



**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

July 10, 2024

Jeanne Y. Ohta



Re: Advisory Opinion 25-01

Dear Ms. Ohta:

This is in response to your request for an advisory opinion dated June 13, 2024.¹ Your request sought advice on whether a candidate may use campaign funds to pay for childcare expenses necessitated by the candidate's participation in campaign activities. In short, the Campaign Spending Commission ("Commission") determines that campaign funds may be used to pay for childcare expenses so long as the expenses "are directly related to the candidate's campaign to influence the nomination or election of the candidate."²

Hawaii Revised Statutes ("HRS") §11-381(a)(1) provides that campaign funds may be used for any purpose directly related to a candidate's campaign for office. Although campaign funds cannot be used for personal expenses, expenses that exist primarily because of the candidate's campaign for nomination or election for office, that is, would not exist in the absence of the candidate's campaign for office, are not personal expenses. HAR §3-160-42(b). Further, the Commission has in the past looked to advisory opinions of the Federal Election Commission ("FEC") for guidance. Commission Advisory Opinion 06-07. In FEC Advisory Opinion 2018-06 (Shirley), the FEC determined that a candidate for Congress could use campaign funds to pay for childcare expenses because under the facts presented, the "expenses would not exist irrespective of [her] candidacy." The FEC concluded:

The Act and Commission regulations do not expressly address childcare expenses. The Commission accordingly must determine whether the proposed use of campaign funds for certain childcare expenses would exist irrespective of the candidate's campaign for federal office.

¹ Attachment "A" is a copy of your request for an advisory opinion.

² Hawaii Administrative Rule ("HAR") §3-160-43(a).

The Commission has previously considered the permissibility of using campaign funds to pay for certain childcare expenses in more limited circumstances. In Advisory Opinion 1995-42 (McCrery), a federal candidate and his wife, who was “an integral part” of the candidate’s campaign team, traveled extensively within the candidate’s congressional district for campaign purposes, resulting in the need for “occasional” childcare for the couple’s young child. The Commission concluded that it was permissible to use campaign funds to pay for such occasional childcare because such expenses, in that case, would be “incurred only as a direct result of campaign activity and would not otherwise exist.”

The Commission’s analysis and conclusion in Advisory Opinion 1995-42 (McCrery) apply equally here. The request explains that you are the full-time caregiver for your young children, and, because of your campaign activity, you will incur expenses for part-time or full-time childcare. The fact that you seek to use campaign funds to pay for more than the “occasional” childcare expenses approved in Advisory Opinion 1995-42 (McCrery) does not change the relevant question, which is whether such expenses would exist irrespective of the candidate’s campaign or officeholder duties. The Commission concludes that the childcare expenses described in your request, to the extent such expenses are incurred as a direct result of campaign activity, would not exist irrespective of your election campaign, and thus may be permissibly paid with campaign funds.³

The Commission agrees with the FEC. A candidate for state or local office may use campaign funds to pay for childcare expenses that are directly related to the candidate’s campaign activities and would not exist in the absence of the candidate’s campaign activities for office.

The Commission provides this Advisory Opinion as a means of stating its current interpretation of the Hawaii campaign finance law in HRS §11-301, *et seq.*, and the Commission’s rules in chapter 3-160, Hawaii Administrative Rules. The Commission may adopt, revise, or revoke this Advisory Opinion if provisions of the campaign finance law or administrative rules are amended or repealed.

CAMPAIGN SPENDING COMMISSION

Neal Herbert

By: NEAL HERBERT
Its Chair

³ Citations omitted.

Jeanne Y. Ohta

June 13, 2024

VIA EMAIL

Hawaii State Campaign Spending Commission
Leiopapa A Kamehameha Building
235 S. Beretania Street, Room 300
Honolulu, HI 96813

RE: Request for Advisory Opinion

I am writing to request an Advisory Opinion on the use of a candidate's campaign funds for childcare costs that are incurred by the candidate during the candidate's participation in the candidate's own campaign activities.

Although these expenses would seem not to exist irrespective of a candidate's campaign as described in HAR Section 3-160-42, candidates are reluctant to test the eligibility of childcare expenses during a campaign due to the potential fines and due to the negative impression of the public disclosure of improper use of campaign funds.

It is because of this reluctance that I am asking the Commission to provide an Advisory Opinion that would assist candidates who have young families to run for office.

I can be reached by cell phone at [REDACTED] or by email at [REDACTED]

Thank you for your consideration of my request.

Sincerely,


Jeanne Y. Ohta