

Advisory Opinion

IECDB AO 2018-02

July 13, 2018

Ms. Reyma McCoy McDeid
4244 NE 6th Street
Des Moines, IA 50313

To Ms. McCoy McDeid:

This opinion is in response to your request for an opinion from the Iowa Ethics and Campaign Disclosure Board. We issue this opinion regarding the use of campaign funds for child care expense. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTS:

You advise the Board you are a legislative candidate and single mother. In order to engage in campaign activities such as canvassing and attending events, you have incurred additional childcare expenses. You would not have incurred these expenses if you were not running for office.

ISSUE:

May a candidate for public office use campaign funds to pay for the candidate's child care expenses which are the result of the candidate participating in campaign activities?

OPINION:

Iowa Code section 68A.302, subsection 1, states “[a] candidate and the candidate's committee shall use campaign funds only for campaign purposes, educational and other expenses associated with the duties of office, or constituency services, and shall not use campaign funds for personal expenses or personal benefit.” The statute then provides a list of prohibited expenditures, such as clothing expenses and mortgage payments.ⁱ The statute further directs the Board to adopt rules which list items that represent “proper campaign expenses.”ⁱⁱ The Board's non-exhaustive list of permissible campaign expenditures can be found at rule 351—4.25 of the Iowa Administrative Code.

Childcare is not specifically mentioned in section 68A.302. However, the statute allows campaign funds to be used for the “payment for personal services directly related to campaign activities.”ⁱⁱⁱ The Board’s rule 351—4.25 does not specifically address childcare either, but it does state an expense may be paid from campaign funds for campaign purposes so long as the expense is for an item purchased to “promote or enhance the candidacy of the candidate.”^{iv}

While we appreciate the steep cost of childcare and sympathize with you and other candidates who have incurred additional childcare expenses related to campaigning for public office, we believe this decision is best left to the legislature. One could argue that childcare expenses incurred by a candidate in order for the candidate to participate in campaign activities is “for campaign purposes” just as easily as one could argue the expense is “personal” in nature.^v It is not unusual for candidates to make financial sacrifices in order to run for office. Some candidates quit their jobs or reduce their work hours in order to campaign or serve in office. Many candidates incur additional expenses as a result of running for office which are considered “personal expenses” under section 68A.302.^{vi} We believe the legislature is the most appropriate body to draw the line between campaign purposes and personal expenses with respect to childcare given the potential for significant financial output on the part of the campaign and the ongoing nature of the expense.^{vii}

However, a candidate for office is not without recourse. In 2008, we issued an advisory opinion with respect to whether Iowa’s campaign finance laws would allow an individual to give a candidate money to cover “personal expenses such as family bills.”^{viii} We stated “we believe that if the donation is truly for the candidate’s ‘personal consumption or use’ and is not intended to be used to advocate for the candidate’s election, it would not be a campaign contribution and would not trigger the limitations and requirements of the campaign laws in Iowa Code chapter 68A.”^{ix} We noted that under Iowa Code section 68B.22, the gift law, a candidate or the candidate’s “immediate family member”^x is prohibited from receiving a gift from a “restricted donor.”^{xi} In applying the provisions of Iowa Code section 68B.22, the Board’s jurisdiction is limited to candidates running for statewide office and political subdivision candidates.^{xii} Candidates for the General Assembly would need to seek guidance from the House and Senate Ethics Committees on the application of Iowa Code section 68B.22 to their conduct.^{xiii} As such, a candidate who is interested in receiving a donation for personal consumption in this manner needs to obtain guidance on the application of Iowa Code section 68B.22 prior to receiving the donation.

CONCLUSION:

We do not believe Iowa law clearly allows campaign funds to be used for a candidate's childcare expenses related campaigning. We believe this issue is a policy decision best left to the legislature.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
John Walsh, Vice Chair
Carole Tillotson
Jonathan Roos
Mary Rueter
Elaine Olson

Submitted by Megan Tooker, Board Legal Counsel

ⁱ See Iowa Code § 68A.302(2).

ⁱⁱ *Id.* § 68A.302(3).

ⁱⁱⁱ *Id.* § 68A.302(2)(c).

^{iv} Iowa Admin. Code r. 351—4.25(1).

^v See Iowa Code § 68A.302(1).

^{vi} See *Id.* § 68A.302(2).

^{vii} *But see* FEC AO 2018-06 (allowing a candidate to use campaign funds to be used for childcare expenses “to the extent such expenses are incurred as a direct result of campaign activity, [and] would not exist irrespective of [the candidate’s] election campaign); AL Ethics Comm’n AO 2018-04 (concluding a candidate’s committee “may use campaign funds to pay for childcare expenses described in the request to the extent such expenses are incurred as a direct result of campaign activity and are tied to specific campaign event”); TX Ethics AO 547 (2018) (concluding the payment of “childcare services to allow or facilitate [candidate’s] participation in campaign activities” “would not constitute personal use.”).

^{viii} IECDB AO 2008-10.

^{ix} *Id.*

^x See *id.* § 68B.2(11) (defining “immediate family member” to mean the spouse or dependent child).

^{xi} See *id.* § 68B.2(24) (defining “restricted donor” to mean any person who falls into at least one of four categories).

^{xii} See *id.* § 68B.32(1) (establishing the ethics and campaign disclosure board and identifying its jurisdiction).

^{xiii} See *id.* § 68B.31 (establishing an ethics committee in the house and senate and setting out responsibilities).