



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2023-09**

December 15, 2023<sup>1</sup>

#### **QUESTION PRESENTED<sup>2</sup>**

1. May a candidate enter into a contract with a direct family member for goods or services to the candidate's campaign and pay the family member with campaign funds?
2. If a candidate uses personal funds to pay a family member for goods or services to the candidate's campaign, may the candidate report the expenditure as a loan to the campaign and be reimbursed by the campaign?

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C) (2019).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a "specific set of circumstances involving an ethics issue[.]" NMSA 1978, § 10-16G-8(A)(2) (2019). "When the Commission issues an advisory opinion, the opinion is tailored to the 'specific set' of factual circumstances that the request identifies." State Ethics Comm'n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On November 13, 2023, the Commission received a request for an advisory opinion that detailed the issues as presented herein. While the request specifically referred to a legislator's candidacy, the legal analysis contained in this opinion applies equally to all candidates subject to the Campaign Reporting Act. *See* NMSA 1978, § 1-19-26(G) (2019) (defining "candidate" under the Act).

## ANSWER

1. Yes. A candidate may contract with a direct family member for goods or services to the candidate's campaign and pay the family member with campaign funds, so long as the family member is charging market rates for bona fide services to the campaign.
2. Yes. A candidate must report expenditures made from the candidate's personal funds for a campaign expenditure, including expenditures paid to a family member under a contract with fair market rates, either as a contribution or as a loan to the campaign committee. If the expenditures constitute a campaign loan, the campaign may reimburse the candidate.

## ANALYSIS

The Campaign Reporting Act<sup>3</sup> regulates how a candidate or a candidate's campaign may expend campaign funds. We are asked to determine whether a candidate or candidate's campaign may expend campaign funds to procure goods or services for the campaign from a family member of the candidate, and if the candidate expends personal funds in making such expenditures, whether the campaign may reimburse the candidate. Under the Campaign Reporting Act and the regulations the Secretary of State promulgated thereunder, the answer to both of these questions is yes: a candidate may procure campaign services through a family member if the expenditure is for bona fide services not costing more than market value; and a candidate must report personal funds expended for campaign services, but may do so either as a contribution to the campaign or as a loan.

**I. A candidate's campaign may pay a family member of the campaign for campaign work, so long as the family member is providing a bona fide service and charging market rates.**

Section 1-19-29.1(A) of the Campaign Reporting Act provides that a candidate or a candidate's agent may make an "expenditure of contributions" for

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<sup>3</sup> NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2021).

“expenditures of the campaign[.]”<sup>4</sup> The Secretary of State has promulgated a regulation implementing this provision of the Campaign Reporting Act which provides that:

Expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.<sup>5</sup>

The regulation “list[s] items considered to be per se personal use, and are, therefore, not allowable expenditures[.]” which include “payments to candidate’s family[.]”<sup>6</sup> The regulation excepts from this prohibition, however, situations where “the family member is *providing a bona fide service* to the campaign.”<sup>7</sup> The regulation further specifies that “[i]f a family member provides bona fide services to the campaign, any salary payment *in excess of the fair market value* of the services provided is personal use[.]”<sup>8</sup> Taken together, a candidate or a candidate’s campaign may make payments to a member of the candidate’s family, so long as the family member provides bona fide goods or services to the campaign, and is not being paid in excess of the fair market value for those goods or services.

What constitutes “bona fide services” and “fair market value” will depend on the specific nature of the expense. A “bona fide service” would be a service that

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<sup>4</sup> NMSA 1978, § 1-19-29.1(A) (2009).

<sup>5</sup> 1.10.13.25(B)(2) NMAC (2022).

<sup>6</sup> 1.10.13.25(B)(2)(h).

<sup>7</sup> 1.10.13.25(B), (B)(2)(h) (emphasis added).

<sup>8</sup> *Id.* (emphasis added).

is a good faith expenditure of the campaign.<sup>9</sup> Whether a family member is providing “bona fide services” to the campaign depends on whether the expenditure is “reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses[.]”<sup>10</sup> As to whether a family member is providing services to the candidate’s campaign at fair market rates, a candidate should consider obtaining quotes from other service providers or otherwise researching rates charged by other service providers offering the same or similar services.<sup>11</sup> It is also prudent for the candidate to obtain invoices or other records of the services rendered. This documentation likely enables a candidate to demonstrate compliance with the Campaign Reporting Act and the regulations promulgated thereunder: invoices tend to establish that a family member provided bona fide goods or services to the campaign, and quotes from other providers tend to establish that the campaign paid fair market value to a candidate’s family member for the goods or services provided.

## **II. A candidate must report the expenditure of personal funds for campaign expenditures, and may be reimbursed for those expenditures if they are a loan to the campaign.**

If a candidate expends personal funds on goods or services for the candidate’s campaign, the expenditure must be reported, either as a contribution or as a loan. If the expenditure is a loan, the candidate may be reimbursed for the expenditure so long as the campaign committee properly itemizes and reports the expenditures. Indeed, 1.10.13.25(A) NMAC requires candidates to report the use of personal funds for campaign expenditures:

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<sup>9</sup> Black’s Law Dictionary, *bona fide* (11th ed. 2019) (defining “bona fide” to mean: “1. Made in good faith; without fraud or deceit. 2. Sincere; genuine”).

<sup>10</sup> 1.10.13.25(B)(2) NMAC; *see* § 1-19-29.1(A)(1).

<sup>11</sup> *See* 11 C.F.R. § 100.52 (defining “usual and normal charge for any services” for purposes of in-kind contributions to “mean[] the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered”); *cf.* N.M. Att’y Gen. Adv. Ltr (Oct. 1, 2008) (concluding under the Gift Act, NMSA 1978, §§ 10-16B-1 to -5, that “the market value of a ticket to a charitable event is whatever the legislator would have otherwise paid to purchase the ticket”).

Candidates who use the candidate's own personal funds for expenditures of the campaign committee *must report* the funds as either contributions to the campaign committee, which cannot be repaid to the candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee.<sup>12</sup>

The regulation specifically allows that “[a] candidate may also pay for expenditures of the campaign committee out of personal funds *and obtain reimbursement from the campaign committee.*”<sup>13</sup> In which case, “the campaign committee must itemize the expenditures reimbursed and otherwise comply with the disclosure requirements of Section 1-19-31 NMSA 1978 including disclosure of the original payee.”<sup>14</sup>

## CONCLUSION

A candidate may pay a family member for services to the candidate's campaign so long as the family member is providing bona fide services and does not charge in excess of market value for those services. Should a candidate make such payments from personal funds, the candidate must report the expenditures as either a contribution or a loan to the campaign committee as set forth in the Campaign Reporting Act and the Secretary of State's regulations.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**  
**JEFFREY L. BAKER, Commissioner**  
**STUART M. BLUESTONE, Commissioner**  
**HON. CELIA CASTILLO, Commissioner**  
**HON. DR. TERRY MCMILLAN, Commissioner**

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<sup>12</sup> 1.10.13.25(A) NMAC (emphasis added); *see also* 1.10.13.20(F) NMAC (identifying assets constituting “personal funds of a candidate”).

<sup>13</sup> 1.10.13.25(A) NMAC (emphasis added).

<sup>14</sup> *Id.*

**RONALD SOLIMON, Commissioner**  
**DR. JUDY VILLANUEVA, Commissioner**