

FILED

APR 12 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES

DATE ISSUED: April 12, 2011

ADVISORY OPINION: JE11-004

PROPRIETY OF A JUDGE USING UNCOMMITTED CAMPAIGN FUNDS AFTER CONCLUSION OF AN ELECTION TO PURCHASE FLAGS FOR DISTRIBUTION AT A PARADE OR TO SPONSOR A CHILDREN'S SPORTS TEAM

election to judicial office. Specifically, the judge inquires whether the Code prohibits use of campaign funds during an interim period between elections to 1) purchase flags for distribution at a public parade; or 2) sponsor a youth sports team operated by a 501(c)(3) organization.

ISSUE

DISCUSSION

May a judge use excess campaign funds after successful election to office to (1) purchase flags with the judge's name printed on them as "donor" for distribution during a parade; or (2) sponsor a children's sports team?

A judge's use of excess campaign funds is governed by NRS 294A.160 and Canon 4 of the Nevada Code of Judicial Conduct (the "NCJC"). The Committee has no jurisdiction to construe NRS 294A.160, and is authorized only to render an opinion evaluating the scope of the NCJC. *Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices.*

ANSWER

Nevada jurists may expend excess campaign funds for *bona fide* expenses related to the judge's office and next election cycle. While the Committee expresses some concern whether the funding activities at issue promote confidence in the integrity of the judiciary, the Committee can find no specific prohibition in the Code against using excess campaign funds to purchase and distribute campaign advertisements at a parade or sponsor a youth sports team operated by a tax exempt nonprofit entity.

The preliminary question presented in this matter is whether the NCJC restricts use of campaign funds after conclusion of an election, or during interim periods between elections. Canon 4 states "[a] judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary." See Nevada Code of Judicial Conduct, Canon 4. No time limitation on expenditures appears on the face of Canon 4.

FACTS

A Nevada Justice of the Peace has inquired concerning the scope of appropriate use of the uncommitted balance of his or her campaign finance account after successful

Rule 4.2 further governs expenditure of campaign funds, and states in pertinent part:

(A) A judicial candidate in a public election shall:

....



(6) if elected to judicial office, a candidate who received contributions that were not spent or committed for expenditure as a result of the campaign may dispose of the money in any combination as provided in subsections (a)–(d). ***Any other disposition of the money is prohibited.***

(a) return the unspent money to contributors;

(b) donate the money to the general fund of the state, county or city relating to the judge's office;

(c) use the money in the judge's next election or for the payment of other expenses related to the judge's public office or the judge's previous campaigns for judicial office;

(d) donate the money to any tax-exempt nonprofit entity, including a nonprofit state or local bar association, the Administrative Office of the Courts or any foundation entrusted with the distribution of Interest on Lawyer's Trust Accounts (IOLTA) funds.

Nevada Code of Judicial Conduct, Canon 4, Rule 4.2(A)(6)(emphasis added).

Paragraph (c) of Rule 4.2(A)(6) thus allows uncommitted campaign funds to be used in the "next election or for the payment of other expenses related to the judge's public office." Although the Code does not define when the "next election" cycle begins, Rule 4.1 is instructive in this respect as it authorizes a judge to engage in a variety of political activities "at any time." Read in conjunction with Rule 4.1, the Code implies the next election for purposes of Rule 4.2(A)(6) may commence immediately following the conclusion of the prior election.

Accordingly, the Committee has previously recognized that the Code does not preclude expenditures of campaign funds during the interim periods between elections so long as the types of expenditures are not otherwise prohibited. *See Advisory Opinion JE10-011.* In that prior opinion, the Committee recognized a public official must keep current with various matters and stay in touch with the voters, concluding "that unspent campaign funds may be used by a judicial officer to pay *bona fide* costs incurred to attend conferences, correspond with voters, travel in connection with conferences or meetings that are not reimbursable, attend meetings with various groups, and attend charitable events." The Committee affirms the conclusion in Advisory Opinion JE10-011 as it relates to the timing of campaign fund expenditures.

There being no issue with the timing of the expenditures, the question becomes whether the Code otherwise prohibits the two types of expenditures at issue.

While construing NRS 294A.160 is beyond the scope of the Standing Committee's jurisdiction, we have previously observed that "the provisions of Paragraphs (a), (c) and (d) of Rule 4.2(A)(6) are identical or substantially similar to Paragraphs (a), (b) and (d) of NRS 294A.160(2). Thus, as the Supreme Court of Nevada has indicated in Commentary 5, a judge must comply with both Rule 4.2(A)(6) and NRS 294A.160(2) by adhering to the more restrictive provisions of Rule 4.2(A)(6)." *See Advisory Opinion JE10-011; see also* Comment [5] to Nevada Code of Judicial Conduct, Canon 4, Rule 4.2(A)(6).

Rule 4.2(A)(6) must be read in conjunction with the fundamental restriction

of Canon 4 (expenditures must not be inconsistent with the independence, integrity, or impartiality of the judiciary) as well as Rule 4.1(A)(9), which instructs that a judge or a judicial candidate “shall not . . . use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others.” Nevada Code of Judicial Conduct, Canon 4, Rule 4.1(A)(9). As explained in Advisory Opinion JE10-011, Rule 4.1(A)(9) is a restatement of the prohibition against using campaign contributions for personal use, while permitting “the use of funds for “real” costs associated with the holding of a public office for which the use of political contributions is “fitting and proper.”” See *Advisory Opinion JE10-011 (citing Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs, 66th Sess., Nev. Legis., at 31-32 (March 12, 1991) (statement of Senator Cook))*.

The Committee has previously recognized that the realm of permissible spending of campaign funds could include costs incurred by public officials to attend conferences, correspond with voters, travel in connection with conferences or meetings that are not reimbursable, attend meetings with various groups, and attend charitable events and town meetings. See *Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs, 66th Sess., Nev. Legis., at 30 (Feb. 7, 1991) (statement of Senator Cook)*. Moreover, Rule 4.2(A)(6)(d) specifically authorizes donations to tax exempt organizations, as to which the youth sports league at issue would qualify.

While the Committee expresses some concerns about whether the two types of campaign activities at issue further the integrity or promotes confidence in the judiciary, and while the Committee expresses some concerns about whether the

prestige of the judicial office is being properly used, the Committee can find no specific prohibition in the Code against the two types of campaign expenditures presented in this matter. See also *Illinois Judicial Ethics Committee Opinion 00-3* (sponsoring youth sports team does not lessen integrity of judiciary or detract from public confidence); *Michigan Advisory Opinion JI-58* (expenditure of campaign funds to sponsor youth soccer team permissible).

CONCLUSION

A Nevada judge may use the uncommitted balance of his or her campaign finance account to pay *bona fide* expenses related to the judge’s office in the next election cycle, such as attending public events and distributing campaign materials or sponsoring a youth sports team operated by a tax exempt entity.

REFERENCES

Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices; Nevada Code of Judicial Conduct, Canon 4, Rule 4.1(A)(9) & Rule 4.2(A)(6); *Commentary [5]* to Rule 4.2(A)(6); NEV. REV. STAT. § 294A.160; *Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs, 66th Sess., Nev. Legis., at 7 & 10 (Jan. 30, 1991)*; *Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs, 66th Sess., Nev. Legis., at 31-32 (March 12, 1991)*; *Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs, 66th Sess., Nev. Legis., at 30 (Feb. 7, 1991)*; *Advisory Opinion JE10-011*; *Illinois Judicial Ethics Committee Opinion 00-3*; *Michigan Advisory Opinion JI-58*

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.



Michael A. Pagni
Vice-Chairman