



Advisory Opinion 2023-01 (Cite as: 2023 OK Ethics 01)

Dear Senator Garvin:

We are responding to your advisory opinion request concerning the application of the Oklahoma Ethics Rules to dependent care expenses. You are asking, in effect, the following question:

Are dependent care expenses, defined as expenses incurred as a direct result of caring for and supervising dependent children, a disabled person, or other person for whom a candidate has caregiving responsibility, considered an ordinary and necessary expense associated with campaign activity and holding public office?

The applicable section of the Ethics Rules is Rule 2, Campaign Finance. Under these rules, funds contributed to a candidate's campaign can only be used for certain expenses. Whether dependent care expenses are allowed under Rule 2, will depend on if the expenses are ordinary and necessary pursuant to Rule 2.43, and not prohibited as personal use pursuant to Rule 2.39.

The first step is to confirm the funds at issue are funds contributed to a candidate committee for a candidate's campaign. A "campaign" is defined in Ethics Rule 2.2(1) as "all activities for or against the election of a candidate for elective state office or for or against a state question."

"Candidate committee" is defined by Ethics Rule 2.2(3) as "the only committee authorized by a candidate to accept contributions or make expenditures on behalf of the candidate's campaign including the campaign of a judicial retention candidate."

Upon entering a campaign, candidates must file a candidate committee Statement of Organization with the Ethics Commission no later than ten days after the

candidate has accepted or expended more than \$1,000 for his or her campaign. Ethics Rule 2.70.

Candidate committees may accept contributions in accordance with Ethics Rule 2, namely Rules 2.17 through 2.30.

I. Campaign Expenses

Candidate committee funds may be used for the purposes set forth in Ethics Rule 2.43, which provides, in pertinent part:

Contributions to a candidate committee may be used to make expenditures for **ordinary and necessary campaign expenses**, for contributions to another candidate committee, for operating expenses of the committee or for other purposes not otherwise prohibited by law or these Rules. **“Ordinary and necessary campaign expenses” as used in this section are those that would not exist but for the candidate’s campaign**, including but not limited to staff salaries, campaign consulting fees, rent (other than for the candidate’s residence or part of a residence), travel, advertising, telephones, office supplies and equipment, fundraising, individual memberships in political organizations, individual memberships in civic or charitable organizations, legal fees for the campaign, payment for campaign accounting or bookkeeping services or campaign finance reporting services and repayment of the principal and interest on a loan as permitted by these Rules. [Emphasis added]

Ethics Rule 2.39 prohibits the use of campaign contributions for personal use. “Personal Use” is defined within Rule 2.39, which provides:

No contributions accepted by a political party committee, a political action committee or a candidate committee may be converted by any person to personal use. **“Personal use” includes any use of funds to fulfill a commitment, obligation or expense of any person that would exist irrespective of a political party’s activities, a political action committee’s activities or a candidate’s campaign or responsibilities as holder of a state elective office, as the case may be.** “Personal use” by a candidate includes, but is not limited to, food purchased for daily consumption in the candidate’s home or supplies

needed to maintain the household; clothing (excluding campaign clothing of low monetary value such as T-shirts or caps); mortgage, rent or utility payments for the candidate's personal residence, even if part of the residence is being used for the campaign; use of a motor vehicle for noncampaign purposes or non-officeholder expenses; interest on a loan made by the candidate or the candidate's spouse to the campaign; costs of a vacation or other trip not related to the campaign or officeholder expenses; admission to athletic events, concerts, theater or other forms of entertainment (except for events that are part of the campaign); dues in country clubs, health clubs, recreational facilities or other nonpolitical organizations and earnings from investment of contributions other than as permitted by these Rules. [Emphasis added]

In applying the Ethics Rules to the issue of dependent care expenses, we must first determine if these expenses are ordinary and necessary as required by Ethics Rule 2.43. The test, as dictated by Rule 2.43, is whether the expense would exist 'but for' the candidate's campaign. Put another way, the candidate must ask whether this expense would still exist if there were no campaign. If the candidate determines the dependent care expense is ordinary and necessary, and would not exist if there were no campaign, the candidate should then ascertain whether the expense is prohibited as personal use. Paying for dependent care is considered personal use if the commitment to care for that dependent would exist irrespective of that candidate's campaign.

By way of example, consider the following situation where a candidate is caring for a dependent. This candidate needs to attend a campaign event where it would be impractical to take the dependent to the event. The candidate will incur the expense of dependent care which would not normally be needed during the time frame that the campaign event takes place. The candidate needs to attend the event since it is for his or her campaign. Attending a campaign event is a normal and ordinary expense involved with being a candidate. 'But for' the candidate running for office, this expense would not occur. If this person were not running for office, the expense to attend this campaign

event would not exist. In this situation, dependent care expenses are ordinary, necessary, would not exist 'but for' the campaign, and are therefore a permitted campaign expense.

II. Officeholder Expenses

A similar analysis must occur when an officeholder is considering the use of campaign committee contributions to pay for dependent care. The officeholder must apply a similar test as set forth above for a candidate.

Rule 2.2(14) defines officeholder expenses as:

“Ordinary and necessary expenses incurred in connection with a candidate’s duties as the holder of a state elective office, provided that the expenses are not otherwise reimbursed or paid for by the state. “Ordinary and necessary expenses” are those that would not exist but for the fact that the candidate was elected to and holds a state elective office;”

Ethics Rule 2.44 allows contributions to a candidate committee to be used for officeholder expenses. The Rule states:

Contributions to a candidate committee of a candidate who is elected to the office for which the contributions were accepted may be used to make expenditures for officeholder expenses until the expiration of the term, resignation or other vacation of the office. When an officeholder dissolves one (1) candidate committee as provided in these Rules and contemporaneously files a Statement of Organization for a different candidate committee prior to the expiration of the term for which he or she has been elected and transfers funds from the first committee to the second committee, the officeholder may pay officeholder expenses until the expiration of the term not to exceed the amount transferred.

When an officeholder is caring for a dependent and needs to attend a campaign, legislative, committee or similar type of event where it would be impractical to take the dependent to the event, this officeholder may need to find dependent care. The officeholder needs to attend the event since it is directly related to his or her service as

an officeholder. Attending the event is a normal and ordinary expense involved with being an officeholder. But for the officeholder position, this expense would not occur. If this person were not elected to office, the dependent care expense to attend this event would not exist. In this situation, dependent care expenses are ordinary, necessary, and would not exist 'but for' the officeholder's status.

III. Conclusion

It is important to note for both the officeholder expenses and campaign expenses, that regular dependent care expenses (i.e., daily daycare, elder care expenses, nursing assistance for a disabled person, etc.) that would be incurred irrespective of the officeholder's status or candidate's status, would not be a permissible expense. For example, a candidate who pays for regular dependent care prior to entering a campaign, should not consider this expense as a campaign expense. This dependent care does not pass the 'but for' test since the dependent care expenses were already incurred prior to the campaign and would be incurred irrespective of the campaign.

It is therefore the official opinion of the Ethics Commission that:

The Ethics Rules allow for use of contributions to a campaign committee to pay for dependent care expenses as an ordinary and necessary expense, when (1.) the candidate or officeholder has primary caregiving responsibility for a dependent, such as a dependent child or an elderly parent; (2.) the candidate or officeholder needs to have the dependent cared for to allow the candidate or officeholder to attend or participate in an event that would not exist but for the campaign or officeholder's position; and (3) the costs associated with caring for this dependent would not be incurred if there were no campaign or office holding.