

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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June 20, 2005

Opinion No. 05-100

Using Campaign Funds to Pay Civil Penalties Assessed by Registry of Election Finance

QUESTION

Can civil penalties assessed by the Registry of Election Finance be paid from a candidate's campaign fund?

OPINION

No.

ANALYSIS

You have asked whether a candidate may use campaign funds to satisfy a penalty assessed by the Registry of Election Finance. Tenn. Code Ann. § 2-10-114 addresses the use of unexpended campaign funds. This statute provides:

(a) 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;

(2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation;

(3) The funds may be distributed to the executive committee of the candidate's political party;

(4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;

(5) The funds may be distributed to any organization described in 26 U.S.C. § 170(c);

(6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C. § 501(c), if such organization is currently operating under such exemption; and

(7) The funds may be used to defray any ordinary and necessary expenses

incurred in connection with the office of the officeholder. Such expenses may

include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes.

The only enumerated use that seems even arguably applicable is Tenn. Code Ann. § 2-10-114(a)(7). In a prior opinion this office concluded that a candidate may not use surplus campaign funds to cover his or her legal expenses, regardless of whether the action is related to the performance of his or her job duties. The opinion concluded that these expenses are not “ordinary and necessary expenses incurred in connection with the office of the officeholder” within the meaning of Tenn. Code Ann. § 2-10-114(a)(7). Op. Tenn. Att’y Gen. 97-146 (October 23, 1997). Under the same analysis, a civil penalty assessed by the Registry of Election Finance is not an “ordinary and necessary” expense because it is a personal judgment against the candidate. Tenn. Code Ann. § 2-10-110(c)(3) (“if a civil penalty authorized by this section is imposed, it shall be considered a personal judgment against the candidate”). Moreover, penalties incurred by an officeholder for violations of the law are not “*ordinary and necessary* expenses” incurred in connection with the office of the officeholder. For these reasons, a candidate may not use campaign funds to pay civil penalties assessed by the Registry of Election Finance.

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