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JANETTE M. BLOOM
CLERK OF SUPREME COURT

BY _____
DEPUTY CLERK

STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES

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OPINION: JE99-005

PROPRIETY OF JUDICIAL CANDIDATE'S
USE OF CAMPAIGN CONTRIBUTIONS
FOR A SEPARATE JUDICIAL CAMPAIGN

Judicial Ethics and Election Practices for an
advisory opinion.

Issue

May a candidate for election to judicial office who was appointed to a different judicial office in a different court while the campaign was in progress, use campaign contributions generated during the campaign to retire a campaign debt incurred during an unsuccessful previous judicial campaign, or retain the funds for use in a future judicial campaign?

Answer: No.

Facts

A judge who raised campaign contributions to support re-election was appointed to a different judicial office. After payment of legitimate campaign expenses, the judge had funds in excess of \$10,000 remaining, and proposed to retire a two-year old campaign debt from a previous unsuccessful campaign for judicial office. A letter was sent to contributors, which contained a request for consent to use the funds to retire the previous campaign debt and use the remainder for a future judicial election; to retain the funds for payment of expenses related to public office; as well as an alternative offer to return the funds, pro-rata to any contributor so requesting.

The judge's inquiry to the Judicial Discipline Commission, whether anything had been overlooked, or not addressed, was referred to the Standing Committee on

Discussion

Although one of the functions of the committee is to render non-binding advisory opinions on hypothetical questions concerning the Nevada Code of Judicial Conduct, the general question posed by the judge, whether anything had been overlooked or not addressed, is outside the purview of the Committee. Supreme Court Rules, Part VIII, Rule 2(3). In order to address the merits of the inquiry, the question has been framed by the Committee in terms of the propriety of using campaign contributions raised for one judicial race to pay the expenses of previous or subsequent judicial campaigns.

Canon 5C(3) provides the method of disposition of unspent campaign contributions in judicial races:

"(3) A candidate who received contributions that were not spent or committed for expenditure as a result of the campaign within 120 days after the elections shall:

"(a) return the unspent money to contributors, on a pro rata basis if practicable;

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

(c) use the money for the payment of

expenses directly related to the candidate's public office other than campaigning, including the attendance at public, civic and charitable community functions;

(d) donate the money to a non-profit 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;

(e) dispose of the money in any combination of the above methods provided in paragraphs (a) through (d)."

Any other disposition of the money is prohibited. In no event may a judge retain unused campaign funds in an amount which exceeds \$5,000 per year, times the number of years of the term of the judge's office. (Emphasis added)

NRS 294A.160 would allow an elected candidate to use unspent campaign contributions in a subsequent election, but Canon 5C(3) governing judges, does not. "In the event of conflict between the provisions of this Code and any statutes covering the same subject matter, activities or reports, the terms of this Code shall prevail." See paragraph "F" of **APPLICATION OF THE CODE OF JUDICIAL CONDUCT**. Nor does it permit the use of these funds to retire a debt incurred in a previous, unsuccessful campaign. Funds to retire such a debt may only be raised within 90 days after the election for which the debt was incurred. Canon 5C(2).

The judge may dispose of the funds only as provided by Canon 5C(3). The consent of the contributors is not required for disposition according to the rule. The judge's letter to contributors includes two of the dispositions of unspent campaign contributions that are authorized by Canon 5C(3); return of the funds, pro-rata, or use of the money for the payment of expenses directly related to the candidate's public office other than campaigning, including attendance at public, civic and charitable community functions. Canon 5C(3)(c).

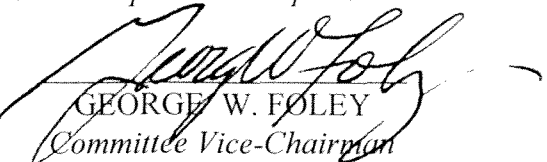
Conclusion

Section (3) of Canon 5 sets forth the manner for disposal of excess campaign funds. Any other disposition of the money is prohibited. When there is a conflict between the provisions of the code and any statutes covering the same subject matter, the terms of the Code prevail.

References

Supreme Court Rules, Part VIII, Rule 2(3); Nevada Code of Judicial Conduct: Canon 5C(3)(a)(b)(c)(d)(e); 5C(2); NRS 294A.160.

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.


GEORGE W. FOLEY
Committee Vice-Chairman