

## The State of South Carolina



## Office of the Attorney General

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August 17, 1988

The Honorable Patrick B. Harris  
Member, House of Representatives  
Box 655  
Anderson, South Carolina 29621

Dear Representative Harris:

In a letter to this Office you questioned whether a State representative who is a defendant in a lawsuit can use campaign funds to pay attorneys' fees and other costs involved in the litigation.

A prior opinion of this Office dated September 17, 1986 indicated that there are no State statutes or regulations which control the expenditure of campaign funds by a candidate in this State. The opinion did note, however, that pursuant to Section 8-13-620 of the Code a report must be filed with the appropriate legislative office stating the amounts of campaign funds expended and for what purposes they were spent.

Another opinion of this Office dated September 29, 1986 dealt with the propriety of a State representative having a fund-raiser to specifically raise money for personal legal fees. The opinion indicated that no provisions of the State Ethics Act, Sections 8-13-10 et seq. of the Code would absolutely prohibit such a fund-raiser. However, two provisions of the Act were noted. Section 8-13-410(1) states in part:

(n)o public official...shall use his official position or office to obtain personal financial gain for himself.

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Section 8-13-420 states in part:

(w)hoever gives or offers to any public official...any compensation...to influence his action, vote, opinion or judgment as a public official...or such public official solicits or accepts such compensation to influence his action, vote, opinion or judgment shall be subject to punishment....

The opinion also noted that pursuant to Section 8-13-830, any gifts of one hundred (\$100.00) dollars or more received from lobbyists, as defined by Section 2-17-20 of the Code, must be reported to the appropriate legislative ethics committee.

A July 29, 1980 opinion of this Office dealt with the question of whether a candidate could spend unexpended campaign contributions for other candidates or for his political party. The opinion noted that the State Ethics Act does not specifically restrict the expenditure of campaign funds but provides for the maintenance by candidates of records of contributions and expenditures of campaign funds. However, the opinion did reference another prior opinion of this Office dated October 8, 1974, a copy of which is enclosed, which advised a legislator that there is the possibility that unspent campaign contributions could be impressed with a trust which would limit the use of such contributions and, furthermore, unspent political contributions should be either returned to their donors, or in the alternative, their consent be obtained prior to using such funds for another purpose.

Referencing the above, there do not appear to be any State statutes which would absolutely prohibit a State representative from using campaign funds to pay attorneys' fees and other costs involved in litigation. However, Sections 8-13-410 and 8-13-420 do prohibit the use of a political office for financial gain. Only a court could categorically conclude whether particular facts or circumstances constitute a violation of such provisions. Furthermore, as noted, there is the possibility that campaign funds are impressed with a trust which controls the manner of expending such funds for purposes other than campaign expenses. Regardless, however, the manner of expending campaign funds must be reported in the manner specified by State law.

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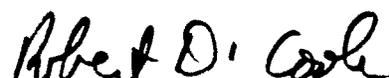
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR:sds

REVIEWED AND APPROVED BY:

  
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EXECUTIVE ASSISTANT FOR OPINIONS