

**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

ADVISORY OPINION 10-01

This Advisory Opinion (“AO”) rescinds AO No. 03-05 and responds to questions asked by elected officials concerning the use of campaign funds for “ordinary and necessary” expenses.

Campaign funds may be used for “any ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state or county office.”¹

The Campaign Spending Commission’s (“Commission”) rules provide further guidance by specifying that expenditures of campaign funds are permitted as “ordinary and necessary” expenses only if all the following requirements are met:²

- The expense is a usual expense;
- The expense bears a direct relation to the office; and
- The expense is reasonable.

The Commission responds that the following are permissible “ordinary and necessary” expenses:

1. Travel expenses to conduct State or county business.
2. Bonafide registration and travel expenses for conferences and workshops directly related to the elected official’s duties and responsibilities.
3. Expenses to organize and host community meetings to disseminate information and gather public comment regarding issues relevant to the elected official.
4. Expenses for leis for official events or office events, but not leis for other legislators.
5. Legislative opening day expenses and inaugural expenses for food and beverages to host constituents.

The Commission also determines that “ordinary and necessary” expenses do not include:

1. Expenses for food and beverages for the official’s or staff’s personal consumption. An exception to this prohibition is made when holding office meetings that include others that are not staff members or when holding meetings with constituents. A log should be kept with the names of attendees and the purpose of the meeting.
2. Flowers or money for funerals of constituents.

As to registration and travel expenses in particular, the Commission emphasizes that the expenses cannot be for personal expenses. Moreover, the expenses must be usual, bear a direct relation to the office, and be reasonable.

Likewise, the Commission emphasizes reasonableness for Legislative opening day and inaugural expenses for food and beverages.

Further, we note that campaign funds shall not be used for personal expenses. The Commission's rules list expenses that are deemed personal expenses.³ If specific expenses are not listed as personal expenses, the "irrespective test" is used to differentiate permissible expenses from prohibited expenses.⁴

If an expenditure of campaign funds results in a mixed benefit (campaign and personal) to the elected official, the elected official must reimburse the campaign for the amount attributed to the elected official's personal benefit unless the personal benefit is de minimis.⁵

If an expenditure is not addressed in the rules or this AO, as a precautionary measure, elected officials may want to contact the Commission before making the expenditure.

The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii Election Campaign Contributions and Expenditures laws provided under HRS section 11-191, et seq. and the administrative rules of the Commission provided in chapter 2-14, Hawaii Administrative Rules. The Commission may adopt, revise, or revoke this Advisory Opinion upon the enactment of amendments to the Hawaii Revised Statutes or the adoption of administrative rules by the Commission.

Dated: Honolulu, Hawaii, July 15, 2010.

CAMPAIGN SPENDING COMMISSION

Paul Kuramoto, Chairperson

Steven E. Olbrich, Vice Chairperson

Gino Gabrio, Commissioner

Dean Robb, Commissioner

Michael E. Weaver, Commissioner

¹ Act 211, Session Laws of Hawaii 2010, section §11-UU Campaign funds only used for certain purposes provides in relevant part as follows:

(a) Campaign funds may be used by a candidate, treasurer, or candidate committee:

* * *

(7) To pay for ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an office.

² Hawaii Administrative Rules (“HAR”) section §3-160-44 Expenditures; ordinary and necessary. A candidate may pay ordinary and necessary expenses incurred in connection with the candidate’s duties as a holder of an elected state or county office. These expenses must be reasonable, usual, and directly related to the office.

(1) The following examples illustrate ordinary and necessary expenses.

Example 1: A legislator purchases a chair for the reception area in the legislator’s office because the State does not provide the chair. This is an ordinary and necessary expense because it is necessary that visitors have a place to sit while waiting to talk to the legislator.

Example 2: A legislator pays ordinary costs of establishing and closing down a legislative office. These are ordinary and necessary expenses.

(2) The following examples illustrate expenses that are not ordinary and necessary.

Example 1: A legislator purchases gifts and lei for other legislators for the Legislature’s opening day. These are not ordinary and necessary expenses.

Example 2: A legislator purchases food and beverages for the legislator’s office staff. These are not ordinary and necessary expenses.

Example 3: A legislator establishes a charitable or education fund or trust in the legislator’s name and transfers campaign funds to the fund or trust. These are not ordinary and necessary expenses.

³ HAR section 3-160-42.

⁴ Expenses that would exist irrespective of a candidate's campaign to seek the nomination or election to office or being elected to an office are prohibited campaign expenses. HAR section 3-160-42(b).

⁵ HAR section 3-160-45 provides in pertinent part as follows:

(a) A candidate or candidate’s committee may purchase goods or services and lease goods and real property, except as provided in section 3-160-43(b)(3), that provide a mixed benefit to the candidate; provided that the amount attributed to the candidate’s personal use shall be determined and reimbursed by the candidate to the committee, unless the personal benefit is “de minimis”.

(b) "Mixed benefit to the candidate", for purposes of this section, means any use of goods or services both for personal use and to influence the nomination or election of a candidate or to satisfy a function of the candidate's elected office and includes the following....