

What went wrong? Using campaign funds for personal legal expenses

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In March 2016, the U.S. Court of Appeals for the District of Columbia Circuit affirmed a lower court decision that former U.S. Senator Larry Craig and his campaign committee, Craig for U.S. Senate, unlawfully converted \$197,935 in campaign funds to pay for Senator Craig's personal legal expenses.

The Federal Campaign Act identifies six categories of permissible uses for contributions accepted by a federal candidate but does not permit conversion of funds to personal use. The act describes conversion to personal use as funds being used "to fulfill any commitment, obligation or expense...that would exist irrespective of the candidate's election campaign or...duties as a holder of Federal office." 2 U.S.C. §439a(b)(2). The Federal Election Commission (FEC) conducts a case-by-case analysis to determine whether the use of campaign funds to pay legal expenses falls under the definition of personal use. 11 C.F.R. §113.1(g)(1)(ii)(A).

In 2007, Senator Craig was arrested for lewd conduct in the Minneapolis-St. Paul International Airport, and money from the senator's campaign account was used to pay his legal bills. The defendants claimed that the use was permissible under the Federal Election Campaign Act and under an FEC advisory opinion from 2013 that appeared to approve the use of campaign funds for similar purposes.

Advisory Opinion 2013-11 responded to a question regarding the use of campaign funds for litigation purposes. Specifically, the committee, Citizens for Joe Miller, asked the FEC whether it may use campaign funds to post a cash deposit in lieu of a supersedeas bond on appeal from a state court judgment against former candidate Joseph Miller and/or whether campaign funds could be used to pay the final judgement if Miller was unsuccessful in his appeal. The lawsuit in question concerned employment records sought by several media outlets from Miller's former employer, the Fairbanks North Star Borough (the Borough). When the Borough would not release the requested records, the media entities filed suit. Miller intervened as a defendant on grounds that he was an indispensable party in protecting his privacy rights. The court ruled that while Miller had a legitimate expectation of privacy with respect to the documents in question, the expectation is outweighed by the public's significant interest in the background of a public figure running for office. Based on long-standing precedent that if a candidate "can reasonably show that the expenses at issue resulted from campaign or officeholder activities, the Commission will not consider the use to be personal use," the FEC allowed campaign funds to be used in the course of the lawsuit.

Unlike the Miller case, Senator Craig's legal troubles did not arise from his campaign activities or official duties as a senator. Campaigns that find their candidate in legal trouble should be cautious when confronted with legal bills and carefully consider whether the legal trouble is connected to the candidate or officeholder's campaign activity or official duties.

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