



NORTH CAROLINA

STATE BOARD OF ELECTIONS

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Robert B. Long, Jr.
The Van Winkle Law Firm
11 North Market Street
Asheville, NC 28801

September 13, 2024

Re: Request for an advisory opinion under N.C.G.S. § 163-278.23 regarding contribution limits

Dear Mr. Long,

Thank you for your correspondence on behalf of the Committee the Elect Van Duncan Commission Chair. The following written opinion is provided in accordance with N.C.G.S. § 163-278.23.

You asked whether an unaffiliated candidate seeking to be nominated by petition pursuant to N.C.G.S. § 163-122 may accept \$6,400 from an individual or PAC in the period up to the date of the first primary election (“primary election period”) and an additional sum of up to \$6,400 from that same individual or PAC in the period following the primary election through December 31 of the same year (“general election period”).

In North Carolina, no candidate shall accept or solicit any contribution from any individual, other political committee, or other entity of any money or any other contribution in any election in excess of \$6,400 for that election. N.C.G.S. § 163-278.13(c). For the limited purpose of N.C.G.S. § 163-278.13, an election is defined as:

. . . the period of time from January 1 of an odd-numbered year through the day of the primary, the day after the primary through the day of the second primary, or the day after the primary through December 31 of the next even-numbered year, without regard to whether the candidate is opposed or unopposed in the election, except that where a candidate is not

on the ballot in a second primary, that second primary is not "an election" with respect to that candidate.

Id. § 163-278.13(e).

Participation in a primary election or appearance on a primary ballot is not a prerequisite for accepting a contribution in the primary election period. A contribution may be made during the primary election period or general election period “without regard to whether the candidate is opposed or unopposed in the election.” N.C.G.S. § 163-278.13(e).¹ It is the date on which the contribution is received that governs the amount that may be received. A candidate may receive a \$6,400 check during the primary election period and a \$6,400 check during the general election period from the same contributor, but cannot receive two checks of \$6,400 during the general election period from the same contributor.

Like all candidates, an unaffiliated candidate is required to organize a candidate committee once the candidate “has received funds or made payments or given consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election for office.” N.C.G.S. § 163-278.7(a). An unaffiliated candidate does not appear on a primary ballot. Instead, during the period before the primary, the candidate is collecting signatures for submission to the board of elections by noon on the day of the primary election. N.C.G.S. § 163-122(a). After verification of the signatures, the board of elections will cause the unaffiliated candidate’s name to be placed on the general election ballot. *Id.* In most cases, the signature gathering effort will require the candidate to engage in some fundraising to support expenditures for materials and travel, resulting in the obligation to organize a candidate committee during the primary election period.

In comparison, when only one candidate of a political party files for office, that person is declared the nominee without having their name printed on the primary ballot. N.C.G.S. § 163-110. The agency has long recognized that these declared party nominees may accept contributions during the primary election period, in addition to any contribution that may be received during the general election period, even though they do not appear on the primary ballot. While becoming a party nominee without a primary due to no opposition is distinct from becoming a general election candidate by virtue of an unaffiliated petition, N.C.G.S. § 163-278.13 does not distinguish between unaffiliated petitioners and declared party

¹ Appearance on the ballot *is* relevant in determining whether an additional \$6,400 contribution may be received during the second primary. N.C.G.S. § 163-278.13(e) (emphasis added).

nominees. Ultimately, for both types of candidates, the primary period and general election period are distinct “elections” for the purposes of contributions to these candidates, regardless of these candidates’ appearance on a primary ballot.

An unaffiliated candidate who organizes a committee on or before the date of the primary may accept a contribution of up to \$6,400 from an individual or PAC during the primary election period. During the general election, the certified unaffiliated candidate may accept an additional \$6,400 from the same individual or PAC in the general election period.

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

Sincerely,

A handwritten signature in blue ink that reads "Karen Brinson Bell". The signature is fluid and cursive, with the first name "Karen" being the most prominent.

Karen Brinson Bell
Executive Director
State Board of Elections

Cc: Ashley B. Snyder, Codifier of Rules



July 16, 2024

VIA EMAIL ONLY

lindsey.wakely@ncsbe.gov

Ms. Wakely:

As stated in the email I sent to you earlier, the Committee to Elect Van Duncan Commission Chair believes that under all of the definitions and provisions applicable to an unaffiliated candidate seeking to be nominated by Petition pursuant to N.C.G.S. 163-122(a)(3), N.C.G.S. 163-278.13 which provides the limits on campaign contributions allows an individual to contribute, and a validly organized political committee to accept, donations by the individual of, \$6,400.00 for the period of time up to the first primary election when the Petitions must be submitted to the County Board of Elections and an additional contribution by the individual of \$6,400.00 allowed to be given and accepted for the period of time following the first primary up to the general election. The Committee belief this to be so is based on the wording of N.C.G.S. 163-278.13 and the definitions contained in N.C.G.S. 163-278.6 for "candidate," "contribute or contribution," "election," "political committee," and "public office."

For the purposes of Part 1 of Article 22A of Chapter 163 of the North Carolina General Statutes, an unaffiliated candidate subject to the provisions of that Article and Part is an individual who takes "positive action for the purpose of bringing about that individual's nomination, or election to public office" which includes making a public announcement of a definite intent to run for a specific public office in a particular election, or receiving funds, etc. such as through a political committee.

Receiving funds and making expenditures in support of the nomination of the unaffiliated candidate by petition would qualify as "contributions" under the definition contained in N.C.G.S. 163-278.6(13).

Further, under N.C.G.S. 163-278.6(30) an "election" means "a first" or "second" primary and a "general election."

The "political committee" is a group accepting things of value with the characteristic of having its major purpose to support or oppose the nomination or election of a clearly identified candidate as provided in N.C.G.S. 163-278.6(74).

Finally for these purposes, a public office is any office filled by election by the people on a County basis.

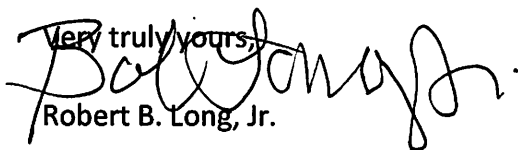
To sum up the position of the Committee, Van Duncan became a "candidate" immediately upon making his announcement of a definite intent to run unaffiliated for the specified office of Chairman of County Commissioners and the valid establishment of a political committee to accept contributions from individuals to support that effort in December 2023. The purpose of the Committee was to aid the candidate to secure the requisite number of signatures of qualified voters in support of his unaffiliated candidacy to be turned in by noon on first primary day as provided in N.C.G.S. 136-122(c) and thereafter to aid his campaign in the general election. Obtaining the requisite number of valid signatures of voters in that time frame qualifies the unaffiliated candidate to go on the general election ballot and would be determined the same as a winning candidate in a primary election would be certified as winner to go on the ballot for the ensuing general election.

There is no statutory exception for filing the requisite campaign contribution and expenditure reports for either unopposed or unaffiliated candidates as campaign contribution reports are required regardless of whether a candidate is opposed, unopposed, or wins during the first primary election reporting and expenditure period.

Finally, N.C.G.S. 163-278.13 setting the current limit of \$6,400.00 per "election" defines "election" as time periods within which to compute the contribution limit and does not limit in any ways the contributions to already qualified individuals. Thus, if nominated by obtaining the required number of signatures, the unaffiliated candidate enters a new time period for calculation of the amount of contributions.

There is nothing in any other definition applicable to Part 1 of Article 22A of Chapter 163 of the General Statutes that contradicts this straight forward interpretation of the statute.

From Mr. Larimore, I understand this is a terribly busy time for you and would like to schedule a time when we might speak. What are your available times to do so?

Very truly yours,

Robert B. Long, Jr.