

OPINION 1997-2

TO: MEMBERS OF THE SENATE OF SOUTH CAROLINA  
FROM: THE SENATE COMMITTEE ON ETHICS  
RE: OPINION 1997-2  
DATE: JUNE 3, 1997

The Committee on Ethics has received the following question which we feel should be answered through this Opinion:

Can a Member of The Senate use campaign funds to make donations to monument commissions created for the purpose of placing a monument on the Capitol Complex?

We will begin by quoting the following Section of *The Ethics, Government Accountability, and Campaign Reform Act of 1991 With Amendments Effective January 12, 1995*:

Section 8-13-1348(A), No candidate, committee, public official, or political party may use campaign funds to defray personal expenses which are unrelated to the campaign or the office if the candidate is an officeholder nor may these funds be converted to personal use. The prohibition of this subsection does not extend to the incidental personal use of campaign materials or equipment nor to an expenditure used to defray any ordinary expenses incurred in connection with an individuals's duties as a holder of elective office. [emphasis added]

This Committee has addressed many similar questions since the enactment of *The Ethics, Government Accountability, and Campaign Reform Act of 1991*. Most notably are Opinions 1993-4 and 1993-7.

Opinion 1993-4, says in part:

The Committee believes that the phrase 'ordinary expenses incurred in connection with an individual's duties' as an officeholder is intentionally broad and that the determination whether a particular expense is permissible is by design left largely to the discretion of the Member.

In determining whether a particular expenditure is permissible, a Member should ask: (A) Is the expenditure "ordinary", that is, is the expense something "commonly encountered" or "usual" for a holder of public office in the Member's position?; (B) is the expense incurred in connection with the Member's duties as an office holder, that is, would the Member

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make the expenditure if he or she were not a holder of public office?; and will the Member realize no personal gain, aside from any benefit received by the public at large, from making the expenditure?

As we can see from these quoted sections of Opinion 1993-4, Members are allowed to expend campaign funds on those expenses that would not be incurred were it not for their office. Many examples are given in the entire text of 1993-4 as well as other Opinions of the Committee.

This question is very timely in that there are several monument commissions currently meeting to design and erect monuments that the General Assembly has approved. It has been stated that the donation of funds for these monuments will be sought from sources other than public moneys. It is a relatively safe assumption that Members of The Senate of South Carolina will be among the first who are formally solicited by these various monument commissions for donations.

Opinion 1993-7 states in part:

Other related provisions within the same act can often provide meaning or insight when interpreting a vague provision. Section 8-13-70 expressly authorizes an expenditure of campaign funds for charitable and other purposes upon final disbursement. One could reason that the presence of such specific language in Section 8-13-70 and its omission from Section 8-13-1348 means that a contribution to a charitable organization prior to final disbursement is not appropriate. This reasoning, however, ignores the fact that Section 8-13-1370 expressly restricts disbursement to several specified items, while Section 8-13-1348 is devoid of such restrictions. Logic dictates that those acts that are not prohibited should be considered appropriate. [emphasis added]

This is clearly an example of donations being sought because of the position held; i.e., that of State Senator. Participating in fundraising activities for organizations, churches, schools, colleges, universities, communities, families in dire situations, political parties, protecting historical landmarks such as buildings and their surrounding property, as well as adding to them, and a whole range of charitable giving and charitable good works is a longstanding function of elected officials, especially Members of The Senate of South Carolina. The Public of this state expect, and in many cases demands, that Members participate in various functions that benefit the aforementioned groups.

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The Ethics Act does not prohibit these actions by Members.