

**NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE
GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

Advisory Opinion No. 2017-03

This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, an exact copy of the advisory opinion may be reviewed during normal business hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1402 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website (www.ethics.ga.gov). Copies may be requested by contacting the Commission at 404-463-1980.

A public hearing is scheduled to begin at 10:00 AM on June 14, 2017 in Room 606 at the Coverdell Legislative Office Building, 18 Capitol Square SW, Atlanta, GA 30334 to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible and signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before June 13 2017. Written Comments should be addressed to Nancy Sandberg, Legal Administrative Assistant, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1402 – West Tower, Atlanta, Georgia 30334. Fax: 404-463-1988.

The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on June 14, 2017, at the Coverdell Legislative Office Building, Room 606, 18 Capitol Square SW, Atlanta, GA 30334.

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 12 day of May, 2017.


Stefan Ritter, Executive Secretary



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

Advisory Opinion No. 2017-03

In response to numerous informal requests to Commission staff, the Georgia Government Transparency and Campaign Finance Commission advises that the payment of a qualifying fee by a candidate for public office with the candidate's personal funds is neither a campaign contribution nor a campaign expenditure under the terms of the Campaign Finance Act. O.C.G.A. §§ 21-5-3(7), 21-5-3(12), 21-5-30.1(a)(2). Thus, such a payment is not required to be reported as either a campaign contribution or campaign expenditure. However, the payment of a qualifying fee by someone other than the public officer or candidate or from campaign contributions does constitute a reportable campaign contribution and expenditure and must be reported. *Id.*

Question Presented

Does the payment of a qualifying fee to run for public office by a candidate for public office constitute either a campaign contribution or campaign expenditure to said person's campaign if the qualifying fee is paid from the candidate's personal funds?

Factual Background

After receiving numerous inquiries from state, county and municipal public officers and candidates for public office, Commission staff seek guidance as to whether the payment of a qualifying fee with personal funds, as opposed to campaign funds, by a public officer or candidate for public office is either a reportable campaign contribution or campaign expenditure pursuant to O.C.G.A. § 21-5-34.

Discussion

Georgia's Campaign Finance Act, O.C.G.A. § 21-5-1 *et. seq.*, requires every public officer and candidate for public office to file periodic campaign finance disclosures with the Commission in the form of campaign contribution disclosure reports ("CCDR"s). O.C.G.A. §§ 21-5-2, 21-5-34(a)(1)(A). While state level public officers and candidates for public office are required to electronically file their CCDRs directly with the Commission, local public officers and candidates for local public office file their CCDRs with a local government agency who then serves as the officer's/candidate's proxy by transmitting those disclosures to the Commission. O.C.G.A. §§ 21-5-34(a)(1)(B)(3)-(4) and 21-5-50(a)(3)-(3.1).

To further the goal of promoting transparency in campaign finance disclosures, Georgia's CFA

imposes a regular filing regimen for public officers and candidates for public office to follow during an election cycle, to include, filing schedules for an election year, non-election years, and subsequent supplemental reports after a campaign has ended.¹ In this regard, the Act mandates that public officers and candidates for public office must disclose all of their campaign contributions and campaign expenditures, with those in excess of \$100.00 itemized to identify the contributor and end-recipient of said funds respectively. O.C.G.A. §§ 21-5-34(b)(1)(A), 21-5-34(b)(1)(B).

Under the Act, a “contribution” is defined as:

[A] gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "contribution" shall include other forms of payment made to candidates for office or who hold office when such fees and compensation made can be reasonably construed as a campaign contribution designed to encourage or influence a candidate or public officer holding elective office. The term "contribution" shall also encompass transactions wherein a qualifying fee required of the candidate is furnished or paid by anyone other than the candidate.

O.C.G.A. § 21-5-3(7) (emphasis added).

Likewise, under the Act an “expenditure” is defined as:

[A] purchase, payment, distribution, loan, advance, deposit, or any transfer of money or anything of value made for the purpose of influencing the nomination for election or election of any person, bringing about the recall of a public officer holding elective office or opposing the recall of a public officer holding elective office, or the influencing of voter approval or rejection of a proposed constitutional amendment, a state-wide referendum, or a proposed question which is to appear on the ballot in this state or in a county or a municipal election in this state. The term specifically shall not include the value of personal services performed by persons who serve without compensation from any source and on a voluntary basis. The term "expenditure" shall also include the payment of a qualifying fee for and on behalf of a candidate.

¹ An election cycle has been defined by the General Assembly as "[T]he period from the day following the date of an election or appointment of a person to elective public office through and including the date of the next such election of a person to the same public office and shall be construed and applied separately for each elective office." O.C.G.A. § 21-5-3(10).

O.C.G.A. § 21-5-3(12) (emphasis added).

Under the facts presented in this request for advisory opinion, the Commission finds the operative portion of § 21-5-3(7) defining “contribution” clearly shows the intention of the Georgia General Assembly to consider the payment of a qualifying fee to be a campaign contribution only if the fee was paid for by “anyone other than a candidate.” *Id.* The payment of the qualifying fee by the candidate from his or her own funds, therefore, is not a “contribution.” Such a payment does not reach the campaign account a candidate is required to separately keep, but is paid, rather, directly from personal funds to qualify.

So, too, it is evident from the plain language of the Act that the payment of a qualifying fee by someone other than the public officer or candidate for public office is a campaign “expenditure.” O.C.G.A. § 21-5-3(12). In this instance, the person who has paid the qualifying fee has effectively made a contribution to the campaign, which should be reported on the CCDR, and the campaign has then made an expenditure. Such a reading is mandated, further, by the fact that the definition of “contribution” expressly includes a “qualifying fee ... paid by anyone other than the candidate” as a “contribution.”

Although prior guidance from the Commission held that the payment of a qualifying fee with personal funds by a public officer or candidate for public office constituted an “in-kind contribution,” A.O. 2012-01, based on the plain language of the statutory definitions, the Commission now finds that the express language of the Act precludes such a conclusion. *See also*, Ga. Comp. R. & Regs. r. 189-6-.07 (in-kind contribution) and 189-2-.01(11) (in-kind expenditure).

Conclusion

For the reasons described above, the Commission advises that the payment of a qualifying fee by a candidate for public office with the candidate’s personal funds is neither a campaign contribution nor a campaign expenditure under the terms of the Campaign Finance Act and is not required to be reported as either a campaign contribution or campaign expenditure. However, the payment of a qualifying fee by someone other than the public officer or candidate or from campaign contributions does constitute a reportable campaign contribution and expenditure and must be reported. The Commission also repeals its prior guidance on this subject issued in Advisory Opinion 2012-01 which was formally adopted on November 16, 2012.

Advisory Opinion 2017-03 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on **June 14, 2017**.

Chair of the Commission

AO 2017-03 prepared by Stefan Ritter and Robert S. Lane.
May 12, 2017.