



2012-042

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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March 12, 2012

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Honorable Don Davis
Mobile County Probate Judge
109 Government Street
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Mobile, Alabama 36601

Fair Campaign Practices Act –
Candidates – Contributions –
Campaign Contributions – Code
Section 17-05-07

Nothing in section 17-5-7 of the Code of Alabama or the Fair Campaign Practices Act authorizes a candidate, public official, or principal campaign committee to return excess campaign contributions to the persons who contributed the funds.

Dear Judge Davis:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Can a candidate for county public office return excess campaign contributions on a pro rata basis to contributors?

FACTS AND ANALYSIS

This question requires an interpretation of section 17-5-7 of the Code, a provision of the Fair Campaign Practices Act ("FCPA"). This section is entitled "Use of excess moneys received; solicitation, etc., of contributions" and states, in pertinent part, as follows:

(a) A candidate, public official, or principal campaign committee as defined in this chapter, may only use campaign contributions, and any proceeds from investing the contributions that are in excess of any amount necessary to defray expenditures of the candidate, public official, or principal campaign committee, for the following purposes:

(1) Necessary and ordinary expenditures of the campaign.

(2) Expenditures that are reasonably related to performing the duties of the office held. For purposes of this section, expenditures that are reasonably related to performing the duties of the office held do not include personal and legislative living expenses, as defined in this chapter.

(3) Donations to the State General Fund, the Education Trust Fund, or equivalent county or municipal funds. Donations to an organization to which a federal income tax deduction is permitted under subparagraph (A) of paragraph (1) of subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended, or any other charitable, educational, or eleemosynary cause of Section 501 of Title 26 of the U. S. Code.

(4) Inaugural or transitional expenses.

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(d) Notwithstanding any other provision of law, a principal campaign committee, during a term of office commencing on the day after the election for the seat or office the candidate seeks and ending on the day of the next general election for that seat or office, may pay qualifying fees to a political party and may expend up to a

cumulative total of five thousand dollars (\$5,000) of campaign contributions, and any proceeds from investing the contributions, for the following purposes:

(1) Tickets for political party dinners or functions.

(2) State or local political party dues or similar expenses incurred by independent or write-in candidates.

ALA. CODE § 17-5-7 (Supp. 2011).

This provision of the law sets forth the ways that a candidate, public official, or principal campaign committee may use any campaign funds that are in excess of the funds necessary for the payment of expenditures of the candidate, public official, or principal campaign committee. Nothing in this section, or any other provision of the FCPA, provides for a candidate, public official, or principal campaign committee to return or refund contributions to contributors on a pro rata basis or otherwise.

This Office has previously stated that campaign contributions that are unwanted or unsolicited and not otherwise utilized to influence an election may be returned to the contributor and not considered a contribution that is accepted and reportable under the FCPA. Opinion to Honorable Jim Bennett, Secretary of State, dated July 11, 1994, A.G No. 94-00228. A refund or return of excess contributions, however, was not contemplated in that opinion and is not authorized by the statute.

CONCLUSION

Section 17-5-7 of the Code sets forth the use and expenditure of excess campaign contributions by a candidate, public official, or principal campaign committee. Nothing in section 17-5-7 or the Fair Campaign Practices Act authorizes a candidate, public official, or principal campaign committee to return excess campaign contributions to the persons who contributed the funds.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:


BRENDA F. SMITH
Chief, Opinions Division

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