

STATE OF NORTH CAROLINA
WAKE COUNTY

BEFORE THE STATE BOARD OF ELECTIONS

IN RE: REQUEST FOR A DECLARATORY)
RULING ON REIMBURSEMENT OF) **DECLARATORY RULING**
COSTS AND EXPENSES RELATED TO)
SERVING IN OFFICE)
)

The State Board of Elections received a Petition for a Declaratory Ruling (“Petition”) from Fletcher J. Hartsell Jr. (“Petitioner”) on January 2, 2024. The Petitioner requested the State Board issue a declaratory ruling under N.C.G.S. § 150B-4 on the validity of advisory opinions issued by previous Executive Directors of the State Board of Elections and the procedures for the reimbursement of costs and expenses related to serving in office.

On February 15, 2024, the State Board granted the request for a declaratory ruling, thereby triggering a 45-day deadline to “issue a written ruling on the merits” of the Petition. N.C.G.S. § 150B-4(a1)(3). This declaratory ruling is limited to interpreting Article 22A of the North Carolian General Statutes and does not address IRS regulations or potential tax implications, as these are not within the purview of the State Board.

I. BACKGROUND

Under N.C.G.S. § 163-278.23, the Executive Director of the State Board of Elections issues written opinions to candidates, the communications media, political committees, referendum committees, or other entities upon request, regarding filing procedures and compliance with this Article 22A of Chapter 163. If a candidate, communications media, political committee, referendum committee, or other entity relies on a written opinion they requested under N.C.G.S. § 163-278.23, then prosecution or civil action on account of the procedure followed is barred. *Id.* Written opinions are also published in the North Carolina Register and on

the State Board of Elections’ website and serve as published guidance on the Executive Director’s interpretation of a law or rule.¹

II. ANALYSIS

Key to any analysis of the procedures for the reimbursement of costs and expenses related to serving in office is N.C.G.S. § 163-278.16B. The law came into effect on July 23, 2006 with the adoption of House Bill 1845 titled “An Act to Restrict the Use of Contributions to Candidates and Candidates’ Campaign Funds to Those Related to Campaigns and Office-holding Duties; To Prohibit Personal Use of Contributions by Candidates and Candidate Campaign Committees; And to Strengthen Reporting Requirements to Prevent Violations.” N.C.G.S. § 163-278.16B limits the use of candidate committee funds to purposes enumerated in the statute. These purposes preclude the personal use of campaign contributions. Most candidate committee expenditures are allowed as either (1) expenditures resulting from the campaign, or (2) expenditures resulting from holding public office. *Id.* § 163-278.16B(a)(1) and (a)(2). Over the years, much of the agency’s guidance on N.C.G.S. § 163-278.16B has stemmed from written opinions from the Executive Director, issued pursuant to N.C.G.S. § 163-278.23.

A. Expenditures for Living in Raleigh

The General Assembly meets in Raleigh for regular session on a biennial schedule. N.C. Const. art. II, § 11(1). Extra sessions may also be called by a joint proclamation *Id.* § 11(2). While members receive an annual salary under N.C.G.S. § 120-3 for their service, they are also entitled to (1) a weekly travel allowance for travel to Raleigh, (2) a general travel allowance for other approved travel, and (3) a subsistence allowance for meals and lodging. N.C.G.S. § 120-3.1. At times, members of the General Assembly have sought to use candidate committee funds for travel and subsistence in lieu of accepting reimbursement from the State. Given the relatively low reimbursement rates in N.C.G.S. 120-3.1, candidates have also sought to use campaign contributions to supplement State allowances.

In 2007, after the adoption of N.C.G.S. § 163-278.16B, Senator Charles Albertson requested a written opinion on whether contributions may be spent to reimburse expenses

¹ N.C. Session Law 2023-134, section 21.2(k) amended N.C.G.S. § 163-278.23 to eliminate publication of written opinions in the North Carolina Administrative Code.

incurred while serving in the General Assembly. Written Op. to Charles W. Albertson, 21 N.C. Reg. 1354 (Jan. 12, 2007). Specifically, expenses including housing, utilities, meals, and other living expenses incurred when a member of the General Assembly is in Raleigh and away from home. Citing to N.C.G.S. § 163-278.16B(a)(2), which says that a candidate or candidate campaign committee may use contributions for “expenditures resulting from holding public office,” then-Executive Director Gary Bartlett concluded that “expenses caused by the necessity to live in Raleigh while the General Assembly is in session or while you are otherwise in Raleigh on legislative matters appear to fall under the statute’s authorized purposes[.]” *Id.*

The agency has adhered to the guidance in the 2007 opinion since its issuance. Members of the General Assembly have been permitted to use candidate committee funds for reasonable travel and subsistence expenses while in Raleigh. However, in 2020 the State Board imposed an additional limitation with the adoption of rule 08 NCAC 21 .0301. The Rule states that campaign contributions may not be used to purchase, lease, rent, or make mortgage payments on residential real property that is owned, either directly or indirectly, by the candidate or officeholder, or a member of the candidate’s or officeholder’s family. *Id.* This eliminated a category of lodging expenses that could previously be paid with contributions under the 2007 opinion—residential real property that is owned by the officeholder or officeholders’ family.

As an additional limiting principal, a member of the General Assembly may not receive reimbursement from their candidate committee funds for expenses for living in Raleigh if the member has already received reimbursement from another source, since that would result in personal enrichment. If a member has already been reimbursed by the State under N.C.G.S. § 120-3.1, further payments from the candidate committee would constitute an impermissible personal use of contributions.

B. Mileage

A candidate may be reimbursed from campaign contributions for travel resulting from the campaign or resulting from holding public office. Reimbursement may be based on (1) actual vehicle expenses, if use of the vehicle is limited to the campaign or holding office, or (2) based on a pre-determined mileage rate. A candidate cannot claim reimbursement for both the actual vehicle expense and mileage.

Members of the General Assembly are entitled to a weekly travel allowance when the General Assembly is in regular session. The weekly travel allowance is calculated for each member by multiplying the actual round-trip mileage from that member's home to the City of Raleigh by the rate per mile which is the business standard mileage rate set by the Internal Revenue Service in Rev. Proc. 93-51, December 27, 1993. N.C.G.S. § 120-3.1(a)(1). Under this provision, the current mileage rate is 29 cents per mile. The same rate applies whenever a member travels, whether in or out of session, as a representative of the General Assembly or of its committees or commissions, with the approval of the Legislative Services Commission. *Id.* § 120-3.1(a)(2). The established rate of 29 cents per mile is well below the current 67 cents per mile standard mileage rate issued by the IRS.

In 2011, the Harold J. Brubaker Campaign Committee requested a written opinion on whether a candidate may be reimbursed from committee funds for the difference between the reimbursement rate paid by the General Assembly and the rate set by the IRS. Written Op. to Harold J. Brubaker Campaign Comm., 26 N.C. Reg. 244 (July 12, 2011). Then-Executive Director Bartlett shared that “[h]istorically, the reimbursement rate differential between the General Assembly allowance and the IRS deductible has been allowed to be expensed from campaign funds.” *Id.* Bartlett stated that “incurred mileage resulting from activities related to campaigning for and subsequently holding public office is a covered expenditure” under N.C.G.S. § 163-278.16B and concluded that that Brubaker “may receive reimbursement for the allowance differential for mileage accrued while attending to the duties of holding public office and the participating in the activities necessary while campaigning for election to office.” *Id.*

While a candidate may be reimbursed for the difference between the two rates, reimbursement cannot occur if the candidate has already been fully reimbursed by another source. If a member has already been fully reimbursed by the State under N.C.G.S. § 120-3.1, or by any other source, further payments from the candidate committee would constitute an impermissible personal use of contributions.

C. Subsistence

As stated in N.C.G.S. § 120-3.1(a)(3), members of the General Assembly may also receive the following subsistence allowance for meals and lodging:

A subsistence allowance for meals and lodging at a daily rate equal to the maximum per diem rate for federal employees traveling to Raleigh, North Carolina, as set out at 58 Federal Register 67959 (December 22, 1993), while the General Assembly is in session and, except as otherwise provided in this subdivision, while the General Assembly is not in session when, with the approval of the Speaker of the House of Representatives in the case of Representatives or the President Pro Tempore of the Senate in case of Senators, the member is:

- a. Traveling as a representative of the General Assembly or of its committees or commissions, or
- b. Otherwise in the service of the State.

A member who is authorized to travel, whether in or out of session, within the United States outside North Carolina, may elect to receive, in lieu of the amount provided in the preceding paragraph, a subsistence allowance of twenty-six dollars (\$26.00) a day for meals, plus actual expenses for lodging when evidenced by a receipt satisfactory to the Legislative Services Officer, the latter not to exceed the maximum per diem rate for federal employees traveling to the same place, as set out at 58 Federal Register 67950-67964 (December 22, 1993) and at 59 Federal Register 23702-23709 (May 6, 1994).

A candidate may be reimbursed from candidate committee funds for actual subsistence expenses resulting from the campaign or resulting from holding public office. However, a candidate may not receive reimbursement from candidate committee funds for subsistence if the member has already received reimbursement from another source. If a member has already been reimbursed by the State under N.C.G.S. § 120-3.1, or by any other source, further payments from the candidate committee would constitute an impermissible personal use of contributions.

D. Reporting

Record keeping and reporting is an important component of any discussion of the procedures for the reimbursement of costs and expenses related to serving in office. One of the

duties of a committee treasurer is to keep detailed accounts of committee activity. N.C.G.S. § 163-278.8. Specifically, N.C.G.S. § 163-278.8(a) requires the treasurer of each candidate committee to keep detailed accounts, current within not more than seven days after the date of making an expenditure, of all expenditures made by or on behalf of the candidate. A candidate's expenditures for travel and subsistence are subject to N.C.G.S. § 163-278.8(a). To be reimbursed for mileage, a mileage log that complies with N.C.G.S. § 163-278.8(a) must be kept by the committee. Accounting records kept by the treasurer may be inspected, before or after the election to which the accounts refer, by an attorney or employee of the State Board who is conducting an investigation pursuant to N.C.G.S. § 163-278.22(b).

In general, a member of the General Assembly is not required to disclose travel to Raleigh for official state business in a campaign finance disclosure report. These expenses are not contributions to the campaign under the definition in N.C.G.S. § 163-278.6(13). However, N.C.G.S. § 163-278.11(a)(2) requires the reporting of all expenditures and the itemization of obligations owed by the committee. To comply with this requirement, if a member intends to be reimbursed by their candidate committee for travel or subsistence, the member must first disclose the expenditures as if an in-kind contribution. The reimbursement to the member from candidate committee funds should then be reported as a reimbursement from the committee.

The present Petition for Declaratory Ruling asks the State Board to address prior agency guidance on whether reimbursed expenses related to officeholding must be reported individually or in aggregate. In 1978, then-Executive Director Alex K. Brock was asked if out-of-pocket expenses for transportation and meals could be reported in an aggregate amount. Written Op. to Joseph E. Johnson (Apr. 12, 1978), available at https://dl.ncsbe.gov/?prefix=State_Board_Meeting_Docs/2024-03-26/Declaratory_Ruling/. In the opinion, Brock said travel expenses could be reported “in an aggregate amount to cover a given period on the Report of Contributions as an ‘in kind’ contribution for travel expenses paid for by [the] candidate.” *Id.* He further stated that “[i]f reimbursement is made to you from campaign funds, then such transaction should be reflected on the Report of Expenditures on the appropriate

date.”² This guidance was issued well before the adoption of N.C.G.S. § 163-278.16B and before the adoption of the agency’s current reporting forms.

In the context of mileage, the agency has historically permitted aggregate reporting. Itemized reporting would be burdensome for most committees given the volume of travel for the campaign, and it would be particularly burdensome for legislators getting reimbursed for traveling to Raleigh while the General Assembly is in session.

In contrast to what is implied in the 1978 opinion, the State Board of Elections has not endorsed aggregate reporting of meals in recent years. Lodging also cannot be reported in aggregate. N.C.G.S. § 163-278.11(a)(2) requires obligations of the committee to be itemized “so as to provide a reasonable understanding of the obligation.” The aggregated reporting of mileage does not inhibit the agency or a member of the public from obtaining a reasonable understanding of the obligation. However, the same understanding cannot be gained when meals or lodging are aggregated. If a candidate intends to be reimbursed from candidate committee funds for meal and lodging expenses related to holding office, then each expenditure must be itemized and disclosed as an in-kind contribution to the campaign in the reporting period in which the expense occurred. The reimbursement to the member from candidate committee funds would then be reported as a reimbursement from the committee.

The 1978 Brock opinion did not expound upon when reimbursements of a travel or subsistence expense must occur. The written opinion only references “a given period.” However, in order to comply with N.C.G.S. § 163-278.16B, which permits the use of contributions for expenditures resulting from “the campaign” or “holding public office,” reimbursement must occur in the same election cycle as the expense.³ If reimbursement occurs in a future election cycle, the nexus to the campaign or the candidate’s term of office is weakened such that the reimbursement payment could constitute a violation of N.C.G.S. § 163-278.16B.

III. CONCLUSION

² The Petition also reference an “Opinion of A.K. Brock dated December 30, 1987.” The 1987 document is a memo that summarizes and restates the 1978 opinion. It is not a separate or independent opinion issued by Executive Director Brock.

³ The term "election cycle" means the period of time from January 1 after an election for an office through December 31 after the election for the next term of the same office. Where the term is applied in the context of several offices with different terms, "election cycle" means the period from January 1 of an odd-numbered year through December 31 of the next even-numbered year. N.C.G.S. § 163-278.6(32).

Based on the foregoing analysis, the State Board DECLARES the following:

- (1) Consistent with the Written Opinion to Charles W. Albertson, 21 N.C. Reg. 1354 (Jan. 12, 2007), a candidate may be reimbursed for expenses caused by the necessity to live in Raleigh while the General Assembly is in session or while otherwise in Raleigh on legislative matters from campaign contributions. Any reimbursement payment from candidate committee funds for living expenses must be reduced by any reimbursement received by the candidate from another source, including State funds. Reimbursement must also be consistent with 08 NCAC 21 .0301—a candidate cannot be reimbursed from committee funds for residential real property that is owned, either directly or indirectly, by the candidate or officeholder, or a member of the candidate’s or officeholder’s family.
- (2) Consistent with the Written Opinion to the Harold J. Brubaker Campaign Committee, 26 N.C. Reg. 244 (July 12, 2011), a candidate may be reimbursed from campaign contributions for the difference between the General Assembly reimbursement rate and the standard mileage rate issued by the IRS. Any reimbursement payment from candidate committee funds must be reduced by any reimbursement received by the candidate from another source, including State funds.
- (3) A candidate’s expenditures for travel and subsistence are subject to N.C.G.S. § 163-278.8(a). To be reimbursed for mileage, a mileage log that complies with N.C.G.S. § 163-278.8(a) must be kept by the committee.
- (4) If the candidate intends to be reimbursed for mileage from candidate committee funds, mileage must first be reported as an in-kind contribution paid for by the candidate. Consistent with the Written Opinion to Joseph E. Johnson (Apr. 12, 1978), available at [https:// dl.ncsbe.gov/?prefix=State Board Meeting Docs/2024-03-26/Declaratory Ruling/](https://dl.ncsbe.gov/?prefix=State_Board_Meeting_Docs/2024-03-26/Declaratory_Ruling/), mileage may be reported in an aggregate amount. If the candidate receives reimbursement, the transaction must be disclosed in the appropriate disclosure report.
- (5) If the candidate intends to be reimbursed for meal and lodging expenses from candidate committee funds, meal and lodging expenses must first be reported as an in kind- contribution paid for by the candidate. Meal and lodging expenses must be itemized in the appropriate disclosure report and cannot be reported in an aggregate

amount. If the candidate receives reimbursement, the transaction must be disclosed in the appropriate disclosure report.

- (6) Any reimbursement for travel and subsistence must take place within the same election cycle as the original travel or subsistence expense.

IT IS SO ORDERED.

This 29th day of March, 2024.



Alan Hirsch, Chair
STATE BOARD OF ELECTIONS