



NORTH CAROLINA

STATE BOARD OF ELECTIONS

Mailing Address:

P.O. Box 27255,
Raleigh, NC 27611

(919) 814-0700 or
(866) 522-4723

Fax: (919) 715-0135

Ms. Jinger Kelley, Treasurer
Committee to Elect Dan Forest
3103 Julian Glen Circle
Waxhaw, North Carolina 28173

June 25, 2021

Re: Request for an Advisory Opinion under N.C.G.S. § 163-278.23 regarding settlements pursuant to a statute

Dear Ms. Kelley,

Thank you for contacting our office. You asked how to properly report the proceeds of a settlement agreement entered into by the committee. As a proposed answer, you suggested that the proceeds be reported on form *CRO-1250 Outside Sources of Income*.

The settlement follows the North Carolina Supreme Court's decision in *Committee to Elect Dan Forest v. Employees Political Action Committee*, 376 N.C. 558 (2021). At issue in that case was North Carolina's "Stand By Your Ad" law, which was repealed by the North Carolina General Assembly in 2013. The now repealed statute created a cause of action and permitted the candidate's campaign committee to seek monetary damages against an opposing candidate or political committee that violated the statutory disclosure requirements. The North Carolina Supreme Court ultimately ruled in favor of the Committee to Elect Dan Forest and the parties entered into a settlement agreement that resolved any remaining questions about damages under the now repealed G.S. § 163-278.39A.

While authorizing an award of actual and treble damages, the "Stand By Your Ad" law did not address the treatment of those damages under Article 22A. However, there is nothing in the language of the now repealed law to indicate that damages were in any way limited by the contribution limits in G.S. § 163-278.13 or the source limits in G.S. § 163-278.15. In fact, the statute states "the price of actual damages shall be calculated as the total dollar amount of television and radio advertising time that was aired that the plaintiff candidate correctly identifies as being in violation of the disclosure requirements. . ." N.C. Sess. Laws 1999-453. As a result, it is reasonable to conclude that the General Assembly did not intend to limit damage awards beyond the language of G.S. § 163-278.39A, and a damage award or settlement under the now repealed law is not subject to contribution limits or source limits.

This is not the only source of funds the Campaign Finance Division has historically excluded from contribution limits and source limits. The Division has

excluded interest earned on bank accounts from financial institutions in the ordinary course of business.

That said, G.S. § 163-278.11, titled “contents of treasurer’s statement of receipts and expenditures,” requires a treasurer to disclose contributions received by a committee regardless of whether a given contribution is subject to G.S. 163-278.13 or G.S. 163-278.15. Any transfer of funds to a candidate committee must be disclosed consistent with G.S. § 163-278.11.

Other receipts received by a candidate committee that have not been itemized on other forms are disclosed on the *CRO-1250 Other Receipt Sources*. Specifically, this is where interest earned on bank accounts is reported. This is also the form used to disclose contributions from qualifying nonprofits under the exception to the prohibition on corporate contributions in G.S. 163-278.19(h). Given the that these contributions may stem from a corporation, or exceed contribution limits, it would be appropriate for the settlement to be disclosed on this form. In making the required disclosure, the treasurer should note in box 4.c. that the transfer of funds results from a settlement agreement between the candidate committee and contributor.

The opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and North Carolina Administrative Code.

Sincerely,

A handwritten signature in black ink that reads "Karen Brinson Bell". The signature is fluid and cursive, with the first name "Karen" and last name "Bell" being more prominent than the middle name "Brinson".

Karen Brinson Bell
Executive Director
North Carolina State Board of Elections

Cc: Molly Masich, Codifier of Rules



May 10, 2021

NC State Board Of Elections
P.O. Box 27255
Raleigh, NC 27611

Attn: Karen Brinson Bell
Executive Director
North Carolina State Board of Elections

RE: Request for Written Advisory Opinion

Dear Ms. Bell

As you may be aware, the Committee to Elect Dan Forest was involved as a plaintiff in a legal dispute stemming from certain advertisements opposing Dan Forest's election for Lieutenant Governor in 2012. After a lengthy legal process, the North Carolina Supreme Court ruled in favor of the Committee to Elect Dan Forest. For a full background on the legal proceedings, I would refer you to the Supreme Court's decision in *Committee to Elect Dan Forest v. Employees Political Action Committee*, 376 N.C. 558 (2021). Following the Supreme Court's unanimous ruling in the Committee's favor, the parties to the lawsuit reached a settlement consistent with N.C. Gen. Stat. § 163-278.39A (now repealed, but in effect at all times relevant to the lawsuit).

Because these funds are not contributions, but rather funds which result from a lawsuit settlement pursuant to a statute, the Committee to Elect Dan Forest requests your advice on how to properly report the proceeds received by the Committee. It would appear the correct answer would be to report it on Form CRO-1250 as "Outside Sources of Income," but given the unique nature of this situation we are requesting a written advisory opinion from you.

Sincerely,

Jinger Kelley
Treasurer

PO Box 471845 Charlotte NC 28247