

OFFICE OF THE ATTORNEY GENERAL



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Honorable Jim Bennett
Secretary of State
Secretary of State's Office
P. O. Box 5616
Montgomery, AL 36103

Fair Campaign Practices Act –
Campaign Contributions – Campaign
Expenses – Debt – Disclosure
Requirements

Campaign debt need not be incurred
on or before election day in order to
be considered campaign debt as that
phrase is used in the Fair Campaign
Practices Act.

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 fol-
lowing the election.

During the 120-day period after an election, a candidate may raise the entire amount of the threshold required for qualification as a candidate for the office to which the candidate was elected.

Dear Mr. Bennett:

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

QUESTIONS 1 & 2

If the exact amount of debt remains uncertain as of election day, must a debt be incurred on or before election day in order to be considered "campaign debt" as that phrase is used in section 17-22A-7(b)(3)?

Where a principal campaign committee has cash in excess of the amount of "campaign debt" identified in the disclosure, may the principal campaign committee nonetheless count the entire amount of the debt for the purposes of determining how much the candidate may raise during the 120-day period after the election?

FACTS AND ANALYSIS

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

(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(b)(3) (Supp. 1998).

This Office recently considered these issues in an opinion to Honorable Steve Windom, Lt. Governor-Elect, wherein we stated:

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 or after 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.

* * *

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.

Opinion to Honorable Steve Windom, Lt. Governor-Elect, dated December 10, 1998, A. G. No. 99-00061 at 3 & 4.

CONCLUSION

Campaign debt need not be incurred on or before election day in order to be considered campaign debt as that phrase is used in the Fair Campaign Practices Act. 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

On which campaign disclosure forms may the "campaign debt" be identified for the purpose of determining the post-election amount of money that a candidate may raise?

FACTS, ANALYSIS, AND CONCLUSION

This Office has previously stated:

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.

Opinion to Honorable Steve Windom, Lt. Governor-Elect, dated December 10, 1998, A. G. No. 99-00061 at 6.

QUESTIONS 4 & 5

Does the phrase "reaching the threshold that is required for qualification as a candidate for the office which he or she currently holds" mean that the entire amount of the threshold can be raised after the election regardless of the amount held by the principal campaign committee on the date of the election, or does "reaching" the threshold mean the balance on hand be subtracted from the threshold to determine the amount which may be raised?

When a candidate assumes an office between the election and the end of the 120-day period and the office has a higher threshold for qualification than that previously held by the

candidate, may the threshold for the new office be counted by the candidate?

FACTS AND ANALYSIS

A candidate may only accept, solicit, or receive contributions after an election to the extent allowed under section 17-22A-7(b)(3) of the FCPA:

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(b)(3) (Supp. 1998) (emphasis added).

The FCPA allows a candidate, during the 120-day period after the election, to raise funds in an amount equal to the amount of the threshold that is required for qualification for the office and does not mention any restrictions or limitations. While the language of the statute is not a model of clarity, it is the opinion of this Office that this provision of the FCPA does not require a candidate to subtract cash on hand after the election from the threshold amount to determine the amount of money the candidate may raise during the 120-day period.

With respect to your last question, the fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting a statute. Hines v. Riverside Chevrolet-Olds, Inc., 655 So. 2d 909 (Ala. 1994). Intent may be gleaned from the language used, the reason and necessity for the statute, and the purpose sought to be obtained. Tuscaloosa County Comm'n v. Deputy Sheriff's Ass'n of Tuscaloosa County, 589 So. 2d 687 (Ala. 1991). When legislative intent is uncertain, great weight should be given to the practical effect that a proposed construction will involve. Odum Lumber Co. v. Southern States Iron Roofing Co., 58 So. 2d 641 (Ala. Civ. App. 1951).

The meaning of the phrase "for the office he or she currently holds" is unclear in the context of section 17-22A-7(b)(3) and the 120-day period after the election. In some cases, the candidate, during the 120-day period, currently holds an office other than the one to which he was elected. Sometimes the candidate does not currently hold an office until

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he has taken the oath of the office to which he was elected. In other situations, the candidate will take office the day after the general election, while some candidates will not take office until January following the general election. It is the opinion of this Office that the purpose of this provision was to allow a candidate to raise money during the 120-day period after his election for the office to which the candidate was recently elected and not to an office the candidate held prior to that election. To apply the literal meaning of the "office currently held" would be nonsensical and could subject a candidate to two different threshold amounts during the 120-day period. Ultimately, the candidate will be subject to a higher threshold, at least in most cases. The practical construction of this provision allows a candidate to raise money to the extent of the threshold required for qualification for the office to which the candidate was elected.

CONCLUSION

During the 120-day period after an election, a candidate may raise the entire amount of the threshold required for qualification as a candidate for the office to which the candidate was elected.

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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