

1 **GEORGIA GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE COMMISSION**

2
3 **ADVISORY OPINION**

4 **C.F.C. 2012-04 AND C.F.C. 2012-06**

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6 The Georgia Government Transparency and Campaign Finance Commission (the “Commission”)
7 has received the following requests for advisory opinion from the Commission staff (Request No.
8 C.F.C. 2012-04) and McKenna Long & Aldridge (Request No. C.F.C. 2012-06). Because these
9 requests cover the same issues, the Commission has combined them into one advisory opinion.

10
11 **QUESTIONS PRESENTED – C.F.C. 2012-04**

- 12
13 1. Whether the Georgia Government Transparency and Campaign Finance Act (the “Act”) allows
14 campaign expenditures for use of aircraft for campaign purposes under circumstances where the
15 candidate or the candidate’s spouse owns an interest in an airplane or when the candidate has
16 entered into an aircraft sharing arrangement where all owners pay a fixed monthly fee to use the
17 aircraft.
18
19 2. If the above expenditure is permissible under the Act, what is the proper manner in which to
20 report the expenditure on a Campaign Contribution Disclosure Report?
21
22 3. Would a candidate be required to report the expense pursuant to Commission Rules 189-3.06(2),
23 189-3.06(4), and 189-3.06(5)?
24

25 **QUESTIONS PRESENTED – C.F.C. 2012-06**

- 26
27 1. What guidelines (if any) exist for a state campaign committee seeking to utilize its contribution
28 funds to pay the costs associated with private air travel when such services are purchased in
29 accordance with the terms of a fair-market, commercially-reasonable transaction? In other
30 words, what guidelines (if any) exist for a state campaign committee seeking to purchase such
31 services on the open market in accordance with the terms of a commercially-reasonable contract,
32 lease, or other similar agreement? In light of the current regulatory framework for the purchase
33 of non-commercial air transportation services, does the above analysis at all change if the private
34 air travel is being purchased from an entity for which the candidate, candidate’s spouse, or
35 candidate’s relative has an ownership interest (fractional or otherwise)? In such an ownership
36 scenario, please assume that the state campaign committee is paying the entity at issue fair
37 market rates for the non-commercial air transportation services provided.
38
39 2. When a state campaign committee utilizes its campaign funds to pay the costs associated with
40 non-commercial air transportation services that are purchased in accordance with the terms of a
41 fair-market, commercially-reasonable transaction rather than in settings involving either an in-
42 kind contribution of such services or the reimbursement of a party who provides such services
43 free of charge, what is the appropriate disclosure methodology for such expenditures on the
44 committee’s periodic CCDRs filed with the Commission? In other words, how should a
45 campaign committee that purchases such services on the open market through a commercially-
46 reasonable contract, lease, or other similar agreement report its private aircraft expenditures for
47 the purposes of its CCDRs filed with the Commission?
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ADVISORY OPINION

The Georgia Government Transparency and Campaign Finance Act (the “Act”) provides that

Contributions to a candidate...shall be utilized only to defray ordinary and necessary expenses...incurred in connection with such candidate’s campaign for elective office....

See O.C.G.A. § 21-5-33(a). The Act defines “ordinary and necessary expenses” as including, but not limited to “Expenditures made during the reporting period for ... travel....” See O.C.G.A. § 21-5-3(18).

Per its explicit language, the Act allows campaign expenditures for travel so long as it is incurred in connection with such candidate’s campaign for elective office. The Commission has recognized that a candidate or public officer may expend campaign funds for flights on noncommercial aircraft if the flight is an ordinary and necessary expense incurred in connection with a campaign for elective office. See Comm’n Rule 189-3-.06; Advisory Opinion 2007-07. Taking into account the provisions cited above and Advisory Opinion 2007-07, the Commission finds that a candidate is allowed to use campaign funds for expenditures for use of aircraft for campaign purposes under circumstances where the candidate or the candidate’s spouse owns an interest in an airplane or when the candidate has entered into an aircraft sharing arrangement where all owners pay a fixed monthly fee to use the aircraft.

In light of the Commission’s finding that such expenditures are generally allowed, the next question presented is the allowable scope and proper treatment of such expenditures. The Commission finds that the current rules do not adequately address these types of expenditures, so the Commission looks to federal law for guidance and adopts the following guidelines for reporting and disclosure of such expenditures:

For non-commercial travel by a candidate on an aircraft owned or leased by that candidate or an immediate family member of that candidate that is conducted in connection with such candidate’s campaign for elective office:

- (1) In the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, where the travel does not exceed the candidate’s or immediate family member’s proportional share of the ownership interest in the aircraft, the candidate must pay and report the hourly, mileage, or other applicable rate charged the candidate or immediate family member for the costs of the travel; or
- (2) In the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, where the travel exceeds the candidate’s or immediate family member’s proportional share of the ownership interest in the aircraft, the candidate must pay and report the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size.

A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft if the candidate or the immediate family member of the candidate has an ownership interest in an entity that owns the aircraft, provided that the entity is not a corporation with publicly traded shares.

99 A proportional share of the ownership interest in an aircraft means the amount of use to which the
100 candidate or immediate family member is entitled under an ownership or lease agreement.

101 The candidate must maintain documentation of the ownership or lease agreement specifying the
102 amount of use of the aircraft corresponding to the candidate's or an immediate family member's
103 ownership interest in the aircraft required by this opinion.

104

105 For the purposes of this opinion, an "immediate family member" of a candidate is the father, mother,
106 son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law of the candidate.

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108 If a candidate, campaign, or other person/entity has a question concerning aircraft activity, as it
109 relates to the Act, then an Advisory Opinion on that question shall be immediately requested. During
110 the period before such Advisory Opinion is adopted, guidance shall be sought in 1) the Act and 2) 11
111 C.F.R. § 100.93. While § 100.93 is uniquely tailored to federal conduct, the Commission expects a
112 common sense application of § 100.93 to the set of circumstances necessitating clarification for
113 correct behavior.

114

115 Prepared by Jonathan Hawkins

116 November 1, 2012

117

118 ADOPTED AT NOVEMBER 16, 2012 COMMISSION MEETING

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June 14, 2012

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RE: ADVISORY OPINION REQUEST MONTHLY FEE ARRANGEMENTS FOR USE OF AIRCRAFT

Dear Commissioners:

This correspondence represents a formal request to the Georgia Government Transparency and Campaign Finance Commission (the "Commission") for the issuance of an advisory opinion in accordance with O.C.G.A. § 21-5-6(b)(13). This request seeks clarification regarding the proper application of the Georgia Government Transparency and Campaign Finance Act ("The Act") to factual situations involving campaign expenditures for use of aircraft for campaign purposes pursuant to an arrangement where the candidate is a part-owner in a company that owns aircraft for which all owners pay a fixed monthly fee to use the aircraft.

The Commission staff has been investigating a complaint based on the above fact pattern. The Commission staff has come to the conclusion that this case cannot be disposed of without clarification of whether the current Georgia Government Transparency and Campaign Finance Act and or Commission Rules allows campaign funds to be expended in this manner. Specifically, the Commission staff is requesting that the following questions be answered in an advisory opinion:

1. Does the Georgia Government Transparency and Campaign Finance Act allow campaign expenditures for use of aircraft for campaign purposes under circumstances where the candidate or the candidate's spouse own an interest in an airplane or when the candidate has entered into an aircraft sharing arrangement where all owners pay a fixed monthly fee to use the aircraft?
2. If the above expenditure is permissible under The Act then what is the proper manner in which to report the expenditure on a Campaign Contribution Disclosure Report?
3. Would a candidate be required to report the expense pursuant to Commission Rules 189-3.06 (2), 189-3.06(4) and 189-3.06(5)?

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JUNE 14, 2012

Should you have any questions, please contact us at your convenience.

Respectfully,



Holly LaBerge
Executive Secretary



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Re: Advisory Opinion Request—Aircraft

Dear Ms. LaBerge and Ms. Murray-Obertein:

This correspondence represents a formal request to the Georgia Government Transparency and Campaign Finance Commission (the “Commission”) for the issuance of an advisory opinion in accordance with O.C.G.A. § 21-5-6(b)(13). This request seeks clarification regarding the proper application of the Georgia Government Transparency and Campaign Finance Act (the “Act”) and existing Commission Rules to factual situations involving campaign committee expenditures on non-commercial air transportation services. In general, given the lack of controlling precedent, we seek additional guidance from the Commission with regard to the following topics: (1) the treatment of campaign fund expenditures for the purchase of private air transportation services through arrangements (contractual or otherwise) that are not specifically contemplated in the provisions of the Act or the Commission Rules; and (2) the proper disclosure methodology for campaign expenditures associated with the purchase of private air transportation services through such presently non-contemplated arrangements. Specifically, we ask the Commission to consider the formal requests set forth herein and provide advice regarding the relevant subjects discussed.

Discussion

As set forth in O.C.G.A. § 21-5-33, a candidate for elective office in the State of Georgia is permitted to utilize contributions made to his or her campaign committee, and any proceeds from investing such contributions, to defray ordinary and necessary expenses which are incurred in connection with the candidate’s campaign. For the purposes of the Act, the term “ordinary and necessary expenses” is explicitly defined to include expenditures made for travel. *See* O.C.G.A. § 21-5-3(18). As such, the Commission has traditionally considered non-commercial

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air transportation service costs associated with state campaign travel as both ordinary and necessary, and thus permissible under Georgia law.

Like all other permissible expenditures under the Act, payments made to defray the costs of private air transportation services are required to be disclosed on a campaign committee's periodic campaign contribution disclosure reports ("CCDRs") filed with the Commission. See O.C.G.A. §§ 21-5-34 and 21-5-34.1. Specifically, Commission Advisory Opinion 2007-07 and Commission Rule 189-3-.06 require state candidates for public office to disclose the fair market value of flights they or members of their staff take on private, non-commercial aircraft if the purpose of such use is related to a campaign for state office. Upon initial consideration, this mandate would appear to be fairly straightforward, but unfortunately the specific disclosure framework set forth in Commission Advisory Opinion 2007-07 and Commission Rule 189-3-.06 is quite ambiguous in a variety of circumstances – particularly in situations where non-commercial air transportation services are purchased through a true market transaction.

As is clear from the language and structure of Commission Advisory Opinion 2007-07 and Commission Rule 189-3-.06, the logical and apparent purpose of the Commission's disclosure framework and rate structure for valuing non-commercial aircraft usage is to provide a means of standard valuation for private air travel given as an in-kind contribution to a candidate or given to a candidate at no charge with the idea that the cost of the flight will eventually be reimbursed. In such situations, there is no standard means by which a candidate can measure the appropriate value of his or her aircraft usage when no actual market transaction has taken place. Appropriately, under such circumstances, the Commission's regulatory framework sets forth a helpful rubric through which to price and disclose non-commercial flight in-kind contributions or reimbursement in a consistent manner.

In scenarios where an actual market transaction has taken place, however, the application of the valuation and disclosure structure set forth in Commission Advisory Opinion 2007-07 and Commission Rule 189-3-.06 is an ambiguous and unsettled point of law. Simply put, the language, constructs, valuation rates and disclosure requirements of the Commission's regulatory framework do not square with situations where a candidate committee has chosen to purchase non-commercial air transportation services via any form of market transaction. This is because the general purpose of the Commission valuation structure is to provide a standard estimate of value for non-commercial aircraft usage in scenarios where no actual market value exists. To apply the existing regulatory structure in settings not involving in-kind contributions or reimbursements illogically requires a campaign to disrupt otherwise natural market transactions and replace the precise, actual value of its private aircraft expenditures (as established by a fair-market, commercially-reasonable transaction) with an imprecise estimated value. Such an application of the provisions of Commission Advisory Opinion 2007-07 or Commission Rule 189-3-.06 would be one that leads to Commission interference in the commercial marketplace, the substitution of actual market values for estimated valuation rates, and the improper obligation for candidates to negotiate with private vendors for flight prices tied to outdated valuation tables

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for imprecise aircraft classifications. This is neither a feasible nor logical application of the Commission's regulatory structure. As such, we seek additional guidance from the Commission.

Formal Requests

Given the ambiguous and unsettled nature of the current valuation and disclosure structure for non-commercial air transportation services contained within the Act, Commission Advisory Opinion 2007-07 and Commission Rule 189-3-06, it is our desire to clarify how expenditures on private air travel should be assessed, valued and disclosed when made outside of an in-kind contribution or reimbursement scenario. Thus, in order to provide proper legal counsel to our clients and to promote optimal compliance with the Act and Commission Rules among present and future state campaign committees, we hereby submit the following formal requests for Commission consideration.

Request #1: Given the ambiguous and unsettled nature of the regulatory framework set forth by the Act, Commission Rule 189-3-.06 and Commission Advisory Opinion 2007-07 with regard to the purchase of non-commercial air transportation services, what guidelines (if any) exist for a state campaign committee seeking to utilize its contribution funds to pay the costs associated with private air travel when such services are purchased in accordance with the terms of a fair-market, commercially-reasonable transaction? In other words, due to the fact that the Commission's regulatory structure appears to address the payment of non-commercial air transportation service costs only in settings involving either an in-kind contribution of such services or the reimbursement of a party who provides such services free of charge, what guidelines (if any) exist for a state campaign committee seeking to purchase such services on the open market in accordance with the terms of a commercially-reasonable contract, lease, or other similar agreement? Also, in light of the current regulatory framework for the purchase of non-commercial air transportation services, does the above analysis at all change if the private air travel is being purchased from an entity for which the candidate, candidate's spouse, or candidate's relative has an ownership interest (fractional or otherwise)? In such an ownership interest scenario, please assume that the state campaign committee is paying the entity at issue fair market rates for the non-commercial air transportation services provided.

Request #2: When a state campaign committee utilizes its campaign funds to pay the costs associated with non-commercial air transportation services that are purchased in accordance with the terms of a fair-market, commercially-reasonable transaction rather than in settings involving either an in-kind contribution of such services or the reimbursement of a party who provides such services free of charge, what is the appropriate disclosure methodology for such expenditures on the committee's periodic CCDRs filed with the Commission? In other words, given that the Act, Commission Rule 189-3-.06 and Commission Advisory Opinion 2007-07 only appear to provide a standard means of valuation and disclosure for non-commercial air transportation service expenditures made in situations where no actual market transaction took place and no true market value was set, how should a campaign committee that purchases such services on the open market through a commercially-reasonable contract, lease or

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other similar agreement report its private aircraft expenditures for the purposes of its CCDRs filed with the Commission?

We appreciate your thoughtful consideration of the above inquiries and this advisory opinion request as a whole. Should you have any questions, please do not hesitate to contact me.

Sincerely,



J. Randolph Evans
Benjamin J. Vinson

JRE