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Oklahoma Republican Party

June 8, 2016

Geoffrey Long, General Counsel
Oklahoma Ethics Commission
2300 N. Lincoln Blvd., Rm. B-5
Oklahoma City, OK 73105

Dear Mr. Long:

Attached is the statement from our legal advisor, Cheryl Baber on the recommendation of the Oklahoma Republican Party regarding Advisory Opinion AOR 16-01.

We appreciate the opportunity to make a recommendation to the Commissioners and look forward to testifying and providing additional information during the hearing.

Sincerely,

A handwritten signature in black ink that reads "Pam Pollard". The signature is written in a cursive, flowing style.

Pam Pollard, Chairman
Oklahoma Republican Party

Advisory Opinion Request 2016-01 (Draft C)

Dear Ms. Pollard:

We are responding to your advisory opinion request concerning the application of the Oklahoma Ethics rules to expenditures and contributions made by candidate committees to political parties. You ask, in effect, the following questions:

- 1. May a candidate committee make an expenditure to purchase a ticket to attend an event hosted by a political party committee where the purpose of the event is fundraising for the political party prior to the availability of surplus funds provision in Rule 2.48?**
- 2. May a candidate committee make an expenditure to purchase a ticket to attend an event hosted by a political party committee where the purpose of the event is not fund-raising for the political party prior to the availability of surplus funds provisions in rule 2.48?**
- 3. May a candidate committee make an expenditure to purchase a sponsorship package for an event hosted by a political party where the sponsorship package may include advertising benefits to the candidate such as a reserved table with multiple tickets to the event, signage identifying the candidate's sponsorship, identification in the program of the event, and identification in electronic presentations at the event?**
- 4. May a candidate committee make an expenditure to a political party committee to purchase tangible goods or services benefitting the campaign such as printing, postage, mailing lists, polling data, and other promotional items or services?**

5. **May a candidate committee make an expenditure to a political party committee to purchase a booth or other space for advertising or campaigning purposes at a political party event? Space for advertising may include a table and designated area to post and distribute campaign materials, opportunities to recruit volunteers, an opportunity to address the attendees at the event, and opportunities to solicit and receive contributions.**
6. **If the answer to question 1, 2, 3, 4, or 5 is yes, are such expenditures considered contributions and, if so, what are the contribution limits?**
7. **If the answer to question 6 is yes, are these contributions allowed by Rule 2.43, which allows candidate committee funds to be used to make ordinary and necessary campaign expenses” or Rule 2.44, which allows candidate committee funds to be used for “officeholder expenses”?**

Background

Ethics Rule 2.2 broadly defines the term “contribution” as “any gift, subscription, loan, guarantee or forgiveness of a* loan, conveyance, advance, payment, distribution or deposit of money made to, or anything of value given to, or an expenditure other than an independent expenditure may on behalf of, a political party, political action committee or candidate committee, but shall not include the value of services provided without compensation by an individual who volunteers those services.” Previous Ethics Rule 257:10-1-20 allowed candidate committees to transfer surplus funds “to the state, county or congressional district committee of a political party, not to include an affiliated or connected entity of a political party.” Previous Ethics Rule 257:10-1-20 allowed a candidate committee to designate funds as surplus funds at any time, regardless of whether the seat being sought by the candidate was decided.

In a similar fashion to the previous Ethics Rules, Ethics Rule 2.48 allows candidate committees to use surplus funds to be “contributed to a political party committee in any

amount not to exceed Twenty-five Thousand Dollars (\$25,000) in the aggregate.” However, in contrast to the previous rules, Ethics Rule 2.48 only allows surplus funds to exist when the funds are not otherwise obligated following the election at which the office for which the candidate committee was formed has been determined” Thus, previous Ethics Rules allowed a candidate to designate surplus funds at any time whereas current Ethics Rules allow a candidate to designate surplus funds only after the office being sought is determined.

In the past, candidate committees engaged in a variety of activities and expenditures with political parties that were unquestioned due to the lack of a time requirement in the surplus funds provisions. Current Ethics Rules place the time restriction on contributions to political parties raising the questions presented in this opinion about contributions and expenditures to political parties by candidate committees where the activities and expenditures arguably fit the definition of campaign expenses or officeholder expenses. In essence, the broad question presented is this: Do the Ethics Rules prohibit a candidate committee from making expenditures to political parties prior to the availability of surplus funds, or do the Ethics rules permit some expenditure by candidate committees to political parties as ordinary and necessary campaign expenses or officeholder expenses?

Discussion

The Oklahoma Ethics Commission promulgates rules of ethical conduct for campaigns for elective state office pursuant to the Oklahoma Constitution, Article XXIX, § 3. Rules relating to campaign finance and ethical conduct for campaigns for elective state office are promulgated as Rule 2 of the Oklahoma Ethics Rules. These rules will govern our analysis of your questions.

- I. May a candidate committee make an expenditure to purchase a ticket to attend an event hosted by a political party committee where the purpose of the event is fundraising for the political party prior to the availability of surplus fund provision in Rule 2.48?**

Yes, a candidate committee may use campaign funds to purchase a ticket from a political party to attend an event where the purpose is to fund-raise for the political party prior to the availability of surplus funds provisions. As set forth above, Ethics Rule 2.2 broadly defines the term “contribution” to include all types of payments and conveyances to political parties without any exceptions. Therefore, any payment to a political party for the purchase of a ticket to attend a fund-raising event is a contribution to the political party.

In light of this conclusion, we must examine whether a candidate committee may make a contribution to the political party prior to the availability of surplus funds provisions. Ethics Rule 2.48 states, “Surplus funds of a candidate committee are those funds not otherwise obligated following the election at which the officer for which the candidate committee was formed has been determined which, in the candidate’s discretion, are not required to be used for campaign expenses or officeholder expenses.” Once the office is decided, a candidate may dispose of surplus funds as described in Ethics Rule 2.48, which allows, in part, for surplus funds to be “contributed to a political party committee in any amount not to exceed Twenty-five Thousand Dollars (\$25,000.00) in the aggregate.” Therefore, after the candidate’s office is decided, a candidate is permitted to use surplus to make contributions to political parties, which includes purchasing tickets to political party fund-raising events.

The question remains, if a payment made to a political party for a ticket to a fund-raising event is a contribution, are there any circumstances where a candidate committee is permitted to make a contribution to the political party prior to the availability of surplus funds provisions in Ethics Rule 2.48? Ethics Rule 2.43 states, “Contributions to a candidate committee may be used to make expenditures for ordinary and necessary campaign expenses, for contributions to another candidate committee, for operating expenses of the committee or for other purposes not otherwise prohibited by law or these rules. Ethics Rules 2.44 states, “Contributions to a candidate committee of a candidate who is elected to the office for which the contributions were accepted may be used to make expenditures for officeholder expenses until the expiration of the term, resignation

or other vacation of the office.” Ethics Rules 2.43 and 2.44, which allow candidate committees to expend funds for ordinary and necessary campaign expenditures and officeholder expenses, allow for expenditures to political parties when such expenditures fit the categories of campaign expenses or officeholder expenses.¹

We recognize that campaign contributions are given to candidate committees for the purpose of furthering the mission of the campaign, and that purpose is to successfully elect the candidate and support the candidate’s office if successfully elected. Political parties perform a vital role in the election process and have provided valuable opportunities and services to candidates during campaigns. This may include activities like holding events that give candidates access to voters and constituents, providing polling data or donor lists, selling signs and campaign materials, and providing postage and mailing services to campaigns. Further, Ethics Rule 2.43 allows candidate committees to give to other candidates committees, thus providing support to other candidates within the same political party. It would not make sense to allow contributions to be made by one candidate committee to another, while prohibiting contributions by candidate committee to a political party for the same purpose of electing like-minded candidates.

Therefore, we conclude that a campaign committee may make an expenditure to a political party prior to the availability of surplus funds when such expenditure is either an ordinary and necessary campaign expense under rule 2.43 or an officeholder expense under Rule 2.44. This may include expenditures made for the purpose of purchasing a ticket to a fund-raising event prior to the availability of surplus funds.

II. May a candidate committee make an expenditure to purchase a ticket to attend an event hosted by a political party committee where the purpose

¹ Although not critical to the analysis in this advisory opinion, a current officeholder may use the balance of surplus funds transferred to a candidate committee seeking a future term to pay officeholder expenses of the current term. Funds raised for a future term may not be used to pay officeholder expenses of the current term.

of the event is not fund-raising for the political party prior to the availability of surplus fund provisions in rule 2.48?

Yes, a candidate committee may use campaign funds to purchase a ticket from a political party to attend an event where the purpose is not to fund-raise for the political party prior to the availability of surplus funds. As set forth above, Ethics Rule 2.2 broadly defines the term “contribution” to include all types of payments and conveyances to political parties without any exceptions. Therefore, any payment to a political party for the purchase of a ticket to attend any event hosted by a political party, even if the purpose of the event is not fund-raising, is a contribution to the political party. We rely on our reasoning in our response to question one for support in permitting a candidate committee to make such a contribution, if it is in the form of a qualified expenditure, prior to the availability of surplus funds. It makes no difference whether the event is a political party fundraiser or not; the relevant question is whether the candidate committee’s contribution to the event, i.e., its purchase of a ticket or tickets, is an ordinary and necessary campaign expense or officeholder expense under Rules 2.43 and 2.44, respectively. We conclude that a candidate committee may make an expenditure, prior to the availability of the surplus funds provisions, as either an ordinary and necessary campaign expense or officeholder expense to a political party for the purpose of purchasing a ticket to an event that is not a fund-raising event.

III. May a candidate committee make an expenditure to purchase a sponsorship package for an event hosted by a political party where the sponsorship package may include advertising benefits to the candidate such as a reserved table with multiple tickets to the event, signage identifying the candidate’s sponsorship, identification in the program of the event, and identification in electronic presentations at the event?

Yes, a candidate committee may use campaign funds to purchase a sponsorship package from a political party prior to the availability of surplus funds. As set forth above, Ethics Rule 2.2 broadly defines the term “contribution” to include all types of payments and

conveyances to political parties without any exceptions. Therefore, any payment to a political party for the purchase of a sponsorship package is a contribution to the political party. Again, we rely on our reasoning in our response to question one for support in permitting a candidate committee to make such a contribution, if it is in the form of a qualified expenditure, prior to the availability of surplus funds. We conclude that a candidate committee may make an expenditure as either an ordinary and necessary campaign expense or officeholder expense to a political party for the purpose of purchasing a sponsorship package prior to the availability of surplus funds provisions.

IV. May a candidate committee make an expenditure to a political party committee to purchase tangible goods or services benefitting the campaign such as printing, postage, mailing lists, polling data, and other promotional items or services?

Yes, a candidate committee may use campaign funds to purchase tangible goods or services from a political party prior to the availability of surplus funds. As set forth above, Ethics Rule 2.2 broadly defines the term “contribution” to include all types of payments and conveyances to political parties without any exceptions. Therefore, any payment to a political party for the purchase of tangible goods or services benefitting the campaign is a contribution to the political party. In this circumstance, in particular, a political party is no different than any other vendor to a candidate or officeholder, although the political party must report the expenditure by the candidate committee as a contribution to the party. The goods and services appear to directly further candidates’ goals of getting elected to office. Accordingly, we rely on our reasoning in our response to question one for support in permitting a candidate committee to make such a contribution, if it is in the form of a qualified expenditure, prior to the availability of surplus funds. We conclude that a candidate committee may make an expenditure, prior to the availability of surplus funds provisions, as either an ordinary and necessary campaign expense or officeholder expense to a political party for the purpose of purchasing tangible goods or services benefitting the campaign.

V. May a candidate committee make an expenditure to a political party committee to purchase a booth or other space for advertising or campaigning purposes at a political party event? Space for advertising may include a table and designated area to post and distribute campaign materials, opportunities to recruit volunteers, an opportunity to address the attendees at the event, and opportunities to solicit and receive contributions.

Yes, a candidate committee may use campaign funds to purchase space for advertising or campaigning purposes from a political party prior to the availability of surplus funds. As set forth above, Ethics Rule 2.2 broadly defines the term “contribution” to include all types of payments and conveyances to political parties without any exceptions.

Therefore, any payment to a political party for the purchase of a booth or other space for advertising or campaigning purposes at a political party event is a contribution to the political party.

In this circumstance, events hosted by political parties are no different than events hosted by non-political organizations in the community, although the political party must report the expenditure by the candidate committee as a contribution to the political party.

Purchasing space for advertising or campaigning appears to directly contribute to the election of a candidate, as candidates use the space to post and distribute campaign materials, recruit volunteers, address attendees, and solicit and receive contributions. It does not make sense to permit this activity after an election, with surplus funds, but not before. There is no reason for a candidate to make such expenditure after the election.

Accordingly, we rely on our reasoning in our response to question one for support in permitting a candidate committee to make such a contribution, if it is in the form of a qualified expenditure, prior to the availability of surplus funds. We conclude that a candidate committee may make an expenditure, prior to the availability of surplus funds provisions, as either an ordinary and necessary campaign expense or officeholder expense

to a political party for the purpose of purchasing tangible goods or services benefitting the campaign.

VI. If the answer to question 1, 2, 3, 4, or 5 is yes, are such expenditures considered contributions and, if so, what are the contribution limits?

We concluded in our responses to the previous questions that expenditures to political parties by candidate committees prior to the availability of surplus funds provisions are permitted with certain qualifications. We also concluded that such expenditures are considered contributions. To reiterate, Ethics Rule 2.2 broadly defines the term “contribution” to include all types of payments and conveyances to political parties without any exceptions. Therefore, we again conclude that any expenditure by a candidate committee to a political party is a contribution to the political party whether such expenditure is made before or after the availability of surplus funds provisions. The only contribution limit in the Ethics Rules for contributions from candidate committees to political party committees is found in the surplus funds provisions of Ethics Rule 2.48. That limit is \$25,000 in the aggregate. Thus, there is an aggregate contribution limit of \$25,000 for a candidate committee to make contributions to political parties for the duration of the candidate committee’s existence.

VII. If the answer to question 6 is yes, are these contributions allowed by Rule 2.43, which allows candidate committee funds to be used to make ordinary and necessary campaign expenses” or Rule 2.44, which allows candidate committee funds to be used for “officeholder expenses”?

We concluded in our response to question six that expenditures to political parties by candidate committees both before and after the availability of surplus funds provisions are contributions. Contributions made to political parties by candidate committees after the availability of surplus funds are made pursuant to Ethics Rule 2.48, which only places timing and total dollar amount limitations on the contributions. Thus, we do not need to

consider whether contributions made after the availability of surplus funds provisions are either campaign expenses or officeholder expenses.

Contributions made to political parties by candidate committees under the qualifications discussed in this opinion prior to the availability of surplus funds provisions are only permitted when the expenditure qualifies as either an ordinary and necessary campaign expense pursuant to Rule 2.43 or a non-reimbursed officeholder expense pursuant to Rule 2.44. If the expenditure or contribution does not qualify as either a campaign expense or officeholder expense, then it is not permitted. Whether any specific individual expenditure or contribution qualifies as a campaign expense or office holder expense is a fact-specific question that cannot be addressed in this opinion. The fact scenarios discussed in question one through five are generally the types of expenditures that could qualify as campaign expense or officeholder expense; however, each individual expenditure or contribution must be judged on the specific facts and circumstances that exist at the time the expenditure or contribution is made.

Therefore, we conclude that any expenditure or contribution made to a political party by a candidate committee prior to the availability of surplus funds must be either an ordinary and necessary campaign expense or a non-reimbursed officeholder expense.

Contributions made for any other purpose are not permitted prior to the availability of surplus funds provisions in Rule 2.48. Once surplus funds are available, contributions may generally be made to a political party for any lawful purpose provided the limitations in Rule 2.48 are followed.

Therefore, it is the official opinion of the Ethics Commission:

- 1. Ethics Rule 2.2 broadly defines the term “contribution” to include any payment without exception.**
- 2. Any payment or expenditure to a political party by a candidate committee is a contribution as defined in Ethics Rule 2.2.**
- 3. A contribution may be made to a political party from a candidate committee prior to the availability of surplus funds provisions only if the**

contribution qualifies as an ordinary and necessary campaign expense pursuant to Ethics Rule 2.43 or a non-reimbursed officeholder expense pursuant to Ethics Rule 2.44.

4. Contributions from a candidate committee to a political party committee are subject to a \$25,000 aggregate contribution limit for the duration of the candidate committee's existence pursuant to Ethics Rule 2.48.
5. A candidate committee expenditure to purchase a ticket to a political party fundraising event is a contribution to the political party. Such a contribution may be made pursuant to surplus funds provisions of Ethics Rule 2.48. A contribution may also be made prior to the availability of surplus funds provisions if the contribution qualifies as an ordinary and necessary campaign expense pursuant to Ethics Rule 2.43 or a non-reimbursed officeholder expense pursuant to Ethics Rule 2.44.
6. A candidate committee expenditure to purchase a ticket to a political party event that is not a fund-raising event is a contribution to the political party. Such a contribution may be made pursuant to surplus funds provisions of Ethics Rule 2.48. A contribution may also be made prior to the availability of surplus funds provisions if the contribution qualifies as an ordinary and necessary campaign expense pursuant to Ethics Rule 2.43 or a non-reimbursed officeholder expense pursuant to Ethics Rule 2.44.
7. A candidate committee expenditure to purchase a sponsorship package from a political party is a contribution to the political party. Such a contribution may be made pursuant to surplus funds provisions of Ethics Rule 2.48. A contribution may also be made prior to the availability of surplus funds provisions if the contribution qualifies as an ordinary and necessary campaign expense pursuant to Ethics Rule 2.43 or a non-reimbursed officeholder expense pursuant to Ethics Rule 2.44.
8. A candidate committee expenditure to purchase tangible goods or services from a political party is a contribution to the political party. Such a contribution may be made pursuant to surplus funds provisions of

Ethics Rule 2.48. A contribution may also be made prior to the availability of surplus funds provisions if the contribution qualifies as an ordinary and necessary campaign expense pursuant to Ethic Rule 2.43 or a non-reimbursed officeholder expense pursuant to Ethics Rule 2.44.

- 9. A candidate committee expenditure to purchase space for advertising or campaigning from a political party is a contribution to the political party. Such a contribution may be made pursuant to surplus funds provisions of Ethics Rule 2.48. A contribution may also be made prior to the availability of surplus funds provisions if the contribution qualifies as an ordinary and necessary campaign expense pursuant to Ethic Rule 2.43 or a non-reimbursed officeholder expense pursuant to Ethics Rule 2.44.**