



STATE ETHICS COMMISSION

ADVISORY OPINION NO. 2025-04

June 6, 2025¹

Campaign Expenditures for Legal Expenses

QUESTIONS PRESENTED²

1. Legislators can use campaign funds to cover expenses around legislative duties. Can campaign funds be used by a legislator to cover legal expenses? If yes, what are the specific situations when this would be allowed?
2. Can campaign funds be used to cover legal expenses of a candidate for office who is not yet a legislator, or a former legislator? If yes, what are the specific situations when this would be allowed?

¹ 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).

² 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). On March 20, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioner Bluestone requested that this advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1); 1.8.1.9(A)(1) NMAC. “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. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

3. Would it be acceptable for a candidate, legislator or former legislator to use campaign funds as a plaintiff when defending oneself from defamation when it relates to the use of campaign funds?

ANSWERS

1. A legislator may use campaign funds to cover legal expenses so long as the funds are reasonably attributable to the legislator's duties of office, and are not used to fulfill a commitment, obligation, or expense of the legislator that would exist even if the legislator were not in office.
2. A candidate may use campaign funds to cover legal expenses that are reasonably attributable to the candidate's campaign.
3. A candidate, legislator, or former legislator would be permitted to use campaign funds on legal expenditures related to an affirmative defamation suit as a plaintiff only where the lawsuit is reasonably attributable to the candidate's campaign or the legislator or former legislator's legislative duties of office.³ A candidate, legislator, or former legislator would be prohibited, however, from converting any monetary recovery from a defamation lawsuit funded by campaign funds for the candidate, legislator, or former legislator's personal use.

³ The request uses the phrase "defending oneself from defamation" which this opinion interprets as asking whether one of the identified individuals may use campaign funds to fund a lawsuit brought on the individual's behalf against a third party for allegedly defamatory statements about the individual's use of campaign funds.

ANALYSIS

I. A legislator may use campaign funds to cover legal expenses so long as the expenditure does not constitute “personal use” and a candidate may expend campaign funds to cover legal expenses so long as they are reasonably attributable to the candidate’s campaign.

As the State Ethics Commission has noted, campaigns generally enjoy “wide discretion in deciding how to spend their funds.”⁴ The State generally has no interest in dictating how a candidate spends contributions in pursuit of election (assuming the expenditures are not otherwise unlawful, i.e., bribes and kickbacks). Among the State’s legitimate interests is the interest in ensuring that campaign expenditures do not directly or indirectly enrich the candidate. Put differently, the underlying purpose of restrictions on the use of campaign funds is the same as the restriction on contribution amounts: (i) preventing corruption and the appearance thereof; and (ii) “increas[ing] participation in the political process by allowing contributors to support a campaign without worrying that their funds will be converted to personal use.”⁵

New Mexico’s Campaign Reporting Act⁶ provides “[i]t is unlawful for a candidate or the candidate’s agent to make an expenditure of contributions received, except for . . . (1) expenditures of the campaign; [or] (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses[.]”⁷ The New Mexico

⁴ See State Ethics Comm’n Adv. Op. 2025-01, at 2 (Feb. 7, 2025) (available at <https://nmonesource.com/nmos/secap/en/19133/1/document.do>) (citing Federal Election Commission, *Making disbursements*, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/>).

⁵ *Id.* (quoting *Federal Election Comm’n v. O’Donnell*, 209 F.Supp.3d 727, 740 (D. Del. 2016)) (quotation marks omitted).

⁶ NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2024).

⁷ NMSA 1978, § 1-19-29.1(A)(1)-(2) (2009). Section 1-19-29.1(A) sets out additional permissible uses of campaign funds, but those uses are not relevant to the request.

Secretary of State has promulgated a regulation defining “expenditures of the campaign” which further interprets “personal” expenses:

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.⁸

This regulation follows that imposed in federal law. The Federal Election Campaign Act⁹ similarly provides:

A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual –

- (1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;
- (2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office¹⁰

After identifying the permitted uses of contributions, the federal statute identifies prohibited uses, explaining “a contribution or donation shall be considered to be

⁸ 1.10.13.25(B)(2) NMAC.

⁹ 52 U.S.C. §§ 30101–30146.

¹⁰ 52 U.S.C. § 30114(a).

converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office[.]”¹¹

New Mexico's Campaign Reporting Act and campaign regulations largely follow the structure set out in federal law; that is, a campaign or legislative officeholder may expend funds for expenditures of the campaign or for expenditures reasonably related to the duties of legislative office, but may not use contributions for personal expenses.¹² Because there is no New Mexico case law applying the Campaign Reporting Act's personal-use prohibition, and because the Campaign Reporting Act and the accompanying regulations are similar to their federal counterparts, the Commission looks to cases and administrative decisions interpreting similar provisions of law outside of New Mexico for guidance in applying the personal use prohibition as it applies to expenditures for legal expenses presented by the request.¹³

¹¹ 52 U.S.C. § 30114(b)(2).

¹² While it is ultimately the language of the statute that is controlling, the Secretary of State is charged with “adopt[ing] and promulgat[ing] rules and regulations to implement the provisions of the Campaign Reporting Act.” NMSA 1978, § 1-19-26.2 (1997). The regulations adopted by the Secretary of State follow a comparable provision in federal law and merely expand on what constitutes a “personal” expense under the Campaign Reporting Act. The Federal Election Campaign Act provides “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person *that would exist irrespective of* the candidate's election campaign or individual's duties as a holder of Federal office[.]” 52 U.S.C. § 30114(b)(2) (emphasis added). New Mexico's campaign regulations identify personal use as “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.” See 1.10.13.25(B)(2) NMAC (emphasis added). While the language is not identical, there is not a material difference between the terms “regardless of” and “irrespective of.” See *Irrespective of*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/irrespective%20of> (defining “irrespective of” to mean “regardless of”).

¹³ See *State v. Martinez*, 2006-NMCA-148, ¶ 12, 140 N.M. 792 (stating that “federal law interpreting [a] rule is instructive,” when the federal rule is similar to its New Mexico counterpart), *aff'd*, 2008-NMSC-060, 145 N.M. 220.

New Mexico law permits a candidate to expend campaign funds for “expenditures of the campaign” and further allows a legislator to make “expenditures reasonably related to performing the duties of the office held,” so long as those expenditures do not pay for “personal and legislative session living expenses.”¹⁴ “Legal expenses” are not included in the non-exhaustive list of per se personal use expenditures, but the rule governing “permissible expenditures” separately identifies “[l]egal expenses reasonably related to the candidate’s campaign are permissible campaign expenditures.”¹⁵

Turning to the questions in the request, a legislator or former legislator may expend campaign funds on legal expenses in certain circumstances. Because there is no express language permitting the payment of legal expenses for expenditures reasonably related to performing the duties of legislative office, such expenditures must be analyzed in the same way as any other expenditure which is neither “per se personal use” nor expressly permitted. Under this analysis, “personal use” consists of “any use of funds in a campaign account to fulfill a commitment, obligation or expense of any . . . legislator that would exist regardless of . . . responsibilities as a legislator. If the expense would exist . . . even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.”¹⁶ Accordingly, a legislator may make campaign expenditures for legal expenses where the expenditures “are reasonably related to performing the duties” of legislative office.¹⁷

As to whether a candidate (whether or not legislator) may use campaign funds to cover legal expenses, New Mexico’s campaign regulations expressly provide that a candidate may expend funds to cover legal expenses of a candidate for legislative office so long as the “expenses are reasonably related to the candidate’s campaign.”¹⁸

¹⁴ § 1-19-29.1(A)(2).

¹⁵ 1.10.13.25(B)(3) NMAC.

¹⁶ 1.10.13.25(B)(2) NMAC.

¹⁷ § 1-19-29.1(A)(2).

¹⁸ 1.10.13.25(B)(3) NMAC.

Importantly, this analysis does not provide a legislator, former legislator, or candidate carte blanche to declare *any* legal expense is related to the duties of office or a candidate's campaign. In *Federal Election Commission v. Craig for U.S. Senate, et al.*,¹⁹ the U.S. Court of Appeals for the District of Columbia Circuit explained "twenty years of advisory opinions have concluded that legal expenditures made in response to charges of campaign or official misconduct are not personal; expenditures to rebut allegations of personal misconduct are."²⁰ Walking through some of the Federal Election Commission's advisory opinions, the court noted that "legal expenses incurred in litigation involving allegations 'arising directly from campaign activity' are not personal, and campaign funds could be used to pay them."²¹ However, "the use of campaign contributions for legal expenses 'incurred to . . . present a legal defense to[] possible liabilities or violations of law that are unrelated to [a] campaign or officeholder status' would constitute the conversion of contributions for personal use."²² This distinction has also been recognized in state courts. For example, in *Sigcho-Lopez v. Illinois State Bd. of Elections*,²³ the Supreme Court of Illinois determined that the irrespective test did not apply under Illinois law, but reached a similar conclusion nonetheless. There, the court held a public official may not use campaign funds to pay for legal expenses incurred as a result of a criminal indictment alleging official corruption, but concluded that "not all allegations by political rivals are sound and that baseless allegations are at times asserted against public officials because of their very capacity as public officials" and "[t]herefore, in limited circumstances" it is permissible to "allow the use of campaign funds to pay for legal expenses in defending such allegations."²⁴

Under New Mexico law, a candidate may use campaign funds for legal expenses related to causes of action related to the candidate's campaign, and a

¹⁹ 816 F.3d 829 (D.C. Cir. 2016).

²⁰ *Id.* at 842.

²¹ *Id.* at 836 (quoting Fed. Election Comm'n Adv. Op. 1995-23 (Shays)).

²² *Id.* (alterations original) (quoting Fed. Election Comm'n Adv. Op. 1996-24 (Cooley)).

²³ 2022 IL 127253, 201 N.E.3d 1077.

²⁴ *Id.* ¶¶ 44-45.

legislator or former legislator may also use campaign funds for legal expenditures for causes of action reasonably related to the duties of legislative office. If the legal action is not sufficiently related to a campaign or legislative office, or if the legal expenses would exist in the absence of the campaign or legislative office, the expense is not considered a “campaign-related expenditure” and the candidate, legislator, or former legislator may not use campaign funds to pay those legal expenses.²⁵

²⁵ Relevant Federal Election Commission opinions interpreting the comparable federal campaign finance provisions provide additional guidance on this analysis. *See, e.g.*, Fed. Election Comm’n Adv. Op. 2018-09 (Clements) (June 28, 2018) (“Here, you describe legal expenses that you are incurring in an attempt to gain ballot access for the primary election in which you are a candidate; such legal expenses are directly related to your campaign and would not exist irrespective of your candidacy. Accordingly, the Commission concludes that the Committee’s use of campaign funds to pay for such expenses would not result in an impermissible conversion of campaign funds to personal use.”); Fed. Election Comm’n Adv. Op. 2005-11 (Cunningham) (Sept. 26, 2005) (“[T]he Committee may use campaign funds to pay for the legal fees and expenses incurred in connection with the grand jury investigation and legal proceedings that may arise from this investigation *because the investigation concerns allegations that are related to Representative Cunningham’s campaign activities or his duties as a Federal officeholder*, or both, and the legal fees and expenses would not exist irrespective of Representative Cunningham’s campaign or duties as a Federal officeholder.” (emphasis added)); Fed. Election Comm’n Adv. Op. 2003-17 (Treffinger) (July 25, 2003) (concluding a former candidate could use campaign funds to pay for a portion of legal expenses related to a criminal indictment that related to his campaign, including allegations of false campaign reports to the Federal Election Commission, but not could not use campaign for the entirety of the legal expenses because a portion of the indictment included conduct that would have occurred irrespective of the campaign, including alleged breaches of public trust and public fraud in the candidate’s position as a county official); Fed. Election Comm’n Adv. Op. 1996-24 (Cooley) (June 27, 1996) (“Thus, the use of campaign funds for attorney fees and expenses (‘legal expenses’) that would exist even if Mr. Cooley were not a candidate or Member of Congress would be a conversion to personal use. Conversely, the use of campaign funds to pay legal expenses that would not exist absent his candidacy or officeholder status would be permissible.”); Fed. Election Comm’n Adv. Op. 1995-23 (Shays) (July 21, 1995) (“The legal expenses described in your request *pertain to a law suit arising directly from campaign activity and your status as a candidate*. Applying the standard established by section 113.1(g)(1)(ii), these expenses are clearly attributable to your campaign. Therefore, campaign funds from your committee may be used to pay the expenses of your defense in the described law suit.” (footnote omitted) (emphasis added)); Fed. Election Comm’n Adv. Op. 1995-21 (Larson for Life) (July 28, 1995) (“The legal expenses described in your request pertain to a law suit arising directly from campaign activity and Mr. Larson’s status as a candidate. Applying the standard established by section 113.1(g)(1)(ii), these expenses are clearly attributable to the campaign. Therefore, campaign funds, including the \$1,500 received in settlement of the lawsuit, may be used to pay the expenses of the Committee in the described law

II. A legislator, former legislator, or a candidate may use campaign funds to pay for legal expenses to bring a defamation suit as a plaintiff provided the underlying allegations are reasonably related to a legislator's or former legislator's legislative duties or to a candidate's campaign.

The final question posed in the request asks whether a legislator, former legislator, or a candidate may use campaign funds to pay for legal expenses related to an affirmative defamation suit they themselves bring related to allegations concerning their use of campaign funds. Under the facts of the request, a defamation suit brought by a candidate to remedy allegations reasonably related to expenditures of the campaign would be permissible because the legal action is directly related to the candidate's campaign. Similarly, while it is less clear that allegations that a legislator or a former legislator misused campaign funds would be reasonably related to performing the duties of legislative office, it is possible to conceive of a situation where a legislator is alleged to have misspent campaign funds on, for example, travel expenditures to serve constituents. In the circumstances identified, the allegations about the misuse of campaign funds would not exist in the absence of the candidate's campaign or the holding of legislative office, respectively.

As a final note, a legislator or candidate may not bankroll a defamation lawsuit using campaign funds only to convert any monetary recovery into personal funds. The conversion of campaign funds for a candidate or legislator's personal use is prohibited by New Mexico's campaign finance laws.²⁶ A defamation lawsuit by its nature typically seeks monetary damages to make a plaintiff whole. If a legislator or candidate is successful in a defamation lawsuit funded by their campaign funds, while funds recovered may be used to reimburse the campaign, those funds cannot benefit the legislator or candidate personally.²⁷ Otherwise, the

suit and related negotiations.” (citing *See* 11 CFR 104.3(b)(2) and (b)(4)(i); Advisory Opinion 1995-23)).

²⁶ *See* 1.10.13.25(B)(2) NMAC.

²⁷ *See* Fed. Election Comm'n Adv. Op. 1997-27 (Boehner and Friends) (Feb. 23, 1998) (concluding a Member of Congress could use campaign funds to pursue a lawsuit as a plaintiff

candidate, legislator, or former legislator would personally benefit from an expenditure of their campaign funds, which is prohibited under Section 1-19-29.1(A).

CONCLUSION

A legislator or former legislator may use campaign funds for legal expenses reasonably related to the duties of legislative office. A candidate is permitted to use campaign funds for legal expenses reasonably attributable to the candidate's campaign. This would include a legislator, former legislator, or candidate using campaign funds to bring an affirmative defamation lawsuit related to the

under the Electronics Communications Privacy Act of 1986 because “the legal expenses at issue would not exist irrespective of Mr. Boehner’s duties as a Federal officeholder, and that he may use funds of the Boehner Committee to pay the legal expenses incurred in evaluating and pursuing the lawsuit” but “condition[ing] its approval on [the] representation that there will be no direct or indirect tax or other financial benefit to Mr. Boehner as a result of the award and use of such damages” other than “[a]ny damages that he receives from the suit will first be used to defray the costs of the litigation (including repayments to the Boehner Committee for the amounts it paid)”. *See also* Mass. Office of Campaign and Political Finance Adv. Op. AO-05-02 (Feb. 24, 2005) (concluding that under Massachusetts campaign finance laws that a candidate could file a defamation action funded by the candidate’s political committee, but that “any monetary damages that might be awarded in a legal action funded by your political committee may not accrue to your personal benefit” and that the candidate’s “political committee may not retain any monetary damages awarded[,]” and therefore “any monetary damages must be donated to a charitable or other entity in a manner consistent with the residual funds clause”); Mass. Office of Campaign and Political Finance Adv. Op. AO-08-07 (Sept. 17, 2008) (“In AO-05-02, we stated that the Sheriff’s political committee could not retain any monetary damages awarded in a defamation action. Whether the committee may be reimbursed for legal fees expended in the event such fees are awarded by the MCAD, however, raises a different issue. Although the campaign finance law does not contemplate that committees may raise funds through litigation, the receipt of attorneys’ fees already expended by the committee does not involve any enrichment, or net receipt, by the committee. It is also reasonable, and consistent with the purpose for awarding legal fees, that to the extent the committee paid the legal costs of such a proceeding and MCAD issues an award of legal fees, that the legal fees awarded may be used to reimburse the committee. If fees awarded exceed committee payments made, the excess amount must be given to a charitable or other entity or entities specified in the residual funds clause of M.G.L. c. 55, s. 18.”). *Cf.* Fed. Election Comm’n Adv. Op. 2013-11 (Oct. 31, 2013) (permitting the payment of campaign funds for a cash deposit in lieu of a supersedeas bond on appeal from a judgment where fees and costs were awarded against the candidate but the candidate did not seek damages, and distinguishing Adv. Op. 1997 (Boehner), “not[ing] that when using campaign funds for costs resulting from offensive litigation, there must be ‘no direct or indirect . . . financial benefit to the requestor as a result of the award and use of’ awarded damages” (alterations original)).

legislator's, former legislator's, or candidate's use of campaign funds, provided that the allegations giving rise to the lawsuit are reasonably related to the legislator's or former legislator's duties of legislative office or are reasonably attributable to the candidate's campaign. Finally, a legislator, former legislator, or candidate is prohibited from converting to personal use any monetary recovery incurred as a result of a lawsuit paid for by campaign funds.

SO ISSUED.

HON. WILLIAM F. LANG, Chair

JEFFREY L. BAKER, Commissioner

STUART M. BLUESTONE, Commissioner

HON. CELIA CASTILLO, Commissioner

HON. GARY L. CLINGMAN, Commissioner

HON. DR. TERRY MCMILLAN, Commissioner

DR. JUDY VILLANUEVA, Commissioner