



STATE OF CONNECTICUT STATE ELECTIONS ENFORCEMENT COMMISSION

DECLARATORY RULING 2019-02:

The Use of Campaign Funds to Offset Candidate's Childcare Costs

On October 19, 2018, the State Elections Enforcement Commission (the "Commission") received a request for a Declaratory Ruling by Caitlin Clarkson Pereira, a candidate for state representative during the 2018 election cycle, as to whether public grant funds that her candidate committee received to run for office through Connecticut's clean elections program, the Citizens' Election Program ("CEP"), could be used to cover childcare costs while she was campaigning. The Petitioner had asked this question of Commission staff during the election cycle and, in Opinion of Counsel 2018-05: *Use of Public Funds to Offset Candidate's Child Care Costs*, issued on August 9, 2018, was told that such costs were not permissible for CEP candidates to pay out of clean elections grant monies.

In her Declaratory Ruling request, the Petitioner argues that the opinion of counsel misinterpreted the laws and regulations and asks that the Commission reconsider the result.

At its regular meeting on November 14, 2018, the Commission voted to initiate a declaratory ruling proceeding responsive to this Petition and the Commission now issues the following guidance.

Executive Summary

Campaign funds generally may be spent to pay for childcare costs incurred by a candidate as a result of campaigning as long as such payments are (1) a direct result of campaign activity which would not exist irrespective of the candidate's campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign.

However, for candidates participating in the CEP who have been approved to receive grant monies from the CEF ("Citizens' Election Fund"), CEP regulations come into effect and these are much stricter with respect to the expenditure of monies. Childcare costs are not currently a permissible expense for a committee that has been approved to receive a grant.

I. Applicable Law

In general, for expenditures to be considered permissible, they must be made for the lawful purpose of the committee, and, for a candidate committee, the lawful purpose means "the promoting of the nomination or election of the candidate who established the committee." General Statutes § 9-607 (g).

General Statutes § 9-607 (g) (4) further states:

[E]xpenditures for “personal use” include expenditures to defray normal living expenses for the candidate, the immediate family of the candidate or any other individual and expenditures for the personal benefit of the candidate or any other individual as defined in [General Statutes § 9-607 (g) (2)]. ***No goods, services, funds and contributions received by any committee under this chapter shall be used or be made available for the personal use of any candidate or any other individual.*** No candidate, committee, or any other individual shall use such goods, services, funds or contributions for any purpose other than campaign purposes permitted by this chapter.

(Emphasis added.)

For candidates who have been approved to receive a grant from the CEF, however, the rules are stricter than what is laid out in General Statutes § 9-607 (g) alone. CEP grant recipients must additionally abide by a set of regulations, including Regs. Conn. State Agencies § 9-706-1 (a), which state:

All funds in the depository account of the participating candidate’s qualified candidate committee,¹ including grants and other matching funds distributed from the Citizens’ Election Fund, qualifying contributions and personal funds, shall be used ***only for campaign-related expenditures made to directly further*** the participating candidate’s nomination for election or election to the office specified in the participating candidate’s affidavit certifying the candidate’s intent to abide by Citizens’ Election Program requirements.

(Emphasis added.)

The CEP regulations further provide:

- (b) In addition to the requirements set out in section 9-706-1 of the Regulations of Connecticut State Agencies, participating candidates and the treasurers of such participating candidates shall comply with the following citizens’ election program requirements. Participating candidates and the treasurers of such participating candidates shall ***not*** spend funds in the participating

¹ A “qualified candidate committee” is defined as:

A candidate committee (A) established to aid or promote the success of any candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, State Treasurer, Secretary of the State, state senator or state representative, and (B) ***approved by the commission to receive a grant from the Citizens’ Election Fund*** under section 9-706.”

General Statutes § 9-700 (12) (emphasis added).

candidate's depository account for the following:

1. **Personal use**, as described in section 9-607(g)(4) of the Connecticut General Statutes; [and]
2. The **participating candidate's personal support or expenses**, such as for personal appearance or the candidate's household day-to-day food items, supplies, merchandise, mortgage, rent, utilities, clothing or attire, **even if such personal items** (such as the participating candidate's residence, or business suits) **are used for campaign related purposes**;

Regs. Conn. State Agencies § 9-706-2 (b) (Emphasis added.)

II. Commission Staff's Advice in Opinion of Counsel 2018-05

In Opinion of Counsel 2018-05, Commission staff cited the above and referenced other scenarios in which it has been asked about the limits on personal use under the Program:

We have been asked, for example, whether public funds could be used to cover part of the mortgage payments for a family member's house that was used as campaign headquarters, to cover a portion of the candidate's personal cell phone bill since it was used to make calls to campaign staff and voters, and to pay for the candidate's clothing which was purchased with campaign engagements in mind. We have looked at whether public funds could be spent to replace the tires of a car that suffered wear and tear crisscrossing the state during a campaign. We have been asked whether CEP funds could be used to pay for a candidate's flight to Amsterdam in order to attend a conference the subject of which was part of his campaign platform and would result in pictures he could use in mailers.

Staff explained that while it was sympathetic to these requests and understood the argument that the personal items were being used for campaign-related purposes, it was concerned with the regulations mandating that funds were not to be spent on items that are personal in nature, *even if campaign-related*, since the regulations specifically state that grant funds were to be used "only for campaign-related expenditures made **to directly further**" the candidate's nomination for election or election to the specified office. Regs., Conn. State Agencies § 9-706-1 (a) (emphasis added). Under the regulations, **even if personal items are used for campaign related purposes**, costs for personal support or expenses may not be paid out of grant monies. Because of these regulations, staff opined that CEP grant monies should not be used to pay for a participating candidate's childcare costs.

III. Commission's Prior Decisions & Other Precedent

The Commission has considered the spending of campaign funds for personal use to be a serious issue. In one matter it assessed a fine equivalent to twice the amount of what a CEP candidate committee paid for clothing and other personal items in violation of the personal use statutes and CEP regulations. *See In re Audit Report for Friends of Gerry Garcia*, File No. 2012-072. The purchase of clothing outside of the CEP has also been found to be personal use. For example, in *In the Matter of a Complaint by John Bysko, et al.*, Old Lyme, File No. 2004-170, the Commission found a violation of the prohibition against personal use after an exploratory committee used funds to pay for the candidate's shoes and clothing. In another case, *In the Matter of a Complaint by Adam Gutcheon*, Windsor, File No. 2002-192, the Commission ordered the respondent candidate to forfeit the equivalent of what his committee had spent on clothing out of campaign funds. *See also In the Matter of Complaints by Tom Kelly*, Bridgeport, File Nos. 2011-090 & 097 (finding that political committee's reimbursements to chairperson for telephone, computer, and internet access bills, without any records substantiating relation to committee, violated personal use prohibition); *In the Matter of Government Action Fund (GAF PAC)*, File No. 2008-003 (concluding that a political committee's payment of chairman senator's personal cell phone bill and his personal credit card without adequate documentation, as well as payments for him to attend legislative conferences, raised personal use concerns).

Over forty years ago, the Commission did, however, address the permissibility of paying for childcare with privately raised campaign funds. In 1976, the Commission issued an advisory opinion that found the cost of care for a dependent to be part of traveling expenses and therefore a permissible expenditure. *See Advisory Opinion 1976-23: Cost of Care for Dependents*. The Commission considered the fact that the statutes permit a campaign funds to be used to pay for the candidate's expenses for postage, telegrams, telephoning, stationery, expressage, traveling, meals and lodging provided that the candidate adequately documented the expenses. The Commission then reasoned that freeing a candidate to travel by paying for his or her childcare was as necessary as procuring a bus ticket or renting a car since "if such care were not purchased, the candidate, presumably, would not be able to travel to attend whatever campaign functions were required, as surely as if the candidate could not purchase a ticket on public transportation." *Id.*

We also looked to other jurisdictions with clean elections programs that provide grant monies. Of the ten that provided responses to Commission staff's survey, four of them – Massachusetts, West Virginia, Oakland, CA, and Tucson, AZ – would not allow campaign funds to be used for childcare. Two jurisdictions – Maryland and Minnesota² – allow public funds to be spent on childcare costs. Three jurisdictions have not opined on the subject – Maine, Michigan, and Seattle, WA. New York City's program has the most

² Minnesota has a specific statute that recognizes the cost of childcare for a candidate's children while campaigning as a legitimate expenditure, whether public or general campaign funds are used. *See* Minn. Stat. § 10A.01, subd. 26 (11).

comprehensively articulated approach – allowing for privately raised funds to be used when certain conditions are met but prohibiting the use of matching grant monies given by the state.³

IV. Analysis

While the Petitioner’s request was limited to the use of clean election grant monies, the Commission will take this opportunity to point out that it is not retracting its 1976 advisory opinion and that it would be a permissible expenditure of *privately raised* campaign funds to cover the costs of childcare incurred by a candidate while campaigning as long as such payments are: (1) a direct result of campaign activity which would not exist but for the candidate’s campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign.⁴

³ Prior to 2018, New York City’s matching funds program had a specific statutory provision that prohibited the use of campaign funds to cover childcare costs. Section 3-702 (21) (b) of the administrative code of the City of New York had provided: “Campaign funds shall not be converted by any person to a personal use which is unrelated to a political campaign. Expenditures not in furtherance of a political campaign for elective office include the following: . . . (6) Tuition payments and childcare costs;”

After a series of hearings in 2018, the New York City legislature passed legislation on October 31, 2018 to permit campaign funds to be used for certain childcare expenses provided specified criteria had been met. Specifically, the language modified subdivision 21 of section 3-702 to permit campaign funds to be spent on:

13. Childcare services, provided that: (i) the candidate has received an approved statement of campaign childcare eligibility, pursuant to subdivision 23 of this section, demonstrating that such services are for a child or children under thirteen years of age for whom the candidate is a primary caregiver and that either the need for such services would not exist but for the campaign or the candidate has experienced a significant loss of salary or wage earnings that would not have occurred but for the campaign; and (ii) that expenditures for such services may only be incurred during the calendar year of the election, and the year immediately preceding the calendar year of the election, and may not be incurred after such election is held.

The legislation further provides that such childcare expenses are exempted from the expenditure limit for the first \$20,000 spent in the election year. Notably, the legislation only applies to *non-public* campaign funds and only during the calendar year of the election and the immediately preceding year.

See A Local Law to Amend the Administrative Code of the City of New York, in Relation to Permitting the Use of Campaign Funds for Certain Childcare Expenses, File No. 0899-2018.

⁴ When a committee anticipates it will pay someone over \$100 for services, it is required to have a written agreement in place which lays out the nature and duration of the fee arrangement and describes the scope of the work to be performed before any work is begun, and is also required to maintain records documenting the actual work performed or services rendered. *See* Regs., Conn. State Agencies § 9-607-1. In this particular case, where personal use concerns are raised even if the payment is well below \$100, the Commission still urges some base level documentation of the childcare services being provided at all amounts, such as the dates and hours worked, the associated fee, and the campaign activity that necessitated the childcare.

As far as whether campaign funds may be used to cover a candidate's childcare costs while campaigning, the Commission confirms its staff's advice that under the current law and regulations, once a committee is approved to receive CEP grant funds, its campaign funds – whether public grant monies or unspent qualifying contributions – may not be used to pay for such expenses. The regulations that come into play once a campaign has been approved for a grant state that all expenditures must “directly further” the candidate's campaign and “even if” personal items are used for campaign related purposes, costs for personal support or expenses may not be paid out of grant monies.

The Commission reminds candidates that these regulations only come into play once the candidate committee has been approved to receive a grant. As such, the candidate committee of a candidate intending to participate in the CEP may pay for the candidate's childcare expenses with potentially qualifying contributions raised to demonstrate adequate public support in connection with the grant application, provided the three criteria listed above have been met. This may occur up until the committee is approved for a grant.

Although the Citizens' Election Program is not a silver bullet for all election disparities, in candidates or results, it is worth pointing out that Connecticut's monetary competitiveness in state elections—which is, roughly speaking, where the lesser the difference in spending between opponents equates to greater competitiveness—has made notable strides since the advent of the Program. In 2004, the year before the Citizens' Election Program was signed into law, Connecticut had ranked 23rd in the nation for monetary competitiveness.⁵ In 2008, the first full run of the Program for the General Assembly, Connecticut's ranking jumped to sixth. The state has ranked in the top four in monetary competitiveness in every election cycle since 2010, when the Program was in full force at both the statewide and General Assembly levels. In fact, in the last election cycle for which is data is available, 2016, Connecticut ranked second in the nation. As national experts have noted: “Clearly, Connecticut's public funding program had a robust effect on making legislative general elections more financially competitive. Indeed, the data has repeatedly demonstrated that, since the 2008 adoption of the public funding program, Connecticut has consistently had some of the highest rates of monetarily competitive races anywhere in the country.”⁶

The Commission is receptive to the policy concerns expressed by the Petitioner and commenters, and the laudable goal of increasing the opportunities for parents of young children to more easily participate in state elections. Similar discussions may be had

⁵ FollowTheMoney.org, <https://www.followthemoney.org/tools/ci> (last visited March 29, 2019).

⁶ Pete Quist, *Connecticut Public Funding and Election Competition*, <https://www.followthemoney.org/research/blog/connecticut-public-funding-and-election-competition> (last visited March 29, 2019); *see also* J T Stepleton, *Competitiveness Index*, <https://www.followthemoney.org/research/blog/competitiveness-index> (last visited March 29, 2019) (“The role of money in the competitiveness of American elections has been addressed time and again. However, many observers fail to fully comprehend the extent to which candidates are either burdened by monetary disadvantages or bolstered by a fundraising edge. . . . Monetary competitiveness is more prevalent in some states, especially those with public financing programs.”).

about campaign spending that involve other circumstances in the candidate's life, such as income (e.g. having to forgo employment hours in order to campaign), care for non-child dependents (e.g. elder care), and other foreseeable and hard to foresee variations on the present question. These questions involve core issues concerning not only the purpose of this state's landmark public financing program but also the use of the public fisc. The answers to these questions may involve more than a simple "yes" or "no" but instead may be a balancing of concerns resulting in limits on the amount or timing of funds that may be spent and documentation requirements. This is the approach taken with respect to many of the permissible expenditures that form the basis for Connecticut's clean financing program.

Answering these questions should allow input from all stakeholders and would be ideally suited to a legislative public hearing. This is the approach used with New York City's public financing program. Public hearings and multiple drafts of the bill resulted in a carefully reasoned and clear approach to the issue. New York City chose to set limits by allowing the use of privately raised money but not public funds and by allowing such payments only during the two years prior to the election. They also required some additional documentation, addressed who could be a care-giver and provided that childcare provided for free or at a discount would not be deemed an in-kind contribution. *See* Council of City of NY Intro No. 0899-2018, Permitting the Use of Campaign Funds for Certain Childcare Expenses (October 23, 2018). New York City limited the exception to care for children under 13 and did not address care for other dependents. While that may or not be Connecticut's approach, those would all be options for thoughtful discussion.

The Commission and its staff are committed to further researching these issues and working with the legislature, should it choose, to craft the best possible solution for the people of Connecticut.

V. Conclusion

Privately raised campaign funds may generally be spent to pay for childcare costs incurred by a candidate as a result of campaigning as long as such payments are (1) a direct result of campaign activity which would not exist but for of the candidate's campaign; (2) reasonable and customary for the services rendered; and (3) properly documented by the campaign.

For candidates participating in the CEP, campaign funds may be spent on such costs up until the campaign has been approved to receive a clean elections grant from the CEF. Once a committee is approved for a grant, monies may not be spent on childcare. A change in legislation or regulation would be needed to alter this outcome. Commission staff stand ready to work with the Petitioner to assist in this effort.

This constitutes a declaratory ruling pursuant to General Statutes § 4-176. A declaratory ruling has the same status and binding effect as an order issued in a contested case and shall be a final decision for purposes of appeal in accordance with the provisions of

State Elections Enforcement Commission
Declaratory Ruling 2019-02

General Statutes § 4-183, pursuant to General Statutes § 4-176 (h). Notice has been given to all persons who have requested notice of declaratory rulings on this subject matter.

Adopted this 3rd day of April, 2019 at Hartford, Connecticut by a vote of the Commission.



Anthony J. Castagno, Chairman