

**NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINION - DRAFT**

DATE: JUNE X, 2018

QUESTION PRESENTED:

- 1) May a candidate for a public office or party position use campaign funds to pay for childcare services?
- 2) May an elected official of a public office or party position use campaign funds for childcare while the elected official conducts official duties?

DISCUSSION:

In a prior Advisory Opinion, the Board opined that ordinary childcare costs are generally to be considered personal expenses of the parents and that, pursuant to § 14-130 of the Election Law, such expenses are not properly paid for out of campaign funds. By way of exception, however, in circumstances “where both parents of a child are engaged in activities directly related to a campaign or the holding of public office, one as the candidate or officeholder, the other as a representative of or accompanying his or her spouse, the payment of child care services out of campaign funds would be permitted and consistent with requirements of Article 14 of the Election Law.” *See* Advisory Opinion 90-2 (emphasis in the original).

Advisory Opinion 90-2 is hereby replaced. It is the opinion of the State Board of Elections that campaign funds may be used to pay a candidate or office holder’s childcare expenses when those expenses are directly attributable to activities related to “a political campaign or the holding of a public office,” as described in this opinion.

*Question 1: May a **candidate** use campaign funds to pay for childcare services?*

Section 14-130(1) of the Election Law states that:

Contributions received by a candidate or a political committee may be expended for any lawful purpose. Such funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.

We have previously observed there are two prongs to the analysis under §14-130 (1) of the Election Law. *See* Advisory Opinion 17-1. Prong One provides that “(c)ontributions received by a candidate or a political committee may be expended for any lawful purpose.” Prong two

provides “(s)uch funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.”

Prong One

Childcare expenses are a lawful purpose as there is nothing inherently illicit or illegal in relation to childcare expenses.

Prong Two

Neither § 14-130 of the Election Law, nor our regulations, specifically address whether childcare expenses are considered a personal use. However, Election Law § 14-130 (3) (v) furnishes examples of converting contributions by any person to a personal use. Personal use includes “salary payments or **other compensation** provided to any person for services where such services are not solely for campaign purposes **or** provided in connection with the execution of the duties of public office or party position.” (emphasis added).

Applied here, the relevant question is whether childcare expenses are “compensation.” and under what circumstance are child care expenses “solely for” campaign purposes or in connection with holding office.

Child care usually consists of a guardian compensating a day-care center, babysitter, or other provider to care for a child while a guardian is indisposed, either because of work, school, or other obligations.

The Board concludes campaign funds thus may be used to pay childcare expenses if the expenses are incurred as a direct result of the guardian’s participation in a campaign activity or in connections with the execution of the duties of public office or party position. Conversely, if the expenses are not a direct result of an activity solely for the campaign, then campaign funds may not be used for childcare expenses. As with any other expenditure, child care payments to the extent they are appropriate are only permissible at a fair market value rate at that time the expense is incurred.

*Question 2: May an elected official of a public office or party position use campaign funds to pay for child care services while the elected official conducts **duties that are in connection with the execution of his/her current office.***

As with candidates, the question of whether elected public or party officials may use campaign funds for child care must be analyzed using the two-prong test described above.

Prong One

As noted above, childcare expenses are a lawful purpose as there is nothing inherently illicit or illegal in relation to childcare expenses.

Prong Two

As noted above, § 14-130 (3) (v) cites, as an example of personal use, “salary payments or other compensation provided to any person for services where such services are not solely for campaign purposes or **provided in connection with the execution of the duties of public office or party position.**” (emphasis added). The Board must analyze whether childcare expenses can reasonably be considered as an expense “in connection with the execution of the duties of public office or party position.”

The plain language “in connection with the execution of the duties of public office or party position” suggests that elected officials may use campaign funds for child care expenses incurred as a result of the execution of activities connected to their official position as an officeholder.

Unlike non-incumbent candidates for State and local office, who are not compensated to campaign for office, the vast majority of elected public officials are compensated to some extent.

Practically, the routine activities that are a part of an officeholder’s duties are analogous to the day to day obligations of any job. The “working” time that requires child care is not unique to someone with officeholder status. Working 1 hour or 10 hours in any day, at any job, would require the guardian of a child up to a certain age to make care arrangements. Based upon that reasoning, an argument can be made that childcare expenses incurred as a result of routine official duties should not be allowed as an expense specifically incurred “in connection with the execution of the duties of public office or party position” because, for some, such expenses are factored into the compensation for the position.

However, the plain language of Election Law § 14-130 (3) does not prohibit the use of campaign funds to assist an elected official with discharging the duties of a public office or party position, even when the position is compensated. For example, Election Law § 14-130 (3) (iii) permits the purchase of clothing if it is used in the execution of the duties of a public office or party position. Election Law § 14-130 (3)(v) permits “payments or other compensation” for services that are solely “provided in connection with the execution of the duties of public office or party position.” This language clearly provides for the payments of services, such as child care, provided that the service is solely provided in connection with the execution of duties of a public office or party position. As such, childcare expenses that are directly attributable to activities related to “the holding of a public office” do not violate Election Law § 14-130.