

OFFICE OF THE ATTORNEY GENERAL

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Honorable Steve Windom
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Fair Campaign Practices Act –
Campaign Contributions – Campaign
Expenses – Debt – Disclosure
Requirements

For purposes of the Fair Campaign Practices Act, campaign debt includes fixed and certain obligations to pay money or some other valuable thing, either in the present or in the future. The FCPA does not require funds on hand to be used to pay existing debt, rather the act contemplates that candidates may raise the funds within the 120-day period after the election to pay off any campaign debt, notwithstanding the fact that the principal campaign committee may have a positive net worth during the time such debt exists.

Campaign debt may be reported in an addendum to the 5-to-10-day report or in the annual report due on or before January 31 of the year following the election.

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Dear Mr. Windom:

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

QUESTIONS 1 & 2

1. Is it permissible for a candidate or principal campaign committee to accept, solicit, and receive contributions for a period of 120 days after the election to the extent of campaign "debt" as that term is normally used, or may the candidate or principal campaign committee accept, solicit, and receive contributions only to the extent of "net" debt of the campaign?

2. Should the normal campaign expenses that are debts of the campaign be treated any differently from the loan from the candidate to the campaign?

FACTS AND ANALYSIS

Section 17-22A-7 of the Fair Campaign Practices Act (FCPA) provides, in pertinent part, as follows:

(b) Notwithstanding any other provision of law, including, but not limited to, Section 13A-10-61, a candidate, public official, or principal campaign committee may only accept, solicit, or receive contributions:

* * *

(3) For a period of 120 days after the election in which the person was a candidate, but only to the extent of any campaign debt of the candidate or principal campaign committee of the candidate as indicated on the campaign financial disclosure form or to the extent of

reaching the threshold that is required for qualification as a candidate for the office which he or she currently holds, or both.

ALA. CODE § 17-22A-7 (Supp. 1998) (emphasis added).

The word “debt” is not defined in the FCPA; therefore, it should be given its plain, ordinary meaning. “Debt” is defined as follows:

A sum of money due by certain and express agreement. A specified sum of money owing to one person from another, including not only obligation of debtor to pay but right of creditor to receive and enforce payment. [*Citations omitted.*]

A fixed and certain obligation to pay money or some other valuable thing or things, either in the present or in the future.

Black’s Law Dictionary 363 (5th ed. 1979).

The FCPA does not require that debt be “net” campaign debt after considering cash on hand which might be used to pay such debt. The statute does not prioritize or dictate how a principal campaign committee spends its funds. The restriction is that the debt must be related to the campaign. So long as the debt is campaign related, it may be incurred either before the election or in winding down the campaign after the election. The FCPA does not require a candidate’s principal campaign committee to pay obligations accrued either before or after the election by a certain time, or at all for that matter.

In addition to paying campaign expenses from campaign funds, successful candidates may also use their funds for transition and inaugural expenses or for expenses reasonably related to the performance of the office to which the candidate was elected. These non-campaign-related expenditures may not be used in calculating campaign debt for which contributions may be accepted after the election; funds can only be raised in the 120-day period to the extent of campaign debt directly attributable to the campaign and winding down the campaign. How the assets on hand are used is a matter exclusively within the discretion of the candidate or the principal campaign committee. Accordingly, it seems clear that the

Legislature did not use the term "campaign debt" to mean the candidate can raise the funds only to the extent of his "negative net worth." If the Legislature had meant to say this, it could have said so explicitly.

The FCPA provides in section 17-22A-8(10) that the disclosure report shall disclose:

The amount and nature of debts and obligations owed by or to the committee or elected official, together with a statement as to the circumstances and conditions under which any such debt or obligation was extinguished and the consideration therefor.

ALA. CODE § 17-22A-8(10) (1995). This provision makes no distinction between debts created by a loan to the campaign and other obligations owed by the campaign committee.

CONCLUSION

For purposes of the Fair Campaign Practices Act, campaign debt includes fixed and certain obligations to pay money or some future valuable thing, either in the present or in the future. The FCPA does not require funds on hand to be used to pay existing debt; rather, the act contemplates that candidates may raise the funds within the 120-day period after the election to pay off any campaign debt, notwithstanding the fact that the principal campaign committee may have a positive net worth during the time such debt exists.

QUESTION 3

When should the campaign debt be indicated on the campaign financial disclosure form:

(a) by filing an amendment to the campaign financial disclosure form or a special filing of the form within a certain number of days after the election to indicate the campaign debt as of the time of the election?

(b) by indicating the campaign debt as of the time of the election at the normal annual filing of the campaign financial disclosure form which is due during January of the calendar year following the election?

(c) or at some other time?

FACTS AND ANALYSIS

The FCPA does not specify the date that the campaign debt must be disclosed. The FCPA does specify that the debt must be "indicated on the campaign financial disclosure form." ALA. CODE § 17-22A-7 (Supp. 1998). Disclosure forms must be filed 45 days before and 5 to 10 days before the date of the election, and an annual report must be filed on or before January 31, of the succeeding year. It is certainly possible that a candidate will incur campaign debt after the 5-to-10-day report is filed and for a period of time after the election. A candidate is allowed to use campaign contributions to pay necessary and ordinary expenditures of the campaign, expenditures that are reasonably related to performing the duties of the office held, as well as inaugural and transitional expenses, but may only solicit contributions to the extent of debt incurred with respect to the campaign. ALA. CODE § 17-22A-7(a) (Supp. 1998). These expenditures may give rise to campaign debt after the 5-to-10-day disclosure report is filed. Since the FCPA does not require a candidate or principal campaign committee to file a separate report to disclose debt, a candidate or principal campaign committee may file an addendum to the disclosure report to reflect campaign debt not previously disclosed. A candidate or principal campaign committee may also report the debt on the annual report due on or before January 31 of the year following the election.

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CONCLUSION


Campaign debt may be reported in an addendum to the 5-to-10-day report or in the annual report due on or before January 31 of the year following the election.

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

Sincerely,

BILL PRYOR
Attorney General

By:


CAROL JEAN SMITH
Chief, Opinions Division

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