

1974 S.C. Op. Atty. Gen. 285 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3865, 1974 WL 21366

Office of the Attorney General

State of South Carolina

Opinion No. 3865

October 8, 1974

***1 Unspent political campaign contributions should be returned to the donors or, in the alternative, their consent obtained for disposition.**

Member

House of Representatives

Mr. McLeod has handed me your letter of September 30, 1974, for research and reply. You advise that you have slightly under \$50.00 in unexpended 1972 campaign contributions and request the opinion of this office as to the proper disposition of the same.

We do not find where this specific question has been the subject of any judicial actions and, additionally, we find no statutory authority that provides for the disposition. We assume, however, that the contributions were given with the donor's intent that the same be used for your campaign expenses and there is some question of whether such contributions are gifts.

If the contributions were gifts, there is authority in this State that no strings can be attached thereto.

'In common parlance, to be legally binding a gift must have no strings attached * * *.' [Watkins v. Hodge](#), 232 S. C. 245, 101 S. E. 2d 657.

There is, however, some authority that conditions may be attached to a gift.

* * * However, the mere fact that a gift is accompanied by a condition or qualification not inconsistent with the vesting of title in the donee does not necessarily render it invalid. * * *. An incomplete gift may be revoked by the donor, and thus a donor may revoke such a gift if the donee fails to comply with the conditions upon which the gift is to take effect or refuses to perform them.' 38 *Am. Jur. 2d, Gifts*, p. 883, Section 81.

More important, however, is the possibility that the contributions were impressed with a trust limiting the use thereof to campaign expenses.

The following is found in 54 *Am. Jur., Trusts*, p. 176, Section 230:

'The rule is frequently stated that where money or property is entrusted to another for a certain purpose, such as the payment of a debt, equity implies or imposes a trust that the money or property will be applied to such purpose. It would seem that such a trust can be viewed either as an express one, created by the manifestation, by conduct, of an intention to create a trust, or as a constructive trust that will be enforced as against any breach of confidence; at least, a breach of confidence to apply the property and proper purpose give rise to a constructive trust enforceable against the money in question.'

It is therefore the recommendation and opinion of this office that the unexpended campaign contributions be returned to the donor or, in the alternative, that the donor's approval be obtained to transfer the funds to another for charitable or other purposes as described in your letter.

Joe L. Allen, Jr.
Assistant Attorney General

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