NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION No. 86-1

DATE: JUNE 2, 1986

May a member of the Legislature, who does not ordinarily reside in Albany County, use campaign funds to pay for travel expenses to Albany County to attend a regular or special Session of the New York State Legislature?

Section 14-130 of the Election Law prohibits the personal use of contributions received by a candidate or political committee if such personal use is unrelated to a political campaign or the holding of a public office or party position.

Members of the Legislature are reimbursed by the State of New York for expenses which are related to their official duties. These reimbursements from the State must be used first to pay the expenses of official duties. Under no circumstances may a member of the Legislature receive payment from the State and payment from his or her committee for the same expenses. However, using contributions to pay for expenses over and above those expenses reimbursed by the State for travel expenses directly related to the attendance at regular or special sessions of the Legislature would not violate the provisions of §14-130 because the use of such funds is directly related to the holding of public office. Cf. 1979 Board of Elections Opinion No. 3.

This opinion relates only to the facts presented and is solely the interpretation of the Board of the term "personal use". It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION 86-2

DATE: JUNE 2, 1986

In case of a legislator's death while an office holder, may a political committee transfer all or part of its assets to the legislator's widow or widower, children or members of his or her office staff?

Section 14-130 of the Election Law states that contributions received by a candidate or a political committee may be expended for any lawful purpose but it prohibits the conversion by any person for a personal use which is unrelated to a political campaign or the holding of a public office or party position.

It is the opinion of the Board that such funds may be used to honor the deceased legislator (i.e. sending a floral arrangement, memorial service, etc.) But they may not be given for the personal use of the surviving spouse or children of the deceased legislator or for the personal use of any of the deceased legislator's office staff if such use was for a purpose which is not directly related to a political campaign or the holding of a public office or party position.

This opinion relates only to the facts presented and is solely the interpretation of the Board of the term "personal use". It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION 86-3

DATE: JUNE 2, 1986

May an office holder or candidate use campaign funds to pay personal income taxes to the Federal or New York State Governments?

Section 14-130 of the Election Law states that contributions received by a candidate or a political committee may be expended for any lawful purpose but it prohibits the conversion by any person for a personal use which is unrelated to a political campaign or the holding of a public office or party position.

It is the opinion of the Board that the use of campaign funds to pay personal income taxes is a use which is prohibited by §14-130 of the Election Law. Such a conversion of contributions would be for purely personal use unrelated to the holding of public or party office or the conduct of a campaign.

This opinion relates only to the facts presented and is solely the interpretation of the Board of the term "personal use". It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION No. 86-4

DATE: JUNE 2, 1986

May an automobile which is being leased by a candidate under a personal lease be transferred to the candidate's political committee and be paid for by campaign contributions? The car is used primarily for political purposes of campaigning for office or serving the constituents of the political subdivision.

Section 14-130 of the Election Law prohibits the personal use of contributions received by a candidate or political committee if such personal use is unrelated to a political campaign or the holding of a public office or party position.

It is the opinion of the Board that the lease may be transferred to the political committee based on the conditions set forth above. However, if the candidate uses the car for any purpose which is not in connection with campaigning or the holding of a public office, it would be considered personal use and the candidate would have to reimburse the committee for anything relating to such personal use.

This opinion relates only to the facts presented and is solely the interpretation of the Board of the term "personal use". It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 86-5

DATE: JUNE 2, 1986

May a political committee terminate its activities as a political committee by contributing the funds remaining in its campaign account to a charitable cause?

Section 14-130 of the Election Law permits a political committee to expend its funds for any lawful purpose. The section prohibits the personal use of such funds if such personal use is unrelated to a political campaign or the holding of public office or party position.

It is the opinion of the Board that a political committee which terminates its activities by contributing the money in its accounts to any charity which is recognized as such by the United States Internal Revenue Code would not be violating Section 14-130 of the Election Law.

This opinion relates only to the facts presented and is solely the interpretation of the Board of the term "personal use". It does not express an opinion on the ramification of any other state or federal law nor is it an acknowledgment that the proposed recipient of funds is a charity recognized by the United States Internal Revenue code or that the proposed purposes are charitable.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 86-6

DATE: JULY 14, 1986

If a political committee has purchased an item for use in a candidate's campaign, may the candidate acquire the item after the campaign is over?

Section 14-130 of the Election Law prohibits the personal use of contributions received by a candidate or political committee if such personal use is unrelated to a political campaign or the holding of a public office or party position.

It is the opinion of the Board that once a campaign is over and the committee seeks to dispose of items which were purchased for the campaign with the committee's money, the candidate may, as private citizen, purchase an item from the committee for an amount which would be equal to the market value of the item. By purchasing the item from the committee for its fair market value, the candidate would not be using contributions to a committee for his or her personal use.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 87-1

DATE: JULY 29, 1987

May a political committee use campaign funds to pay legal fees in relation to the following issues:

> (a) A candidate receives in his own name summonses by the New York City Environmental Control Board for being deemed guilty of unlawfully postering on the basis of campaign posters having been posted on a regular and ongoing basis, which posters contained in relevant part a photograph of the candidate, a statement requesting voters to vote for the candidate and the date which the election was to be held;
>
> (b) Whether a candidate who is sued civilly for an incident occurring on the date of the primary elections, and on the premises of the campaign headquarters. The civil lawsuit alleges tort actions by the candidate himself and a volunteer campaign worker. The incident was instigated by a newspaper reporter and photographer who had come to the campaign headquarters allegedly to interview the candidate and who are plaintiffs in the lawsuit together with the newspaper they represent;
>
> (c) Whether it is permissible for a candidate and/or political committee to make a personal loan to the candidate for the purpose of paying a legal retainer for the incidents (a) and (b) above. The loan would be repaid by the candidate in the near future. And whether or not the candidate and/or political committee can forgive said loan assuming that said loans are permissible in the first instance.

Section 14-130 of the Election Law permits a political committee to expend contributions received by a political committee for any lawful purpose but it prohibits the conversion of such funds by any person for a personal use which is unrelated to a political campaign or the holding of public office or party position.

With regard to question (a), the Board is of the opinion that while the act in question is not a penal or criminal act it is nonetheless a violation of New York City Local Law No. 30 of 1985 which specifies such violation and sets forth civil penalties for such violation. Since the putting up of posters was a direct violation of a local law, the Board is of the opinion that campaign funds cannot be used to pay fines associated with unlawful conduct. Therefore, a campaign committee may not pay a fine or the legal expenses associated with defending a person charged with a violation of a local law of the City of New York.

Neither does the Board consider alleged tortious conduct by a candidate to reasonably be considered to enhance or further the nomination or election of any person. Since such alleged conduct is of a personal nature which is unrelated to a political campaign or the holding of public office or party position, any use of campaign funds to defend such personal conduct would be precluded by §14-130 of the Election Law.

In answer to question (c), the Board is of the opinion that since both of the above questions request the use of campaign funds for a personal use, the political committee may not loan the money to the candidate for such use.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term “personal use.” It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 90-1

DATE: MARCH 28, 1990

May a candidate/officeholder establish a scholarship fund with campaign monies, which would be administered by an independent committee making awards based only upon academic qualifications?

> Article 14 of the Election Law prohibits the conversion of campaign funds to personal uses. In its relevant part it states:
> §14-130. Campaign funds for personal use. 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.

In the past this Board has held that an underlying purpose of the Election Law was "...not to restrict contributions by...candidates to bona fide charitable institutions.", 1975 Op. St. Bd. Elec. #17, emphasis added.

Standing alone, the use of campaign funds to defray the costs of an individual's education, books or expenses would be prohibited by Article 14 of the Election Law as a conversion to a "personal use" of such funds. The additional facts which indicate an independent committee will make scholarship awards does not change the personal use of campaign monies that is inherent to the situation. It is, therefore, the opinion of the Board that the proposed use of campaign funds to provide scholarships is prohibited by §14-130 of the Election Law.

If the committee administering scholarship monies were to qualify itself as a "bona fide charitable institution" under New York State law; or, in the alternative, scholarship monies are transferred outright to an academic institution recognized as a charity; the proposal would avoid the prohibitions of the Election Law and become permissible use of campaign funds.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 90-2

RESCINDED by OPINION No. 2018-02

DATE: MARCH 28, 1990

May a candidate use campaign funds to pay for child care services in circumstances where the candidate and his/her spouse must attend campaign related events or events related to the holding of public office?

> Section 14-130 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."

It is the opinion of the Board that ordinary child care costs are generally to be considered personal expenses of the parents and that, pursuant to §14-130 of the Election Law, would not be properly paid for out of campaign funds.

This Board does, however, recognize the roles that candidates' and public officials' spouses play in relation to a candidacy for office or the duties and obligations that flow from public service. The activities of a spouse representing his or her wife or husband at a public or campaign related function necessarily creates an extraordinary imposition upon the obligations of that individual to his or her children. The rearing of children and public life are not mutually exclusive; people with families should be able to participate in the electoral process.

It is the opinion of the Board, therefore, that in cases 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.

We note here that the choice of a candidate to use such funds for this purpose should be held to a high level of scrutiny, and that documentation of the event(s) requiring the attendance of both the candidate/ officeholder and his or her spouse must be retained by the committee pursuant to §14-122 of the Election Law.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 93-1

DATE: SEPTEMBER 27, 1993

May an officeholder who has chosen not to run for re-election use all or a portion of remaining campaign funds to underwrite the research, production and authorship of a book whose topic would be a historical account of the operation of city government during the time period that the officeholder occupied the position of mayor?

May the political committee of an officeholder use all or a portion of the remaining campaign funds to pay the expenses of a reception for individuals who have previously made campaign contributions to the committee?

Section 14-130 of the Election Law prohibits the conversion of campaign funds to personal uses not related to a political campaign or the holding of a public office or party position.

The first question posed implies that the former mayor would use a portion of campaign funds in the pursuit of writing a book regarding events in the city government during his tenure of mayor. This book would, presumably, be written after the person has left their public office and, while recounting events occurring during the holding of public office, would not relate to the holding of present public office or party position. As such, this would be a personal use of campaign money under §14-130 of the New York State Election Law.

The second proposal is to pay the expenses of a reception for campaign contributors. This reception would presumably be an appreciation gesture on behalf of the committee for those who have contributed to the committee. This is similar to the practice which some former officeholders have undertaken to return unused contributions to the contributors. This practice is permissible as it merely returns the money to those who originally contributed the money. Since the reception for campaign contributors serves the same function as returning the money to the original contributors, this is permissible use of campaign money. Should money remaining in the committee be returned to contributors as cash, this should be on a pro-rata basis to insure that no contributor receives more in return than they gave to the committee.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term “personal use.” It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 93-2

DATE: DECEMBER 8, 1993

May a political committee spend campaign funds for a portrait of the mayor who has chosen not to run for reelection to be hung in the office of the mayor at City Hall?

Section 14-130 of the Election Law prohibits the conversion of campaign funds to personal uses not related to a political campaign or the holding of a public office or party position.

This question indicates that the only reason that this portrait would be placed on display at City Hall is because the person who is the subject of the portrait has served as the mayor of this city. It is apparent that the creation and use of this portrait is directly related to the individual's holding of public office and that by hanging the portrait in City Hall, there is not a personal use of the portrait. According to the letter of request, a portrait of most of the mayors who have served the city are displayed in the mayor's office. On this basis, this is a permissible use of campaign money under the New York State Election Law.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINION
OPINION NO. 95-1

DATE: APRIL 26, 1995

In the event that the State withholds salary checks of legislative employees during protracted budget negotiations, may a legislator use surplus campaign funds to make salary payments to employees until the budget is enacted and the state resumes issuing salary checks to legislative employees?

Section 14-130 of the Election Law prohibits the personal use of contributions received by a candidate or political committee if such personal use is unrelated to a political campaign or the holding of public office or party position.

The maintaining and staffing of offices in Albany and a legislator's district, in order to carry out the responsibilities of his/her office and provide services to his/her constituents, is directly related to the holding of public office. Accordingly, campaign funds may be used for these purposes without violating §14-130 of the Election Law.

The payment of salaries to employees is just one of many costs involved in maintaining such offices. Therefore, this Board is of the opinion that a legislator may use surplus campaign funds to pay salaries to employees in the event the state should withhold those salaries pending the enactment of a state budget. However, it must be clear that such payments are loans that are to be reimbursed when the state resumes issuing salary checks to legislative employees. All such loans, and the reimbursements, must be reflected on the campaign committee's financial disclosure statement. Any unreimbursed loans become a gift, and therefore a personal use of campaign funds which is prohibited by §14-130.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 95-2

DATE: MAY 31, 1995

Is the following an appropriate use of surplus campaign funds?

> An individual who has not held public office for nearly 10 years, and who has not terminated his or her campaign fund since leaving office, proposes to make a donation to a local charity using funds in the campaign account. The charitable donation is one of the terms of an agreement to settle a civil lawsuit arising out of the individual's former employment. The terms of the agreement provide that the settlement will remain effective regardless of the legality of the proposed donation.

Election Law §14-130 specifically prohibits the conversion of campaign funds to personal use not related to running a campaign or the holding of public office or a party position. In the past, this Board has held that it is permissible to terminate a campaign fund by making donations to charities recognized by the United States Internal Revenue Service. See Advisory Opinion 86-5.

Standing alone, the charitable donation would be permissible use of the remaining campaign funds. However, the donation does not stand alone, but is presented as part of a settlement agreement for a lawsuit that arises out of the circumstances of the individual's former employment. The provision which severs the donation, should it be found impermissible, does not alter its nature as part of an agreement to settle a personal lawsuit that is unrelated to holding public office or party position or the running of a campaign. Therefore, the proposed charitable donation is an impermissible personal use of campaign funds.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 95-3

DATE: JULY 31, 1995

May a political action committee sponsor and pay for the production of a public access cable television program for the discussion of political or governmental issues which are of concern to the political action committee or to promote candidates for party or public office?

Section 14-130 of the New York Election Law prohibits the personal use of contributions received by a candidate or political committee if such personal use is unrelated to a political campaign or the holding of a public office or party position.

The expenditure of funds by a political committee to promote candidates for party or public office clearly fits within the permissible use of political funds since the expenditures are related to a political campaign listed in §14-130 as an allowable use.

Section 14-130 of the Election Law also permits a political committee to expend its funds for any lawful purpose which is not personal use. The expenditure of funds by a political committee to pay for a television program to discuss political and governmental issues is not a personal use and is a permissible use of campaign money. The use of this money must be strictly limited to the ordinary and necessary expenses incurred in relation to the production of the television program. In addition, all other requirements of Article 14 of the New York State Election Law must be complied with. This includes limitations on contributions to candidates specified in §14-114 of the New York Election Law if the subject matter of the television program is campaign related.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 97-1

DATE: SEPTEMBER 3, 1997

May a political committee terminate its activities as a political committee by contributing the funds remaining in its campaign account to a research organization formed to analyze social trends? The organization is a charitable organization under section 501(c)(3) of the Internal Revenue Code.

Election Law section 14-130 prohibits the conversion of campaign funds to personal uses, as follows: 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.

The Board has previously held that the campaign funds may be given to "bona fide charitable organizations," 1975 Board Opinion #17, to "any charity which is recognized as such by the United States Internal Revenue Code," Advisory Opinion No. 86-5, and to "an academic institution recognized as a charity." Advisory Opinion No. 90-1. These opinions do not, however, address the circumstances under which a charitable contribution by a political committee would result in a violation of §14-130. For example, if a charitable organization uses funds from a political committee to compensate individuals associated with that committee (e.g., candidates, committee staff, candidate and staff family members), the prohibition against personal use of the funds would be violated. In this regard, the charitable organization is under the same statutory prohibition as applies to the committee itself. In addition, such individuals should refrain from exercising any control over the funds after receipt by the charitable organization. Finally, these restrictions would apply until the organization expended the entire amount received from the committee.

Accordingly, it is the Board's opinion that the use of campaign funds described above is permissible, as long as the recipient organization does not use the funds to compensate individuals associated with the political committee or members of their families and as long as such individuals do not exercise control over the disposition of the funds by the charitable organization.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 15-1

DATE: JUNE 10, 2015

QUESTION PRESENTED:

May a public official use campaign funds to pay the travel expenses of that official and two staff members for a two-day trade mission to another country with other government officials?

DISCUSSION:

Election Law § 14-130 was recently amended by Chapter 56 of the Laws of 2015 to read, in relevant part:

> § 14-130. Campaign funds for personal use. 1. 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.
>
> 3. For the purpose of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position. "Converted by any person to a personal use", when meeting the definition in this subdivision, shall include, but not be limited to, expenses for the following:
>
> > (x) travel expenses including automobile purchases or leases, unless used for campaign purposes or in connection with the execution of the duties of public office or party position and usage of such vehicle which is incidental to such purposes or the execution of such duties. (Emphasis added)
>
> 5. Nothing in this section shall prohibit an elected public officeholder from using campaign contributions to facilitate, support, or otherwise assist in the execution or performance of the duties of his or her public office.

Election Law § 14-130 (6) directs the State Board of Elections (hereinafter the "Board") to "issue advisory opinions upon request regarding expenditures that may or may not be considered personal use of contributions."

The facts presented indicate that the public official, who is requesting the Board's opinion, will be visiting another country in his official capacity, accompanied by two staff members. The purpose of the travel is to participate in a trade mission to Cuba organized by another public official. The official would prefer not to use public funds to pay for the travel expenses, but use campaign funds instead.

HOLDING:

It is the opinion of the Board, that based upon the facts presented, and applying the applicable provisions of Election Law § 14-130, the use of campaign funds for payment of travel expenses of the official and two staff members to accompany other government officials on a trade mission is permissible for those travel expenses that are incurred by the official and his staff in his official capacity

and related to his public office.

Any expenses incurred other than as a result of the official's duties or that are unrelated to his office may not be paid with campaign funds.

This opinion relates only to facts presented and is solely the interpretation of the Board of the term "personal use." It does not express an opinion on the ramifications of any other state or federal law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 15-2

DATE: SEPTEMBER 1, 2015

QUESTION PRESENTED:

Does Election Law § 14-130 permit a candidate to use campaign funds to purchase services from a marketing firm in which the candidate has a 45% ownership interest?

DISCUSSION:

Election Law § 14-130 was recently amended (Chapter 56 of the Laws of 2015) to read, in relevant part:

> § 14-130. Campaign funds for personal use. 1. 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.

Election Law § 14-130 (6) directs the State Board of Elections (hereinafter the "Board") to "issue advisory opinions upon request regarding expenditures that may or may not be considered personal use of contributions." This opinion does not analyze the application of any other state or federal laws or ethics rules to the facts presented.

The facts, as presented, are as follows: A candidate owns 45% of a marketing firm. The campaign wishes to hire this marketing firm to provide services for his campaign, for which the firm will be paid $5,000.

None of the specifically enumerated statutory examples of "personal use" apply to the facts presented. See Election Law § 14-130 (3). The relevant law is therefore the general prohibition that campaign 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." Election Law § 14-130 [1].

Campaign marketing services relate to a political campaign. The nature of the expenditure, based on the limited facts provided, is therefore assumed to be proper.

The relevant issue is the candidate's ownership interest in the marketing firm which stands to profit by rendering services to the campaign. Such an ownership interest does not, pursuant to Election Law § 14-130, preclude the candidate's campaign committee from purchasing services from the firm, provided the committee receives bona fide services related to the political campaign in accordance with fair market value. This opinion assumes the marketing firm has other clients, exists independent of the candidate's committee and is not an artifice designed to direct campaign money to the candidate.

HOLDING:

It is the opinion of the Board that Election Law § 14-130 applied to the facts and assumptions recited herein, does not prohibit the use of campaign funds to purchase marketing services from a firm in which the candidate owns 45% of the firm to the extent the campaign receives campaign-related services in accordance with fair market value.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 15-3

DATE: SEPTEMBER 1, 2015

QUESTION PRESENTED:

Two public officials have requested that the New York State Board of Elections (hereinafter "State Board") issue an opinion, as directed by Election Law § 14-130(6), regarding the use of campaign funds. Specifically, may public officials use campaign funds to pay travel expenses for a trip to Europe with various community leaders that includes meetings with Jewish leaders in Krakow, Poland, a visit to the Auschwitz Concentration Camp Memorial, meetings with religious, human rights and cultural organizations in Athens, Greece regarding the current economic crisis in Greece, and meetings with journalist, writers and Jewish leaders in Istanbul, Turkey to discuss growing intolerance against opposition media and specific ethnic groups. The trip will also include four days of private activities.

It is the opinion of the State Board, as further detailed below, that the payment of travel expenses to meet with community leaders in Poland, Greece and Turkey to discuss human rights and current affairs is permissible because the expenses will be incurred by public officials in their official capacity and, therefore, are related to their public office.

DISCUSSION:

Election law § 14-130 was recently amended to read, in relevant part:

> § 14-130. Campaign funds for personal use. 1. 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.
>
> 3. For the purpose of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position. "Converted by any person to a personal use", when meeting the definition in this subdivision, shall include, but not be limited to, expenses for the following:
>
> > (x) travel expenses including automobile purchases or leases, unless used for campaign purposes or in connection with the execution of the duties of public office or party position and usage of such vehicle which is incidental to such purposes or the execution of such duties.
>
> 5. Nothing in this section shall prohibit an elected public officeholder from using campaign contributions to facilitate, support, or otherwise assist in the execution or performance of the duties of his or her public office.

The facts presented indicate that the public officials requesting the Board's opinion will be visiting another country in their official capacity, accompanied by community leaders from New York, and will focus on issues of importance to the citizens of New York. The new amended version of Election Law §

14-130 expressly authorizes the use of campaign funds to pay for such travel. However, campaign funds may not be used for the four-day portion of the trip for private activities.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 15-4

DATE: OCTOBER 13, 2015

QUESTION PRESENTED:

Does Election Law § 14-130 permit a candidate to use campaign funds to pay rent to a partnership comprised of the candidate and another individual for an apartment to be used as an office for the candidate's campaign office?

DISCUSSION:

Election Law § 14-130 was recently amended (Chapter 56 of the Laws of 2015) to read, in relevant part:

> **§ 14-130. Campaign funds for personal use.** 1. 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.
>
> 3. For the purpose of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position. "Converted by any person to a personal use", when meeting the definition in this subdivision, shall include, but not be limited to, expenses for the following:
>
> > (i) any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence of a candidate or officeholder or a member of the candidate's or officeholder's family that are not incurred as a result of, or to facilitate, the individual's campaign, or the execution of his or her duties of public office or party position. In the event that any property or building is used for both personal and campaign use or as part of the execution of his or her duties of public office or party position, personal use shall constitute expenses that exceed the pro-rated amount for such expenses based on fair market value.
> >
> > (ii) mortgage, rent, or utility payments to a candidate or officeholder for any part of any non-residential property that is owned by a candidate or officeholder or a member of a candidate's or officeholder's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property's usage for campaign activities.

Election Law § 14-130 (6) directs the State Board of Elections (hereinafter the "Board") to "issue advisory opinions upon request regarding expenditures that may or may not be considered personal use of contributions."

The facts, as presented, are as follows: A candidate, who is making the request for an opinion of the Board, and a business partner purchased a residential building with apartment units. The candidate rents one unit from the partnership for $425.00 per month. A relative of the business partner rents another unit for $425.00 per month. Both payments are made to the partnership. The third unit is rented by the candidate's campaign for $425.00 per month. This rent is paid directly to the mortgage servicer and not to

the partnership. The campaign rental is used to store campaign materials, as a work space for volunteers and, occasionally, to provide overnight accommodations for volunteers. The mortgage for the building is $1,145. After payment of the $425 monthly campaign rent directly to the mortgage company, the partnership pays the balance of the mortgage, $720, to the mortgage company. The surplus of the total rent payments of $1,275, after payment of the mortgage, which is $130, is used by the partnership for building repair and upkeep.

The candidate's rent payment to the partnership for a separate residential apartment he uses does not raise any issues regarding use of campaign funds.

The rental of the space for a campaign office is clearly related to a political campaign. In this case, the rental agreement for the campaign office is between the campaign and the partnership comprised of an officeholder and another individual. When rent is paid for campaign space which is owned by a candidate or, in this case, a partnership that includes a candidate, the amount of rent may not exceed the fair market value. Accordingly, this opinion, for purposes of analysis under Election Law § 14-130 (3) (i), (ii) presumes without making any such factual finding or conclusion, that the rentals described represent fair market value (see also 9 NYCRR Subtitle V, § 6200.6 [b]).

HOLDING:

It is the opinion of the Board, that based upon the facts presented, and applying the applicable provisions of Election Law § 14-130 as outlined above, the use of campaign funds to pay for the rental of the campaign office is permissible under such section of law to the extent it does not exceed fair market value.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 17-1

DATE: AUGUST 2, 2017

QUESTION PRESENTED:

Does Election Law §14-130 prohibit a trade association, which both operates a political action committee and retains a lobbying firm, from paying its lobbying retainer fees with funds from its political action committee?

DISCUSSION:

The trade association in question indicates that it operates a political action committee (PAC). A political action committee is defined in §14-100(16) of the Election Law as "a political committee which makes no expenditures to aid or take part in the election or defeat of a candidate, or to promote the success or defeat of a ballot proposal, other than in the form of contributions, including in-kind contributions, to candidates, candidate's authorized committees, party committees, constituted committees, or independent expenditure committees provided there is no common operational control between the political action committee and the independent expenditure committee; or in the form of communications that are not distributed to a general public audience as described in subdivision thirteen of this section."

As a political committee, the political action committee must comply with §14-130 of the Election Law. There are two prongs to the analysis under §14-130(1)of the Election Law. Prong One provides that "(c)ontributions received by a candidate or a political committee may be expended for any lawful purpose." Prong two provides that "(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."

Additionally, §14-130(3)(v) cites examples of what shall be considered converting contributions by any person to a personal use, including: "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).

In the instant matter, the trade association inquires of whether it can use contributions from its political action committee to pay for a lobbying retainer incurred by the trade association. This is not permissible under the Election Law, as it would not meet the requirements of the second prong of the analysis under §14-130(1). The use of contributions by the PAC to pay for the trade associations lobbying bill would be considered converting such contributions to a personal use under §14-130(3)(v). As stated above, 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." Lobbying on behalf of the trade association is not a "campaign purpose." Section 1-c of the Legislative Law defines "lobbying" and "lobbying activities" as attempts to influence a broad range of governmental decision-making at the State, agency, tribal and local levels. Political campaigning is not within the definition of lobbying.

Given that lobbying is not a "campaign purpose", using PAC contributions to pay for the trade association's lobbying retainer would violate §14-130 of the Election Law.

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 18-1

Date: March 1, 2018

Question Presented:

Is a federal candidate committee that is required to register with and file campaign finance disclosures with the United States Federal Election Commission ("FEC") required to register such committee and file campaign finance disclosure reports with the New York State Board of Election when such committee makes aggregate contributions to New York political committees in excess of $1,000 pursuant to EL section 14-124 (2-a)?

Discussion:

Federal Preemption

Federal law establishes a detailed regime of campaign finance disclosure for federal candidates and committees. *See* 52 USC 3010 *et seq*. Federal law establishes requirements for the registration of political committees (52 USC § 30103), identifies what information they must report and when they must report (52 USC 30104). Among other things, federally registered candidates must report contributions to state political committee on their FEC disclosure reports and itemize such contribution over $200. 11 CFR 104.3 (b) (1) (i), (v).

Facing a patchwork of state and local filing requirements, Congress expressly articulated "field preemption" of federal law over state law in this area, opting for a "comprehensive, uniform Federal scheme that is the sole source of regulation of campaign financing…for election to federal office." FEC AO 1988-21. As amended in 1974, 52 USC § 30143 provides "[t]he provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office."

The FEC regulations are more explicit in establishing the extensive reach of federal preemption in this area:

> (b) Federal law supersedes State law concerning the -
>
> > (1) Organization and registration of political committees supporting Federal candidates;
> >
> > (2) Disclosure of receipts and expenditures by Federal candidates and political committees; and
> >
> > (3) Limitation on contributions and expenditures regarding Federal candidates and political committees.
>
> (c) The Act does not supersede State laws which provide for the -
>
> > (1) Manner of qualifying as a candidate or political party organization;

(2) Dates and places of elections;

(3) Voter registration;

(4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses;

(5) Candidate's personal financial disclosure; or

(6) Application of State law to the funds used for the purchase or construction of a State or local party office building to the extent described in 11 CFR 300.35. (b) 11 CFR 108.7 (b), (c).

Congressional intent to avoid federal candidates making duplicative state and federal filings is clear:

> The Commission notes that, with respect to disclosure requirements, including the reporting of receipts and expenditures and, by implication, the registration of political committees, Congress was particularly emphatic. The House committee report, cited above, in discussing the revised (in 1974) preemption provision, referred to the parallel part of the 1971 Act that, although mandating the filing of Federal reports (and "statements") with the States, merely required the Federal supervisory officers to cooperate with and encourage State officials to develop procedures to eliminate the necessity of multiple filings by permitting the filing of such copies to satisfy State requirements. The House report, looking ahead to the 1974 repeal of the 1971 provision, states that under the 1974 legislation, the Federal reporting requirements would be "the only reporting requirements" with respect to Federal elections (and copies of the Federal reports would be filed with the States)1. H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974); see also 2 U.S.C. §439.

Caselaw and numerous FEC Advisory opinions have applied federal preemption in this area broadly. In *Teper v. Miller*, 82 F.3d 989, 994 (11 Cir. 1996), the court held FECA's preemption provision intended 'to make certain that the Federal law is construed to occupy the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated'" [quoting H.R. Rep. No. 1239, at 10 (1974)]). In *Bunning v. Kentucky*, 42 F.3d 1008 (6th Cir. 1994), the court held state law in that case was preempted by federal law as to a federal candidate committee. In *Weber v. Heaney*, 995 F.2d 872, 875–76 (8th Cir. 1993), the court affirmed preemption of state public financing scheme for congressional candidates.

The FEC has opined that federal law preempted the former provisions of New York Election Law § 2-126 (limitation on use of party funds in primary elections) such that with respect to contributions in federal contests, the New York State Democratic Committee was bound by only federal law. FEC AO 2000-23. State prohibitions on payroll deductions to make contributions to federal committees were found to be preempted. FEC AO 2014-04. The FEC also concluded that the poll disclosure provisions of 9 NYCRR § 6201.2 are preempted by federal law and inapplicable to federal candidates. FEC AO 1995-41.

The FEC distinguishes state regulatory authority over state and local committees' *receipt of* federal funds, noting "State regulation of funds received by a campaign for State office from a campaign for Federal office may not be avoided by relying on the Federal preemption provisions…" FEC AO 1978-37. Accordingly, State law determines permissible contributions a state committee may receive from a federal committee. FEC AO 1986-05. State law can establish the lawful amount "of such transfers or donations, or their reporting by any state *transferee entity*." [emphasis added] FEC AO 1993-10; see also FEC AO 1999-12; FEC AO 1986 -29 (state law regarding publication of a slate card preempted but federal committee could be required to provide certain information to non-Federal candidates that they needed for their state reporting). FEC AO 1999-12.

The FEC has also recognized "the State's interest with respect to the reporting obligations of a non-Federal political committee and the receipts and disbursements for non-Federal election purposes." FEC AO 1999-12. But even in such instances, the FEC has concluded "the Act would preempt the State from requiring the non-Federal account [of a committee] to report all other receipts and disbursements of the Federal account in a consolidated report because such a requirement would impose reporting and itemization requirements on the Federal account that would exceed those of the Act." Id; *see also* FEC AO 1986-27.

Election Law § 14-124 (2)

Election Law § 14-124 (2), the language of which predates the current codification of the election law in 1976, provides:

> The filing requirements and the expenditure, contribution and receipt limits of this article shall not apply to any candidate or committee who or which engages exclusively in activities on account of which, pursuant to the laws of the United States, there is required to be filed a statement or report of the campaign receipts, expenditures and liabilities of such candidate or committee with an office or officers of the government of the United States; provided a copy of each such statement or report is filed with the office of the state board of elections.

The requirement under Election Law § 14-124 (2) that federal committees file their FEC reports with the state board of elections is preempted by federal law. *See* 52 USC § 30143. However, a similar federal provision requires "[a] copy of each report and statement required to be filed by any person under this Act shall be filed by such person with the Secretary of State (or equivalent state officer[1]) of the appropriate State…" 52 USC § 30113. With the advent of on-line access to FEC reports via the FEC's website, Congress amended 52 USC § 30113 in 1995 to allow the FEC to exercise discretion to waive duplicative state filing of FEC reports if the state provides a system that permits "electronic access to and duplication of, reports and statements that are filed with the [FEC]." 52 USC § 30113 (c). The FEC pursuant to this "waiver" authority granted a state filing waiver to all fifty states and directed that all federal committees "no longer have to file duplicate copies of their FEC campaign finance disclosure reports" with state offices. See https://classic.fec.gov/pages/statefiling.shtml.

[1] In New York, the "equivalent officer" is the State Board of Elections.

New York's filing requirement in Election Law § 14-124 (2) is expressly preempted by federal law, and the similar federal law requirement that FEC filings be sent to the state board is satisfied by the FEC waiver applied to New York and all other states owing to the filings' availability at FEC.gov.

Election Law § 14-124 (2-a)

Election Law 14-124 (2-a) provides:

> The provisions of sections 14-102, 14-112 and subdivision one of section 14-118 of this article shall not apply to a political committee supporting or opposing candidates for state or local office which, pursuant to the laws of the United States, is required to file a statement or report of the campaign receipts, expenditures and liabilities of such committee with an office or officer of the government of the United States, provided that such committee makes no expenditures to aid or take part in the election or defeat of a candidate for state or local office other than in the form of contributions which do not exceed in the aggregate one thousand dollars in any calendar year, and provided further, that a copy of the federal report which lists such contributions is filed with the appropriate board of elections at the same time that it is filed with the federal filing office or officer.

Election Law 14-124 (2-a) was added to the election law by chapter 454 of the Laws of 1984. The section exempts a committee that files with the FEC from filing under New York Election Law if such committee does not engage in state campaign expenditures "other than in the form of contributions" aggregating to no more than $1,000 in a calendar year, provided further the committee files a copy of its FEC report with New York contemporaneous with its filing with the FEC. If a committee filing with the FEC makes contributions more than $1,000 and does not file its FEC report with New York, this section requires the committee filing with the FEC to also file itemized state disclosure reports (Election Law § 14-102), an authorization statement (Election Law § 14-112) and other state registration documents (Election Law § 14-118).

Legislative History

The legislation enacting Chapter 454 of the Laws of 1984 originated with the New York State Board of Elections. By letter dated June 15, 1984, the State Board encouraged the governor to sign the bill enacting chapter 454 of Laws of 1984, noting its purpose was to "exempt a national political action committee (P.A.C.) from filing financial disclosure statements if it only makes a contribution to a state or local candidate for office." The state board noted "[t]his bill would permit this type of national P.A.C. to make a contribution up to $1,000 to state or local candidates without being required to file separate New York State financial disclosure statements as long as they file a copy of the federal financial disclosure report with the appropriate board of elections." Bill Jacket, p 11, Chapter 454 Laws of 1984. The Assembly bill memorandum described the legislation nearly identically. Bill Jacket, p. 6, Chapter 454 Laws of 1984. The Senate bill memorandum refers more generically to "federal political committees." Id. at 7. The Majority Leader Research Staff Report in the Assembly described, in totality, the bill adopting Election Law § 14-124 (2-a) as "exempt[ing] any National PAC (Political Action Committee) which does not spend any money directly in support of a state or local candidate and only contributes up to $1,000 in support of such candidates in the aggregate, from filing separate state financial forms so long as such federal committee files a copy of its report with the app. local board." Id. at 8 [emphasis as in original].

Whether the drafters of Chapter 454 thought the language of the legislation by its express terms only applied to PACs or whether it was understood that federal preemption would preclude the legislation from applying to candidate committees, is unclear. But this understanding—that PACs, not federal candidate committees were subject to state regulation is reflected in the prior and subsequent opinions of the board.[2]

The State Board's Opinion 1982 # 2 determined that a PAC which supports state candidates from a segregated federal account must register and file with the state. In multiple opinions the Board opined that a PAC cannot evade state registration and reporting requirements by choosing to organize in a manner that creates a federal nexus. The Board's Opinions 1978 #8; 1989 # 2, both applicable to PACs, accord. Since its inception the Board has commensurately recognized its lack of jurisdiction over federal candidates. "The Board does not exercise jurisdiction over the filing activities of candidates for Federal office and by this opinion does not intend in any way to interpret the provisions of Federal Law." Opinion 1975 # 5.

Practical Application

Under New York law when a political committee is required to register and make disclosures, the committee must report all its financial activity. *See* 1989 Opinion #2 (noting "New York Law makes it mandatory that any…political committees must report all contributions and all expenditures.") [emphasis as in original]. There is no mechanism in the statute or the current regulations of the board for partial reporting by a committee.[3] Federal preemption, providing that federal law is the sole source of reporting obligations for federal committees, cannot abide federal candidates being required to file comprehensive reports with the FEC and to also separately file duplicative itemized reports on a different time schedule with New York. Notably there appear to be no FEC opinions concluding that a Federal candidate's principal campaign committee based on a contribution made to state or local committees—or on any other basis—may be subject to state filing requirements.

FEC opinions that have explored federal candidate committee contributions or shared expenditures in state elections have uniformly applied the broad preemption of 52 USC § 30143. For example, a candidate's federal committee contributing funds from the federal committee to his own state committee (because he was planning to run for a state office) was not subject to state requirements, but federal preemption would not extend to the recipient state committee which was subject to state limits and state reporting. FEC AO 1986-5. More succinctly, the contribution from the federal committee to a state committee did not subject the federal committee to state law. In FEC AO 1986-29 a federal candidate desired to create a "slate card" that would include state and federal candidates. The federal committee would, under some of the scenarios posited, collect money from state candidates to send the card or the federal candidate committee would pay the bill on behalf of the state candidates participating, essentially contributing to them.

The FEC opined in AO 1986-29:

> The Commission notes that the Act preempts any state law with respect to election to Federal office. See 2 U.S.C. 453; 11 CFR 108.7. This provision will preempt the application of state law to you, your committee, and the U.S. Senate candidate (as mentioned in your request)

[2] The Policy/Procedure Manual dated June 1996 included a section on "Registration Requirements Federal PACS" referencing the criteria of Election Law § 14-124 (2-a).

[3] At least one federal committee attempted such partial reporting, underscoring the inherent problems.

> with respect to the proposed slate card activities, including any disclaimer requirement with respect to you and the Senate candidate. This provision, however, will not preempt the application of state law with regard to your committee's providing certain information to listed state and local candidates that they may need for state reporting purposes. See Advisory Opinions 1986-27 and 1986-11.

With respect to contributions from federal committees, the FEC has opined that a federal committee contributing to a state committee's federal account was outside the reach of state law. *See* FEC AO 1993-14 (noting "[c]onsistent with Federal preemption as to registration and reporting, the Commission also concludes that a Federal political committee's contribution to the State Committee's Federal Account would not, by itself, permit application of Rhode Island requirements").

Though broad, federal preemption does not reach some scenarios where an entity other than a candidate committee raises federal funds and state funds in the same solicitation. *See* FEC AO 1999-12. Nor can an entity with both a federal and non-federal account under its control, for example, evade state reporting by routing contributions into the federal account and transferring 80% of the proceeds to the state account. *See* FEC AO 1986-27. Yet, where federal reporting and registration apply to a committee engaging in state and federal activities that are inextricably intermeshed with both state and federal requirements facially applicable, federal law preempts:

> The Act and regulations state that the provisions of the Act and the rules prescribed under the Act "supersede and preempt any provision of State law with respect to election to Federal office." 2 U.S.C. §453; 11 CFR 108.7(a). Commission regulations provide that Federal law supersedes State law with respect to the organization and registration of political committees supporting Federal candidates, the disclosure of receipts and expenditures by Federal candidates and political committees, and the limitations on contributions and expenditures regarding Federal candidates and political committees. 11 CFR 108.7(b).8 By their very nature, the allocable expenses of a State party committee, as distinguished from funds raised for and spent solely for the support of a non-Federal candidate, are intertwined with, and can affect, Federal election activity. With respect to your request, the Commission concludes that the Act and Commission regulations preempt any requirement imposed by [Alaska] that would limit the amount of Federal account funds that ADP [Alaska Democratic Party] uses to pay for administrative and generic voter drive expenses.

FEC AO 2000-24

Election Law § 14-124 (2-a) was not intended to, and cannot, require a candidate committee filing with the FEC to register and/or file (either fully or partially) with New York on the basis of contributions made to New York political committees. New York likely could ban or limit non-federal New York committees from receiving contributions from federal candidate committees, but New York Law cannot subject a federal candidate's campaign committee to New York's filing regime.

Transparency Considerations

It is notable that federal candidates filing with the FEC make campaign financial disclosures that are substantially comparable to those required under state law for state committees, and in some ways

have tighter fundraising restrictions. The FEC disclosure filings, fully searchable, are available to the public at FEC.gov. A link to that site is currently provided on the state board's website. Moreover, when a federal candidate's committee makes a contribution to a state candidate's committee, the state committee must disclose the contribution in accordance with state law. The state committee's financial disclosure reports are publicly available, and fully searchable, on the state board's website. Accordingly, there is full public online disclosure both on the part of the federal candidate committee making a contribution to a state committee and by such state committee receiving such contribution.

It is the opinion of the board that federal candidate committees filing with the FEC that make contributions to state or local committees in any amount, are not, on that basis alone, subject any registration and/or filing requirements under New York State Election law.

STATE BOARD OF ELECTIONS

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINIONS
OPINION NO. 18-01

DATE: JUNE 25, 2018

QUESTION PRESENTED:

May a political committee disburse its remaining funds to a "Charitable Giving Fund" which is a separate legal entity from the political committee and organized as a charity, recognized as such under section 501 (c) (3) of the Internal Revenue Code (IRC) and the Charities Bureau of the Office of the New York State Attorney General?

DISCUSSION:

A retired public official's authorized political committee desires to donate all remaining funds to a J.P. Morgan Charitable Giving Fund (CGF) account[4] and thereafter terminate the committee. The Treasurer has asked whether such a distribution violates Election Law § 14-130.

The nature of the CGF is as follows: The CGF/National Philanthropic Trust is a recognized charity under IRC 501 (c) (3) and is registered with the Charities Bureau in the Office of the New York State Attorney General. The CGF receives funds from a donor. Once made, the donations to the CGF are irrevocable. Money held by a CGF account can then only be distributed to public charities. Persons designated in the documents creating a particular CGF account retain the ability to advise the CGF about making "grants" to other charities. The CGF funds are, until expended on such grants, invested among various J.P. Morgan options. Any gains or losses change the balance of the CGF account. In no instance will gains or losses benefit the donor. Every distribution from a CGF account is vetted and approved by the CGF administered by National Philanthropic Trust pursuant to an agreement with JP Morgan.

With certain statutory caveats, Election Law § 14-130 permits campaign funds to be "expended for any lawful purpose" provided the funds are not "converted to a personal use which is unrelated to a political campaign or the holding of a public office or party position." Election Law § 14-130 (1).

[4] The funds donated to the CGF become the property of National Philanthropic Trust. "[G]rants from donor-advised funds can be made only to charitable organizations that are tax exempt under Internal Revenue Code Section 501(c)(3) and that are public charities under IRC Section 509(a). Among other restrictions, proposed grants cannot be made to non-operating private foundations, to fulfill legally binding pledges already made by the donor, or to benefit the donor (membership dues, tuition, tickets or other goods or services) or any individual, or to support a political campaign or lobbying activity." *See* JP Morgan PB-18-PRO-693.

The State Board has long recognized that "a political committee which terminates its activities by contributing the money in its accounts to any charity which is recognized as such by the United States Internal Revenue Code would not be violating section 14-130 of the Election Law." A.O. 1986-5.

Likewise, one of the five statutory options delineated by the legislature for distributing funds of an authorized committee after the death of a candidate is "donating the funds to a charitable organization or organizations that meet the qualifications of section 501 (c) (3) of the Internal Revenue Code." Election Law § 14-132.While Election Law § 14-132 is not directly applicable to the question presented here because the political committee is not seeking to distribute funds after the death of a candidate, Election Law § 14-132 evidences legislative approval for the Board's longstanding opinion regarding the propriety of distributing campaign funds to charitable organizations.

The nature of charities and the legal requirements imposed on them provide significant insulation against personal use. For example, in opining that directly establishing a scholarship fund with campaign funds was a "personal use," the State Board further advised contributing funds to a scholarship fund qualified as a "*bona fide* charitable institution" would "avoid the prohibitions of the Election Law and become a permissible use of campaign funds." A.O. 1990-1.

Under certain circumstances the State Board has also recognized that charitable contributions can constitute personal use. A charitable contribution of campaign funds as part of "an agreement to settle a personal lawsuit that is unrelated to holding public office or party position or the running of a campaign" was determined to be an "impermissible personal use of campaign funds". A.O. 1995-2. Funds donated to a charity by a political committee cannot compensate individuals associated with the donating committee, and the Board has advised that persons associated with the donating campaign committee "should refrain from exercising any control over the funds after the receipt by the charitable organization." A.O. 1997-1. Advisory Opinion 1997-1 further cautioned that a recipient charitable organization "is under the same statutory prohibition as applies to the [political] committee itself."

In this case, the Treasurer has indicated he would be the individual identified in the CGF's papers as the person to make grant recommendations. The pivotal issue here is whether this retained role of an individual associated with the authorized committee violates Election Law § 14-130. On these facts, it does not. Given that CGF funds may be used only to make charitable contributions subject to the institutional controls and approval of the CGF, there is no "personal use." Nor is there any heightened risk of "personal use" in this context materially different than if the authorized committee did not close and continued to make charitable contributions.

The Board cautions, as we did in 1997, that the personal use prohibitions of Election Law § 14-130 that attached to the campaign funds persists until "the organization expend[s] the entire amount received from the committee." A charitable organization cannot be used as an artifice to effectuate a prohibited "personal use".

NEW YORK STATE
BOARD OF ELECTIONS
ADVISORY OPINION No. 18-02

DATE: OCTOBER 25, 2018

QUESTION PRESENTED:

May a candidate for a public office or party position use campaign funds to pay for childcare services?

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.

The board has received inquiries as to whether campaign funds may be used to pay a candidate's child care expenses when those expenses are directly attributable to activities related to a political campaign.

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 or 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. 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.

Any person requiring guidance on whether an expenditure is a personal use given certain circumstances may request an opinion pursuant to Election Law § 14-130 (6).