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CAMPAIGN FINANCE ADVISORY OPINION NO. 19-001-F

February 1, 2019

Question Presented: May campaign contributions be used to repay a loan from a candidate to his or her campaign when the loan is sufficiently documented?

Brief Answer: Yes. If documentation is created contemporaneously with the campaign contribution which conclusively proves the contribution was intended to be a loan and not a donation, and the loan and the repayment are fully and timely reported in detail as required by law, then campaign contributions may be used to repay a loan.

The Mississippi Ethics Commission issued this opinion on the date shown above in accordance with Section 23-15-821(7), Mississippi Code of 1972, as reflected upon its minutes of even date. This opinion is limited to the provisions of Section 23-15-821 regarding the personal use of campaign contributions. This opinion does not interpret or offer protection from liability for any other laws, rules or regulations. While the actions discussed in this opinion may have tax consequences, the Ethics Commission is not authorized to give tax advice, and this opinion does not constitute tax advice. The Ethics Commission based this opinion solely on the facts and circumstances provided by the requestor as restated herein. The protection from liability provided by this opinion is limited to the individual who requested this opinion and to the accuracy and completeness of these facts.

I. LAW

Section 23-15-821, Mississippi Code of 1972.

(1) The personal use of campaign contributions by any elected public officeholder or by any candidate for public office is prohibited.

(a) For the purposes of this section, "personal use" is defined as any use, other than expenditures related to gaining or holding public office, or performing the functions and duties of public office, for which the candidate for public office or elected public official would be required to treat the amount of the expenditure as gross income under Section 61 of the Internal Revenue Code of 1986, 26 USC Section 61, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended. "Personal use" shall not include donations to a political organization, or to a political action committee, or to another candidate.

(b) "Candidate" shall mean any individual described in Section 23-15-801(b), and shall include any person having been a candidate until such time that the person takes office or files a termination report as provided in this section.

(c) "Officeholder" shall mean any elected or appointed official from the beginning of his or her term of office until that person no longer holds office.

(2) The following personal use expenditures are specifically prohibited under this section:

....

(h) Nondocumented loans of any type, including loans to candidates;

....

II. FACTS

Facts provided by the requestor are set forth below, with identifying information redacted, and are considered a part of this opinion.

I am writing to request an Ethics Commission advisory opinion on personal loans of a candidate. On December 10, 2018, I contacted [another state agency] and asked if I used my personal savings money to purchase campaign materials, would I be able to pay myself back once I raised money for my campaign. [An employee with the agency] stated that I could by documenting the money that I used from my savings as a personal loan to the campaign, and I could pay myself back once I raised the money in my campaign fund. Once I filed my qualifying papers, and began to fill out the Statement of Economic Interest, I read that the law was not clear pertaining to loans. The statute that I read specified "nondocumented loans," but did not clarify if reporting it on the receipts page as a personal loan would constitute as documentation. I respectfully request an advisory opinion in this matter.

III. ANALYSIS

Section 23-15-821(2)(h), Miss. Code of 1972, specifically prohibits the use of campaign contributions to repay “[n]ondocumented loans of any type, including loans to candidates.” The statute implies that campaign contributions can be used to repay documented loans without specifying what sort of documentation is required. The statute is clearly intended to prohibit a candidate from disbursing campaign funds to himself or another and claiming falsely that the expenditure was to repay money which neither he nor the other person can document was loaned to the campaign. Therefore, it is the opinion of the Ethics Commission that the Legislature clearly intended this particular subsection to mean that any campaign expenditure which purports to repay a loan must be accompanied by sufficient documentation to conclusively establish that an actual loan existed at the time the transaction occurred.

The question is what form and amount of documentation is required for the loan to be repaid with campaign contributions. First, the documentation must conclusively prove that the payment of personal funds was intended to be a loan and not a campaign donation at the time the payment was made.¹ Such documentation must have been created contemporaneously with the payment. For example, a personal check written by a candidate or other person which is made payable to the campaign and which bears a memo or other notation describing the transaction as a loan. The terms of the loan should also be contemporaneously memorialized in writing, preferably in the form of a promissory note or other instrument which contains, at a minimum, the period and frequency of payment, the amount of payments and the amount of interest if any. While the execution of a promissory note is not necessarily required in all cases, it is certainly the best practice.² Finally, the loan and the repayment must be reported on the next appropriate campaign finance reports, designated as a loan and itemized as receipts and disbursements if the amounts require it, all as mandated in statute. Only when these steps are followed would the documentation suffice to allow a loan to be repaid using campaign contributions.

MISSISSIPPI ETHICS COMMISSION

BY: _____
Tom Hood, Executive Director and
Chief Counsel

¹ Similarly, if a candidate were to seek reimbursement for an expenditure of personal funds there must be documentation which conclusively proves the expenditure of personal funds was solely for campaign purposes, such as a detailed invoice or receipt from a third party which describes in detail the goods services or property obtained and the purposes for which they were obtained. Naturally, the candidate or other person cannot receive reimbursement from campaign contributions if the personal expenditure was for personal use.

² The Ethics Commission is not empowered to give advice regarding the Uniform Commercial Code or tax law, and no such advice should be inferred.