



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2026-05**

April 17, 2026<sup>1</sup>

### **Campaign Expenditures for Media Related to Lawsuits Arising from Legislative Duties**

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

May a former legislator use campaign funds to purchase advertising space in a local newspaper to address a lawsuit that arose directly from the former legislator's official duties as a legislator and which involved action taken in the former legislator's legislative capacity, where the proposed advertisement would discuss the outcome of the lawsuit and provide information to the public regarding the matter?

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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).

<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). On December 18, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein and Commission staff issued an informal advisory opinion letter in response. *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." N.M. 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.

## ANSWER

A former legislator may expend campaign funds for press expenses incurred in connection with legal proceedings arising directly from the legislator's official duties as a legislator, so long as the expenditures would not exist if the legislator had not held legislative office.

## ANALYSIS

### I. Expenditures of campaign funds under Section 1-19-29.1 of the Campaign Reporting Act

As the State Ethics Commission has noted, campaigns generally enjoy “wide discretion in deciding how to spend their funds.”<sup>3</sup> 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., personal use per se). 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.”<sup>4</sup>

New Mexico's Campaign Reporting Act<sup>5</sup> provides that “[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,

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<sup>3</sup> See N.M. 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/>); N.M. State Ethics Comm'n Adv. Op. 2025-04, at 3 (June 6, 2025) (available at <https://nmonesource.com/nmos/secap/en/item/19140/index.do>).

<sup>4</sup> *Id.* (quoting *Federal Election Comm'n v. O'Donnell*, 209 F.Supp.3d 727, 740 (D. Del. 2016)) (quotation marks omitted).

<sup>5</sup> NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2024).

including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses[.]”<sup>6</sup> The New Mexico 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.<sup>7</sup>

This regulation follows that imposed in federal law. The Federal Election Campaign Act<sup>8</sup> 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;

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<sup>6</sup> 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.

<sup>7</sup> 1.10.13.25(B)(2) NMAC.

<sup>8</sup> 52 U.S.C. §§ 30101–30146.

(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office . . . .<sup>9</sup>

After identifying the permitted uses of contributions, the federal statute identifies prohibited uses, explaining “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[.]”<sup>10</sup>

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.<sup>11</sup> 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

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<sup>9</sup> 52 U.S.C. § 30114(a).

<sup>10</sup> 52 U.S.C. § 30114(b)(2).

<sup>11</sup> 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”).

applying the personal use prohibition as it applies to the expenditures presented by the request.<sup>12</sup>

## **II. Use of campaign funds for press or media expenditures incurred as a result of legal actions alleging conduct related to the duties of legislative office**

New Mexico law does not specifically address whether a candidate or former legislator is permitted to use campaign funds to pay for press or media expenditures; that is, such expenditures are neither on the per se list of prohibited expenditures, nor are they expressly permitted. Such expenditures therefore fall under the general analysis of whether the expenditures are “expenditures of the campaign” or are “expenditures reasonably related to performing the duties of the office held[.]”<sup>13</sup>

The Federal Election Commission has issued several advisory opinions opining on the permissibility of paying for media expenses related to legal actions. The Federal Election Commission has consistently held that campaign funds may be used to pay for expenses incurred in responding to press inquiries regarding legal actions arising out of allegations related to a candidate’s campaign activities or duties as a Federal officeholder; these opinions often analyze both the underlying legal action as well as related media expenses.<sup>14</sup>

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<sup>12</sup> 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.

<sup>13</sup> § 1-19-29.1(A)(1), (2).

<sup>14</sup> See FEC Adv. Op. 2009-12 (Coleman) (June 26, 2009) (concluding a senator’s “need to respond to the media’s demands for public discussion of the allegations would not exist irrespective of his campaign officeholder duties” and therefore his campaign committee “may use campaign funds to pay Senator Coleman’s legal fees and expenses incurred in responding to the press regarding the FBI investigation, Senate Ethics Committee complaints, and Texas and Delaware lawsuits”); FEC Adv. Op. 2006-35, at 4 (Kolbe) (“Accordingly, the Commission concludes that the Committee may use campaign funds to pay for the legal expenses incurred in responding to the press regarding the inquiries by the House Ethics Committee and the Department of Justice into allegations that are related to Representative Kolbe’s duties as a Federal officeholder, as discussed in response to question one above.”); FEC Adv. Op. 2005-11 (Cunningham) (Sept. 26, 2005) (“In the past, the Commission has determined that legal fees and

The State Ethics Commission has previously reviewed the question of whether a candidate, legislator, or former legislator may use campaign funds to cover legal expenses, concluding “a candidate may use campaign funds for legal expenses related to causes of action related to the candidate’s campaign, and a legislator or former legislator may also use campaign funds for legal expenditures

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expenses incurred to respond to the press regarding allegations that concern the candidate’s campaign activities or duties as a Federal officeholder would not exist irrespective of the candidate’s campaign or duties as a Federal officeholder and therefore may be paid for with campaign funds.”); FEC Adv. Op. 2001-09 (Kerrey) (July 17, 2001) (concluding a former candidate and officeholder was permitted to use campaign committee funds to pay for expenses incurred in responding to media inquiries because the inquiries were directly related to the individual’s campaign and officeholder duties); FEC Adv. Op. 1998-01 (Hilliard) (Feb. 27, 1998) (determining that identified allegations “arise directly out of Mr. Hilliard’s status and conduct as a Federal candidate or Member of Congress, and the expenses of responding to such would not arise irrespective of such status and conduct” and “[t]herefore, the legal expenses for dealing with, and responding to, the press as to these allegations would be 100% payable by the Committee”); FEC Adv. Op. 1997-12 (Costello) (Aug. 15, 1997) (“Thus, any legal expenses for preparing press releases and conducting press conferences can be paid 100% with campaign funds. Because they arise directly from your officeholder activity, the legal expenses relating to allegations that your vote in Congress was part of an impermissible plan to establish a business venture in which you held a secret interest can be paid 100% with campaign funds.”); FEC Adv. Op. 2009-12 (Coleman) (June 26, 2009) (“Thus, the Commission has determined that a candidate’s authorized committee may use campaign funds to pay certain legal fees and expenses incurred in responding to press inquiries and news stories regarding allegations both related and unrelated to campaign activities and duties as an officeholder.”); FEC Adv. Op. 2008-07 (Vitter) (Sept. 9, 2008) (“Senator Vitter’s need to respond to the intense media scrutiny regarding the Palfrey allegations would not exist irrespective of his campaign or officeholder duties. The Commission concludes that the Committee may use campaign funds to pay Senator Vitter’s legal fees and expenses incurred by Subpoena Counsel in press relations related to the Palfrey matter, including the review of press releases and consultations with a public relations professional.”); FEC Adv. Op. 2006-35, at 4 (Kolbe) (“The Commission has previously determined that legal expenses incurred to respond to the press regarding allegations that concern the candidate’s campaign activities or duties as a Federal officeholder may be paid for with campaign funds.”); and FEC Adv. Op. 2005-11 (Cunningham) (Sept. 26, 2005) (“The Commission concludes that the 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 and the legal fees and expenses would not exist irrespective of Representative Cunningham’s campaign or duties as a Federal officeholder. The Committee may also use campaign funds to pay for the legal fees and expenses incurred in responding to the press regarding the grand jury investigation and legal proceedings that may arise from this investigation.”).

for causes of action reasonably related to the duties of legislative office.”<sup>15</sup> The Commission cautioned, however, that “[i]f 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.”<sup>16</sup>

Looking to these authorities, a former legislator is permitted to use campaign funds for press expenditures incurred in responding to a matter reasonably related to the duties of office provided the expenditures do not constitute personal use, that is, if the expense “would exist regardless” of the “responsibilities as a legislator.”<sup>17</sup> Here, the request explains that the press expenses would discuss the outcome of a lawsuit explain the outcome of a lawsuit which arose directly from the former legislator’s official duties as a legislator and involved actions taken by in the former legislator’s legislative capacity. Based on these facts, expenses incurred in responding to press inquiries or news stories regarding allegations in a lawsuit concerning the requester’s actions as a legislator would be reasonably related to the duties of legislative office. As such, so long as the expenditures would not be used to fulfill a “commitment, obligation or expense . . . that would exist regardless of . . . responsibilities as a legislator[,]” the requester would be permitted to use campaign funds for those expenses.<sup>18</sup>

## CONCLUSION

Under the Campaign Reporting Act, a former legislator may expend campaign funds for press expenses incurred in connection with legal proceedings

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<sup>15</sup> N.M. State Ethics Comm’n Adv. Op. 2025-04 (June 6, 2025) (available at <https://nmonesource.com/nmos/secap/en/item/19140/index.do>). “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.” 1.10.13.25(B)(3) NMAC.

<sup>16</sup> *Id.* (citing to numerous Federal Election Commission opinions concluding the same).

<sup>17</sup> 1.10.13.25(B)(2) NMAC.

<sup>18</sup> *Id.* The request does not identify whether the former legislator is a current candidate or not, but if the requester is a candidate, it is possible the expenditures would also constitute “expenditures of the campaign[.]” *Id.*

arising directly from the legislator's official duties as a legislator, so long as the expenditures do not constitute personal use and would not exist if the legislator had not held legislative office.

**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**