

**ETHICS INTERPRETATION EI-1995-005
ISSUED APRIL 13, 1995**

The Ethics Commission, in regular meeting, addressed your request for an Ethics Interpretation. You have asked

May a 1994 candidate for state office, who checked only "transfer to candidate's future election campaign" on the "Use Of Surplus Funds" category of his Statement Of Organization ["Form SO-1"], obtain a variance from the Ethics Commission to permit him to dispose of surplus campaign funds according to another method set forth in Section 257:10-1-20 (a)(3) of the Constitutional Ethics Rules, when the candidate has determined that he will not again seek elective office?

FACTS

You have advised the Commission that you ran for office in the 1994 state elections and were defeated. You have a balance of campaign funds in your candidate committee bank account. You would like to close your campaign. In order to do so, you acknowledge that you must dispose of surplus campaign funds. The single use you selected on the face of your Statement Of Organization ["Form SO-1"] is no longer viable, since you have subsequently decided not to again seek office. You would like to transfer your surplus funds to the state or local central committee of a political party or avail yourself of other uses authorized by the Constitutional Ethics Rules [Section 257:1-1-1 et seq. of the Rules of the Ethics Commission, 74 O.S. 1994 Supp., Ch.62, App.]. You have thus asked the Commission for a variance which would allow you to dispose of your remaining campaign funds according to those uses set forth in the constitutional rules.

ANALYSIS

The constitutional rules require that candidates for state office declare intended uses for surplus campaign funds. These uses must be selected from a list contained in 257:10-1-20. It provides:

Use of campaign contributions and use of surplus funds

(a) Candidate committees.

* * *

(3) Use of surplus funds. The surplus funds may:

(A) be deposited with the State Treasurer to the credit of the General Revenue Fund;

(B) be returned to the contributors pursuant to any formula approved by the candidate; provided, any amount returned to a contributor shall not exceed the amount of the original contribution;

(C) be contributed to a charitable organization;

(D) be retained by the candidate or candidate committee for use in a future election for a six-year period following the General Election for the same or different office;

(E) be used to defend legal actions or proceedings arising out of the campaign, election, or the performance of the candidate's official duties as a state officer; provided that a candidate/officerholder who, in the course of such legal actions or proceedings, is found to have violated statutes or any provision of this title shall repay funds used for his or her legal defense to his or her candidate committee;

(F) be used for a community activity;

(G) be transferred to the state or local central committee of a political party; or

(H) be distributed using a combination of these options.

The declaration of uses for surplus funds is set forth on the face of the Statement Of Organization each candidate committee must file with the Commission.

Statement of organization

(a) Candidate committee statement of organization.

(1) The statement of organization shall include the following:

* * *

(i) a designation of the use or uses of surplus funds, which shall be limited to those set forth in Section 20 of this chapter;

* * *

257:10-1-12

The rationale for requiring candidates to declare uses for surplus funds at the point of registering with the Commission is so that the public, when making contributions, can be on notice as to how a candidate intends to use such funds.

A candidate may amend his Statement Of Organization to provide for other or additional uses of excess funds. But, no contributions received prior to the date of filing the amended statement may be used for the amended purposes.

Designation of use of surplus funds.

A candidate whose candidate committee has an unexpended balance of funds not otherwise obligated for the purposes specified in Paragraph (1) of this subsection shall designate how the surplus funds are to be distributed. Uses are limited to those in Paragraph (3) of this subsection and shall be set forth on the committee's statement of organization. Surplus funds may not be expended for any other purpose. *The designated use or uses for surplus funds may be changed by the candidate committee by filing an amended statement of organization, provided that no contributions received*

prior to the date the amended statement of organization is filed with the Commission may be used for the amended use or uses.

257:10-1-20(a)(2)

[emphasis added]

The Commission has thus evidenced its intent to protect the public's right to know where surplus campaign funds are going to be spent at the point of giving and receiving campaign contributions.

In this instance, the public was on notice that you restricted your declared use of surplus campaign funds for a future race. At the time of collecting contributions you did not foresee that you would need to use surplus funds for any purpose. Since the election, you have determined that you will not again stand for election. But, your decision was reached after you had collected all your contributions, hence, too late to amend your Statement Of Organization to any avail pursuant to 257: 10-1-20(a)(2). Under a strict reading of the constitutional rules, you are prohibited from disposing of your excess funds according to any other specified uses.

A use variance constitutes permission to depart from the literal requirements of a regulation. [BLACK'S LAW DICTIONARY, 5th Edition] While variances are not to be encouraged, in this case, to withhold one would yield an absurd result. It does the public no good to deny you the opportunity to close out your campaign which, in turn, requires disposing of surplus funds. However, because you failed to notify the public that you would avail yourself of the full range of permitted uses, the Commission will grant the variance for deposit of your funds to the State Treasurer to the credit of the General Revenue Fund, under 257:10-1-20(a)(3)(A), or, pursuant to 257:10-1-20(a)(3)(B), for return to your contributors pursuant to any formula you approve, provided any amount returned to a contributor shall not exceed the amount of the original contribution.

The Commission thus grants you permission to amend your Statement Of Organization accordingly, and then, dispose of current funds in either of the stated manners. The Commission considers this holding specific to this case and that it does not constitute a precedent.

CONCLUSION

It is therefore the ethics interpretation of the Ethics Commission, as voted upon at its regular meeting held April 13, 1995, that this candidate should be and is granted a use variance with respect to 257:10-1-20(a)(2), such that he will be allowed to amend his Statement Of Organization to reflect that his surplus campaign funds will be deposited to the State Treasurer to the credit of the General Revenue Fund, under 257:10-1-20(a)(3)(A), or, pursuant to 257:10-1-20(a)(3)(B), returned to his contributors pursuant to any formula he approves, provided any amount returned to a contributor shall not exceed the amount of the original contribution, and then dispose of current campaign funds accordingly. The Commission considers this holding specific to this case and that it does not constitute a precedent.

Please be advised that ethics interpretations by law will be published by this Commission without identifying petitioners.