House of Representatives

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August 23, 2010

Honorable Thurbert Baker, Attorney General
Office of the Attorney General
40 Capitol Square, SW
Atlanta, GA 30334

Dear Mr. Baker:

It has recently come to my attention a discussion and memorandum of campaign contribution limits between unrelated campaign accounts by the State Ethics Commission. My understanding is the commission is considering inter campaign contributions may not be subject to the statutory limits and, therefore, there is no limit to amounts given by one campaign account to another individual's campaign as a contribution.

Enclosed you will find a copy of a State Ethics Commission Memorandum, dated August 11, 2010, by Stacey Kalberman, Executive Secretary, addressing this issue. The specific statutory provisions in question are OCGA 21-5-33, 21-5-40 and 21-5-41, and the Commission Rule 189-5-.01, some of which are referenced as outlined in the memorandum.

The specific question for which I request your opinion is, "Are candidate campaign accounts subject to the same limitations on contributions to other campaign accounts as every other contributor?"

As we are currently in the bi-annual state campaign season, I respectfully request your opinion to this question as early a date as possible.

Respectfully,

Wendell K. Willard

WKW/cb

Enclosure

STATE ETHICS COMMISSION

200 Piedmont Avenue | Suite 1402, West Tower | Atlanta, Georgia 30334

404-463-1980 | www.ethics.georgia.gov

Memorandum

Date: August 11, 2010

To: James C. Gatewood, Commission Chairman
Kent Alexander, Commission Member
William H. Jordan, Commission Member
Patrick N. Millsaps, Commission Member
Hilary S. Stringfellow, Commission Member

From: Stacey Kalberman, Executive Secretary

RE: **Campaign to Campaign Contributions (O.C.G.A. § 21-5-33)**

The agenda for the August 17, 2010 Commission meeting includes a complaint against Charles Chalk which involves a legal question regarding campaign to campaign contributions under O.C.G.A. § 21-5-33 and Commission Rule 189-5-.01. I have included the EIG Section and rule and I have also included the federal elections law on point.

The language of O.C.G.A. § 21-5-33 appears to exempt campaign to campaign contributions from the maximum allowable contribution limits of O.C.G.A. § 21-5-41. The specific language is found in subparagraph (B) below which states that excess contributions may be used "without limitation" to any national state or local committee of a political party ***or*** to any candidate.

One could read the last sentence of section (B) as containing two separate clauses with the modifier "without limitation" applying only to the first clause, "to any national, state or local committee of any political party…" and not to "or any candidate." However, this would most likely be interpreted as a constrained reading of the section.

Additionally, I have found an Unofficial Attorney General Opinion on point which interprets the section to allow one campaign to contribute unlimited excess funds to another campaign (See U92-18). Specifically the AG states, "the General Assembly appears to have intended to limit the use of campaign contributions by an office holder to his or her own future campaigns, and not limit the ability of a candidate to transfer funds to another candidate or to a political party."

Although this AG Opinion was drafted in 1992, Ethics Rule 189-5-01, which limits campaign to campaign contributions to the permissible limits of § 21-5-41, was adopted by the Commission effective August of 2000. While I personally agree with the policy behind Rule 189-5-01, we should discuss whether the Rule is in conflict with the law and whether the Rule should be modified to avoid this conflict. I have also included the federal law which limits campaign to campaign contributions between federal candidate campaigns to $2,000.

This matter will need to be decided before we can proceed on the Chuck Chalk case.

§ 21-5-33. Disposition of contributions
(a) Contributions to a candidate, a campaign committee, or a public officer holding elective office and any proceeds from investing such contributions shall be utilized only to defray ordinary and necessary expenses, which may include any loan of money from a candidate or public officer holding elective office to the campaign committee of such candidate or such public officer, incurred in connection with such candidate's campaign for elective office or such public officer's fulfillment or retention of such office.
(b)(1) All contributions received by a candidate or such candidate's campaign committee or a public officer holding elective office in excess of those necessary to defray expenses Georgia Ethics in Government Act pursuant to subsection (a) of this Code section and as determined by such candidate or such public officer may only be used as follows:
(A) As contributions to any charitable organization described in 26 U.S.C. 170(c) as said federal statute exists on March 1, 1986, and which additionally shall include educational, eleemosynary, and nonprofit organizations;
(B) Except as otherwise provided in subparagraph (D) of this paragraph, for transferral without limitation to any national, state, or local committee of any political party or to any candidate;

189-5-.01 Disposition of Contributions Without Limitation O.C.G.A. § 21-5-33 governs the proper disposition of campaign contributions. One of the specifically permitted uses for such funds is contained in O.C.G.A. § 21-5-33(b)(1)(B), which states "except as otherwise provided in subparagraph (D) of the paragraph, for transferral without limitation to any national, state, or local committee of any political party or to any candidate." However, 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.

Authority O.C.G.A. § 21-5-6, 21-5-33. History. Original Rule entitled "Disposition of Contributions Without Limitation" adopted. F. Feb. 22, 2000; eff. Mar. 13, 2000. Amended: F: Feb.4, 2008; eff: Feb. 24, 2008.

TITLE 11--FEDERAL ELECTIONS

CHAPTER I--FEDERAL ELECTION COMMISSION

PART 102_REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)--Table of Contents

Sec. 102.12 Designation of principal campaign committee
(2 U.S.C. 432(e) (1) and (3)).

(a) Each candidate for Federal office (other than a nominee of a political party to the Office of Vice President) shall designate in writing a political committee to serve as his or her principal campaign committee in accordance with 11 CFR 101.1(a) no later than 15 days after becoming a candidate. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR parts 102, 103 and 104.

(b) No political committee may be designated as the principal campaign committee of more than one candidate.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as a principal campaign committee, except that, after nomination, a candidate for the office of President of the United States nominated by a political party may designate the national committee of such political party as his or her principal campaign committee. A national committee which is so designated shall maintain separate books of account with respect to its function as a principal campaign committee.

(2) For purposes of 11 CFR 102.12(c), the term support does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR part 110.

[45 FR 15104, Mar. 7, 1980, as amended at 71 FR 54899, Sept. 20, 2006]