



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. Abbie Lane
Committee to Elect Abbie Lane
6061 NC 33 NW
Tarboro, NC 27886

November 12, 2019

Re: Request for an Advisory Opinion under N.C.G.S. § 163-278.23 regarding the use of contributions for the payment of a salary to the candidate

Dear Ms. Lane,

Thank you for contacting our office. You asked whether a candidate for a North Carolina office could draw a salary from campaign contributions. Based on the text and structure of the North Carolina campaign finance laws this would be an impermissible use of candidate committee funds. North Carolina campaign finance laws are different than federal laws and regulations, which specifically permit paying a salary to the candidate.

North Carolina law limits a candidate's use of contributions to the following nine permissible uses outlined in N.C.G.S. § 163-278.16B:

- (a) A candidate or candidate campaign committee may use contributions only for the following purposes:
 - (1) Expenditures resulting from the campaign for public office by the candidate or candidate's campaign committee.
 - (2) Expenditures resulting from holding public office.
 - (3) Donations to an organization described in section 170(c) of the Internal Revenue Code of 1986 (26 U.S.C. § 170(c)), provided that the candidate or the candidate's spouse, children, parents, brothers, or sisters are not employed by the organization.
 - (4) Contributions to a national, State, or district or county committee of a political party or a caucus of the political party or an affiliated party committee.
 - (5) Contributions to another candidate or candidate's campaign committee.
 - (6) To return all or a portion of a contribution to the contributor.
 - (7) Payment of any penalties against the candidate or candidate's campaign committee for violation of this Article imposed by a board of elections or a court of competent jurisdiction.
 - (8) Payment to the Escheat Fund established by Chapter 116B of the General Statutes.

- (9) Legal expense donation not in excess of four thousand dollars (\$4,000) per calendar year to a legal expense fund established pursuant to Article 26 of this Chapter.

A salary is “an agreed compensation for services . . . paid at regular intervals on a yearly basis, as distinguished from an hourly basis.” BLACK’S LAW DICTIONARY (11th ed. 2019). It is a method of compensating an individual for services rendered.

There is no part of N.C.G.S. § 163-278.16B that authorizes a candidate to pay himself or herself for his or her own “services” to the campaign (his or her own physical or mental efforts for the campaign or for holding public office).

North Carolina law differs from federal law, which grants federal candidates broad authority to use contributions for a wider variety of purposes. Specifically, 52 U.S.C. § 30114 lists among its permitted uses:

- (a) 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 office;
 - (3) for contributions to an organization described in section 170(c) of title 26;
 - (4) for transfers, without limitation, to a national, State, or local committee of a political party;
 - (5) for donations to State and local candidates subject to the provisions of State law; or
 - (6) for any other lawful purpose unless prohibited by subsection (b) of this section.

This final provision in (a)(6) is a broad grant enabling federal candidates to use contributions for any lawful purpose not prohibited by subsection (b), which states that contributions or donations “shall not be converted by any person to personal use.” 52 U.S.C. § 30114.

The FEC promulgated rules to clarify the definition of personal use. Specifically, 11 C.F.R. § 113.1(g) defines personal use as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder.” The rule then gives a non-exhaustive list of examples of impermissible uses of candidate funds. One use prohibited in 11 C.F.R. § 113.1(g)(1)(i)(I) is for “[s]alary payments by a candidate’s principal campaign to a candidate *in excess of* the lesser of: the minimum salary paid to a Federal officeholder holding the Federal office that the candidate seeks; or the

earned income that the candidate received during the year prior to becoming a candidate” (emphasis added). This subpart explicitly provides that a candidate for federal office may draw a salary from that candidate’s campaign contributions, subject to certain limits related to the amount and the timing of the election.

North Carolina has no provision similar to the “other lawful purpose” in (a)(6) that would permit the payment of a salary to state candidates in North Carolina and support the development of rules similar to those promulgated by the FEC. Again, candidates for North Carolina office may use contributions only for the purposes listed in N.C.G.S. § 163-278.16B.

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,



Karen Brinson Bell
Executive Director
North Carolina State Board of Elections

Cc: Molly Masich, Codifier of Rules