earlier campaign. But under Tenn. Code Ann. § 2-10-114, after an election is finished, a candidate may transfer any excess funds remaining from that election to pay off debts attributable to an earlier election. The candidate could not make this transfer, however, until after the end of the election to which the contribution is attributed.
2. In light of the answer to Question 1, Question 2 is moot. Where a candidate transfers excess funds under Tenn. Code Ann. § 2-10-114, of course, no reattribution is required.

ANALYSIS

1. Payment of Campaign Debt with Contributions Attributable to Later Election Cycle

This opinion concerns the circumstances under which a candidate who has been elected to office but whose prior campaign account shows debt may use contributions attributed to the subsequent election cycle and subject to a separate, additional cap to pay off those debts. For example, assume a successful candidate received a contribution of \$2,000 from a contributor in the 2002 election. The candidate's earlier campaign fund still owes a \$2,000 debt. The request asks

whether a candidate could transfer a negative balance from one campaign account to a later campaign account, and use contributions attributed to a later election to settle the balance. Thus, in the example above, the question is whether the candidate could simply transfer a negative balance of \$2,000 from the 2002 election account, and begin the 2004 election cycle with a negative balance of \$2,000.

The Campaign Contribution Limits Act of 1995, Tenn. Code Ann. §§ 2-10-301, *et seq.*, sets limits on the contributions a candidate may accept “with respect to any election.” Tenn. Code Ann. § 2-10-302; Tenn. Code Ann. § 2-10-307. The statute sets a limit on the amount a candidate may receive from a person, and a separate limit on the aggregate amount a candidate may receive from multicandidate political campaign committees. Tenn. Code Ann. § 2-10-302. The statute also sets a limit on the aggregate amount of contributions made by a political campaign committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either House of the General Assembly.

As discussed in other opinions of this Office, the campaign finance laws do not expressly require contributions to be attributed to the election that was actually going on when the contribution was received or reported. Op. Tenn. Atty. Gen. 98-209 (November 16, 1998); Op. Tenn. Atty. Gen. 98-122 (July 10, 1998). Similarly, the campaign finance laws do not expressly require campaign debts or expenditures to be attributed to the election that was going on when they were incurred or reported. But, in order for a new contribution limit to apply, a contribution must be made “with respect to” the later election. If a contribution is used to pay off the expenses from an earlier election, it cannot have been made “with respect to” the later election. Current rules of the Registry of Election Finance reflect this reasoning. Under Rule 0530-1-3-.03(1), a candidate’s campaign financial disclosure report must disclose the particular election for which each itemized contribution is allocated. Rule 0530-1-3-.05(1) provides:

A candidate must adopt a record-keeping system to distinguish between contributions made for a primary election and those made for a general election. *Contributions received for a general election may not be spent in the preceding primary election, but any funds remaining from a primary election may be used in a subsequent general election.*

(Emphasis added).

The Registry of Election Finance is authorized to promulgate rules to determine the campaign cycle to which campaign expenditures may properly be attributed. Under the question posed, we assume that the negative balance in the campaign account reflects expenditures that, under Registry rules and policies, are properly attributable to the campaign election cycle with respect to which the account was opened and the disclosure reports were made.

Under Tenn. Code Ann. § 2-10-105, candidates for state and local public office must file a statement of all contributions received and all expenditures made by or on behalf of the candidate, either with the Registry of Election Finance or with the county election commission of the county where the election is held. Statements are required at specific times within and after the close of the primary or general election cycle. Tenn. Code Ann. § 2-10-106 contains additional reporting requirements where the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit. The statute provides in relevant part:

If the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry of election finance . . . a supplemental annual statement of contributions and expenditures. Beginning after filing the post-election report required by § 2-10-105(c)(4), subsequent supplemental statements shall be filed on an annual basis by candidates *until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit*. A candidate may close out a campaign account by transferring any remaining *funds* to any campaign fund subject to the requirements of this part and commence annual filing as provided by this part.

(Emphasis added). We do not think this statute authorizes a candidate to close out a campaign account showing a negative balance by transferring that negative balance to an account for a later election cycle. This conclusion is based on the last sentence, which authorizes a candidate to close out a campaign account by transferring remaining “funds” to another campaign fund. We do not think the term “funds” as used in this sentence can be interpreted to include a negative balance.¹ Thus, a candidate cannot transfer a negative balance from one campaign account and start a subsequent election account with a negative balance.

Other portions of the Campaign Contributions Limits Act support this conclusion. Under that act, the contribution limits do not apply to certain transfers or retention of funds by a candidate. Tenn. Code Ann. § 2-10-305 provides:

The limits contained in this part do not apply to:

(a) The retention of funds by a candidate pursuant to § 2-10-114(a)(1);

¹ In an earlier opinion, this Office did conclude that a candidate who was successful in a primary could carry forward a primary deficit to the general campaign report. Op. Tenn. Atty. Gen. 83-497 (November 22, 1983). That conclusion, however was based on Tenn. Code Ann. § 2-10-106 as then in effect, which included the sentence “If a candidate wins nomination, a supplemental statement need not be filed by the candidate with respect to the nomination campaign.” Since then, the statute has been amended to delete this sentence.

(b) The transfer of funds by a candidate pursuant to § 2-10-114(a)(1) *to a campaign fund of the same candidate* for election to a different state or local public office; or

(c) The transfer of funds by a candidate for election to a federal office to a campaign fund of the same candidate for election to a state or local public office.

Under Tenn. Code Ann. § 2-10-114 (a)(1):

Any candidate for public office in this state with an unexpended balance of contributions *after the election* shall elect one (1) or a combination of the following for allocation of such funds within sixty (60) days of such election:

(1) The funds may be retained or transferred to *any campaign fund* pursuant to Tennessee reporting requirements[.]

(Emphasis added). Under this statute, therefore, a candidate may transfer unexpended contributions from one election to any campaign fund, including an earlier campaign account of that candidate that still shows a negative balance. Under Tenn. Code Ann. § 2-10-305, the contribution limits do not apply if the candidate transfers unexpended contributions to an account of that same candidate for election to a different state or local public office. The term “election” means any general, special or primary election or run-off election, held to approve or disapprove a measure or nominate or elect a candidate for public office. Tenn. Code Ann. § 2-10-102(4). But, as the statute indicates, a transfer under this section may be made only after the end of the election cycle to which the contributions are attributed. Op. Tenn. Atty. Gen. 97-137 (October 6, 1997). Thus, in the example above, the candidate could not use money collected for election to office in 2004 to pay debts remaining from the earlier campaign until, at the earliest, the end of the 2004 primary election to which those contributions were attributed.

2. Consequences if a Candidate Decides not To Run for Office after Collecting Contributions

The second question asks whether a candidate who transfers a debt from a previous account, uses contributions collected in a later cycle to pay off the debt, and then decides not to run must reattribute those contributions to the earlier cycle for the purpose of determining whether he or she has exceeded the contribution limits. In light of our conclusion that such transfers are unauthorized, this question is moot. Of course, where a candidate transfers funds to another of his or her own campaign accounts under Tenn. Code Ann. § 2-10-114, the contribution limits do not apply. Tenn. Code Ann. § 2-10-305.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Drew Rawlins
Executive Director, Tennessee Registry of Election Finance
404 James Robertson Parkway, Suite 1614
Nashville, TN 37243-1360