

**1    Advisory Opinion No. 2012-04**

**2    Questions Presented**

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

**14    Advisory Opinion**

15    The Georgia Government Transparency and Campaign Finance Commission (the  
16    “Commission”) has received this request for advisory opinion from the Commission staff.

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

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

21    *See* O.C.G.A. § 21-5-33(a). The Act defines “ordinary and necessary expenses” as including, but  
22    not limited to “Expenditures made during the reporting period for ... travel....” *See* O.C.G.A. §  
23    21-5-3(18).

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

34    In light of the Commission’s finding that such expenditures are generally allowed, the next  
35    question presented is the allowable scope and proper treatment of such expenditures.

36 Commission Rule 189-3-.06 provides the rules for payment and disclosure of flights on  
37 noncommercial aircraft by a candidate for campaign purposes. This Rule, however, does not  
38 currently provide for scenarios where candidates use aircraft owned, in whole or in part, by  
39 themselves or their spouses.

40 For questions presented above, the Commission assumes that the fixed monthly fee is equal for  
41 all owners of the aircraft and that each owner, including the candidate or candidate's spouse,  
42 contributed an equal amount toward the purchase of the aircraft. The Commission further  
43 assumes that the entire use of the aircraft is by the candidate's campaign only, as opposed to pro  
44 rata usage contemplated by Rule 189-3-.06(3). Under such a scenario, the campaign must report  
45 the expenditure as follows:

46 If the fixed monthly fee is less than the fair market value as set by the Commission, the  
47 campaign shall pay the fixed monthly fee, the travel expenditure shall be reported at the fixed fee  
48 amount, and the difference shall be reported as an in-kind contribution from the candidate or  
49 candidate's spouse. *See* Advisory Opinion 2007-07 ("Providing the use of a plane to a candidate  
50 or public officer without charge or at a price that is less than the fair market value is an in-kind  
51 contribution."); Comm'n Rule 189-6-.07(1) ("An in-kind contribution is deemed a 'contribution'  
52 for purposes of the Act, and refers to any item of value other than money received by a candidate  
53 or any committee."); *Cf.* Comm'n Rule 189-6-.06 (treating "unreimbursed value" as an in-kind  
54 contribution).

55 If the fair market value as set by the Commission is less than the fixed monthly fee, then the  
56 campaign shall pay the fair market value, the travel expenditure shall be reported at the fair  
57 market value, and the difference between the two may either be paid by the candidate or  
58 candidate's spouse with his or her own personal funds or treated as an in-kind contribution from  
59 the owner(s) of the aircraft. Such in-kind contributions shall be deemed to have been made pro  
60 rata by the owners as individuals and/or by the business entity that owns the aircraft. *See*  
61 O.C.G.A. § 21-5-41(f). In other words, a pro rata portion of the difference would be attributable  
62 to the candidate or candidate's spouse, as well as the remaining owners and/or the business entity  
63 that owns the aircraft.

64  
65 Prepared by Jonathan Hawkins.  
66 June 29, 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,



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Executive Secretary



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HL/EMO/lmd