



## STATE ETHICS COMMISSION

### ADVISORY OPINION NO. 2024-02

April 5, 2024<sup>1</sup>

### QUESTION PRESENTED<sup>2</sup>

May a legislator use campaign funds to pay for registration and travel to conferences and courses designed to make them a better legislator, including educational conferences and professional development courses?

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. On May 2, 2023, the Commission received a request for an advisory opinion that detailed the issues as presented herein. *See* 1.8.1.9(B) NMAC. Commissioner Baker requested that the advisory letter be converted into a formal advisory opinion. *See* 1.8.1.9(B)(3) NMAC. *See generally* NMSA 1978, § 10-16G-8(A)(1) (2019); 1.8.1.9(A)(1) NMAC.

## ANSWER

Yes, the Campaign Reporting Act<sup>3</sup> allows for the expenditure of campaign funds by a legislator that are reasonably related to performing the duties of the office held, which may include training and travel expenditures.

## ANALYSIS

The Campaign Reporting Act provides an exhaustive list of permissible uses of campaign funds, and expressly prohibits purchases made for personal use.<sup>4</sup> Included among the list of permitted uses of campaign account monies are “[e]xpenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to service constituents, but excluding personal and legislative session living expenses. . . .”<sup>5</sup> The request asks whether campaign funds may be used to pay for registration and travel expenses to educational conferences and professional development courses “designed to make [the individual] a better legislator.” The Campaign Reporting Act permits such expenditures where the courses and associated travel for professional development are “reasonably related” to performing the legislator’s duties.<sup>6</sup>

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<sup>3</sup> NMSA 1978, §§ 1-19-1 to -37 (1979, as amended through 2021).

<sup>4</sup> NMSA 1978, § 1-19-29.1(A)(1)–(7) (2009). *See also Dann v. Ohio Elections Comm.*, 973 N.E.2d 285 (Ohio Ct. App. 2012) (concluding the attorney general of Ohio violated campaign finance law by using excess campaign funds to install security cameras in his home, where statute only permits campaign funds for “legitimate and verifiable ordinary and necessary expenses incurred in connection with duties of public office” (citing Oh. ST § 3517.13(O)(2))).

<sup>5</sup> NMSA 1978, § 1-19-29.1(A)(2).

<sup>6</sup> The Campaign Reporting Act does not define “reasonably related,” but “[u]nless a word or phrase is defined in the statute or rule being construed, its meaning is determined by its context, the rules of grammar and common usage.” NMSA 1978, § 12-2A-2 (1997). *See State v. Farish*, 2021-NMSC-030, ¶ 11, 499 P.3d 622 (explaining that in interpreting any statute, the primary goal of the Court must be to give effect to the intent of the Legislature, and in doing so first look to the ordinary and plain meaning unless a different intent is clearly indicated). *See also State v. Adams*, 2019-NMCA-043, ¶ 26, 447 P.3d 1142 *aff’d*, 2022-NMSC-008 (noting that when ascertaining the ordinary and plain meaning of a statutory term, Courts frequently will look to dictionary definitions).

While the request does not detail the specifics about the courses the legislator wishes to attend, the request makes clear that the trainings are educational conferences and professional development courses intended to make the individual a “better legislator.” And courses designed towards improving the individual’s skills as a legislator to better serve constituents would be reasonably related to performing the duties of legislative office.<sup>7</sup> The associated travel to those courses is also likely a permitted expenditure under Section 1-19-29.1(A)(2) so long as that travel is necessary for attendance at the courses.<sup>8</sup>

In sum, Section 1-19-29.1(A) of the Campaign Reporting Act permits a candidate to expend campaign funds on expenses for attending courses or conferences that are reasonably related to a legislator’s legislative duties, but prohibits use of campaign funds for travel for personal reasons such as vacation or visiting family. Whether a given expenditure of campaign funds is or is not permitted under the Campaign Reporting Act turns on facts and context not presented in the request. An example of a permissible expenditure might be attendance and travel to the National Conference of State Legislatures, or trainings directly tied to the legislative committees on which the individual serves, such as a course on environmental legislation. If the purpose of a given course or conference is obviously related to legislative service, then expenditures of campaign funds to attend the course or conference would likely be a permissible expenditure under Section 1-19-29.1(A)(2).

On the other hand, expenditures to attend a course or conference with only some tangential relation to the individual’s duties as a legislator may be more difficult to justify: for example, attending the Santa Fe International Literary Festival. So too expenditures in satisfaction of an obligation the legislator would have incurred even if the individual were not a member of the legislature, such as expenditures on a cruise to Alaska with their family, would likely not be

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<sup>7</sup> Additionally, the analogous Federal Election Campaign Act (“FECA”), 52 U.S.C. §§ 30101–30145 (1971 as amended through 2018), permits a candidate or individual to use contributions for “ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” 52 U.S.C. §30114(a).

<sup>8</sup> Regulations of the Federal Labor Standards Act (“FLSA”) generally require employers to compensate their employees for attendance at lectures, meetings, and training programs so long as the courses are directly related to the employee’s job. *See* 29 CFR § 785.27.

permissible.<sup>9</sup> Such an expenditure would be more difficult to justify as an expenditure reasonably related to the individual's legislative service, since it would appear that the cruise trip is more in the nature of a family vacation, even if the cruise offers courses on talking to difficult people or office management.

## **CONCLUSION**

The Campaign Reporting Act permits the use of excess campaign funds to be used for expenses reasonably related to the legislator's elected office. Such expenses may include trainings and travel associated with attending trainings, but those courses must be reasonably related to the elected legislative office. "Reasonably related" requires some degree of meaningful connection between the training and the legislative office held, and the use of campaign funds cannot be used for personal use, which includes the use of campaign funds for personal travel, or travel associated with a training that is so broad or generalized it is not directly connected to the position of the legislative office held.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. CELIA CASTILLO, Commissioner**

**HON. DR. TERRY MCMILLAN, Commissioner**

**RONALD SOLIMON, Commissioner**

**DR. JUDY VILLANUEVA, Commissioner**

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<sup>9</sup> See 1.10.13.25(B)(2) NMAC (identifying a non-exhaustive list of items under New Mexico law that are considered to be per se personal use, including "a vacation"). The FECA imposes similar restrictions for use of campaign funds for personal use and provides a non-exhaustive list of examples of prohibited "conversion of campaign funds for personal use," which similarly includes the use of campaign contributions for the purposes of "a vacation or other noncampaign-related trip." 52 U.S.C. §30114(b)(2).