STATE ETHICS COMMISSION
ADVISORY OPINION
S.E.C. 2010-06

Whether limits on campaign contribution as outlined in O.C.G.A. §21-5-41 apply to political campaign funds that donate money to other political campaign funds?

ADVISORY OPINION

Section 21-5-33(b)(1)(B) of the Georgia Ethics in Government Act (the "Act") permits candidates to transfer excess campaign contributions to any national, state, or local committee of any political party or to any candidate. Specifically, the Act states that a candidate may transfer excess contributions "*without limitation* to any national, state, or local committee of any political party or to any candidate."

The issue before us revolves around whether the words "without limitation" are a reference to the types of organizations to which a candidate may contribute excess contributions or whether "without limitation" is a reference to contribution limitation amounts. If the former, the reference is a modifier relating to the possible receiving organizations. If the latter, the reference is to the amount of contributions and would permit candidates to make candidate to candidate contributions in excess of those permitted under O.C.G.A. §21-5-41 or "without limitation". The Ethics Commission believes the former interpretation applies and candidate to candidate contributions are subject to the limits of O.C.G.A. §21-5-41.

The above position has been a long standing one held by the Commission. In fact, in 2000 the Commission implemented Rule 189-5-.01 which states that "contributions to any candidate or candidate's campaign committee may not exceed contribution limits, and such contributions are subject to all other restrictions or prohibitions contained in the Ethics in Government Act or other applicable law." The Commission's interpretation of the law as well as the Rule comport with both the legislative intent of the Act as well as appropriate statutory interpretation.

In the case of Ford Motor Company v. Abercrombie et al, 207 Ga. 464 (1950), the Supreme Court of Georgia discussed the proper method of statutory interpretation,

> The cardinal rule to guide the construction of laws is, first, to ascertain the legislative intent and purpose in enacting the law, and then to give it that construction which will effectuate the legislative intent and purpose.

Section 2 of the Act states that the Act is established "… in furtherance of [the State's] responsibility to protect the integrity of the democratic process and to ensure fair elections. . . ." Section 41 of the Act prohibits any "person, corporation, political committee, or political party" from making and any "candidate or campaign committee" from receiving contributions in excess of the specified amounts outlined for both state-wide and all other campaigns. The legislative intent of Section 41 is plainly clear; that is, a policy of limiting the direct financial influence of private interests on public officers because the prevention of corruption or the

appearance of corruption "is a legitimate and compelling governmental interest." Gwinn et al v. State Ethics Commission et al, 262 Ga. 855, 857 (1993); Buckley et al. v. Valeo, Secretary of the United States Senate, et al., 42 US 1, 42 (1976).

Reading §21-5-33(b)(1)(B) to exempt candidate to candidate contributions from the express limitations of §21-5-41, could permit candidates and the candidate's contributors to have unlimited direct influence over another candidate or public officer. It would also provide an exemption that is not permitted for any other person, entity or organization and would necessarily provide an exemption for the receiving candidate himself who is not permitted to accept contributions in excess of the contribution limits. The result would be an abolishing of the public policies established by the Act for one particular group, the candidates themselves. We do not believe that this was the intent of the legislature as it may dilute the integrity of the democratic process and at a minimum would give the appearance of potential corruption among the political campaigns themselves.

The rules of statutory construction also require us to disregard "any terms the literal meaning of which conflict with the expressed legislative intent…" Supra, Ford Motor Company at 467-468. Adhering to this rule would require us to read the statute so as not to abrogate the provisions of §21-5-41.

Additionally, if the legislature intended to exempt candidate to candidate contributions from the limitation requirements of §21-5-41, it seems reasonable that the legislature would have worded §21- 5-33(b)(1)(B) to expressly reference its exemption from the limitations of §21-5-41. The legislature has not made such a reference and to make such a departure from the stated policies of the Act would seem peculiar without a clear reference.

Therefore, we interpret the words "without limitation" as a reference to the types of organizations to which a candidate may contribute excess contributions and not as a reference to contribution limitation amounts or an exemption therefrom.

We have been made aware of an Unofficial Attorney General Opinion, U92-18 which relates to section §21- 5-33(b)(1)(B), but addresses whether elected officials may use campaign funds to make contributions to their political parties. In the Opinion, the Attorney General states that the section appears to limit the use of campaign contributions by an office holder towards his or her own future campaigns. The Opinion does not appear to address the issue of whether "without limitation" allows a candidate to transfer funds in violation of the contribution limitations of §21-5-41, but simply states that section §33(b)(1)(D) does not limit the ability of a candidate to transfer funds to another candidate or to a political party.

Prepared by Stacey Kalberman, Executive Secretary