NEW YORK STATE
PUBLIC CAMPAIGN FINANCE BOARD
ADVISORY OPINIONS
OPINION No. 23-1

DATE: December 7, 2023

QUESTION PRESENTED:

May a candidate, who has a one-third ownership interest in a golf course, use public matching funds to pay for the costs of holding a campaign event at that golf course, including the purchase of a prize to be given out to the winner of a "longest drive" contest at the event?

DISCUSSION:

The Public Campaign Finance Board administers the Public Campaign Finance Program ("the Program"). Candidates participating in the Program are eligible to have certain contributions from individual contributors matched with public funds, provided the candidates and the contributors meet certain eligibility requirements. *See* Election Law §§ 14-200-a(11), 14-203. Candidates may only use public matching funds for "qualified campaign expenditures."[1]

Election Law § 14-206(2)(k) prohibits the use of public matching funds for, among other things, "payments made…to a business entity in which the candidate… has a ten percent or greater ownership interest." A participating candidate may still make payments to such an entity provided that any expenditures are made with non-public funds raised from private contributors, or legacy funds transferred from a previous committee.[2]

In using private contributions or legacy funds that have been transferred, participating candidates are still, however, subject to the "Personal Use" provisions of Election Law § 14-130. Specifically, a participating candidate using non-public funds to make payments to a business entity in which that candidate has an ownership interest must ensure that any costs do not exceed the "fair market value" for the item or service provided. *See* Election Law § 14-130(3). A payment over the "fair market value" for such an item or service may be considered conversion of campaign funds for personal use. *See* NYSBOE Advisory Opinion No. 15-2. The price of what other persons or entities would pay in an "arms-length transaction" is a good gauge of "fair market value." *See* NYSBOE Formal Opinion #2, 2015.

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[1] "Qualified campaign expenditure" is defined at Election Law section 14-200-a(16) as "an expenditure for which public matching funds may be used." Election Law section 14-206 states that public matching funds may "be used only by an authorized committees for expenditures to further the participating candidate's nomination for election or election, and for debts incurred within one year prior to an election," and lists the prohibited uses of public matching funds. Therefore, if the use does not fall within the enumerated prohibitions, and is not contrary to any of the restrictions set forth in Article 14, Title I of the Election Law, it is a "qualified campaign expenditure."

[2] *See* Election Law § 14-203(h)(iii). These expenditures would be listed under general expenditures in the financial disclosure report.

HOLDING:

In the instant case, because the candidate has a one-third ownership interest in the golf course, expenditures made to the golf course would not be "qualified campaign expenditures." As such, public funds cannot be used to pay for these expenditures. Accordingly, they cannot be listed on Schedule T – "Qualified Expenditures" of the applicable campaign financial disclosure report. Use of public funds for these expenditures would be a violation of Election Law § 14-206(2)(k).

However, the committee may use contributions from private contributors, or legacy funds transferred from a previous campaign, to pay for use of the golf course, provided that the cost is not more than "fair market value" for these goods and services. If the cost is more than "fair market value," then it may be considered a violation of Election Law § 14-130, converting campaign funds for personal use.

In the case of the prize for the "longest drive" contest at the event, such a prize could be paid for with public funds provided that the prize is not purchased from the golf course or any other business entity in which the candidate or their family members has a ten percent or greater ownership interest. If the prize is purchased from such a business entity with non-public campaign funds, the same principle applies as with the golf course, where the purchase must adhere to the fair market value standard.

On a related note, if the campaign pays for the event or prize with non-public funds and receives a discounted rate for use of the golf course and/or the prize from the pro shop, then the amount of the discount would be deemed an "in-kind" contribution from the entity providing the discount, subject to the candidate's contribution receiving limit.[3]

[3] *See* 9 NYCRR 6200.7. In the case of the golf course, additional reporting requirements and contribution limitations may apply depending on the type of business entity that holds the golf course—for example, corporation, limited liability company, professional limited liability company, etc. If the golf course is held by an LLC or PLLC, then any direct or in-kind contribution would trigger the need for the LLC to file with the State Board of Elections, pursuant to Election Law section 14-116(3), the "Statement of Identity" form, available on the State Board's website at https://www.elections.ny.gov/campaignfinanceforms.html. The candidate's campaign committee, in the case of an LLC/PLLC direct or in-kind contribution would also have additional disclosure requirements of the ownership interests of the LLC pursuant to Election Law section 14-120(3). Finally, any such in-kind or direct contribution from the business entity for which the candidate has a one-third ownership interest must be applied to the candidate's own contribution limit to his campaign, pursuant to Election Law section 14-203(1)(f).