Opinion No. 23-2 is no longer applicable due to changes to the Election Law that became effective on August 7, 2025 (Laws of 2025, Chapter 55, part OO).

NEW YORK STATE
PUBLIC CAMPAIGN FINANCE BOARD
ADVISORY OPINIONS
OPINION No. 23-2

DATE:

QUESTION PRESENTED:

Is a participating candidate who receives public matching funds for a Primary Election required to utilize these funds by the Primary Election date, or can the candidate choose to use unspent public funds received for the Primary in the General Election, without the need to reimburse such unspent funds to the PCFB?

ANSWER:

Generally, a candidate would not have to return unspent public matching funds received for the Primary Election, and can carry them forward for use on qualified expenses for the General Election; however, as explained below, if a candidate receives public funds before the Primary Election and is **unopposed** in that Primary Election, any unspent primary funds by primary day must be returned.

ANALYSIS:

General Rule

Under current statute, Election Law §14-208 (2)(c), any unspent public funds received for the Primary Election may be carried over for use in the General Election. After the General Election a determination will be made to determine whether a surplus for the entire election cycle (Primary and General Elections together) exists, the same as is defined by statute.

Participating campaigns must reimburse the PCFB any surplus funds that are remaining after the election cycle. Surplus is calculated after the election cycle is complete, and the calculation looks at the **total** amount of public matching funds received as compared to total campaigns expenses. Election Law §14-208(2)(c) provides:

> If the total sum of contributions received and public matching payments from the fund received by a participating candidate and his or her authorized committee exceed the total campaign expenditures of such candidate and authorized committee for **all covered elections** held in the same calendar year or for a special election to fill a vacancy, such candidate and committee shall use such surplus funds to reimburse the fund for payments received by such authorized committee from the fund during such calendar year or for such special election (emphasis added).

“[A]ll covered elections" includes both the Primary and General Election. For surplus calculations, the statute does not differentiate between matching funds received for the Primary and General Elections; it considers the total amount received “for **all covered elections** held in the same calendar year” when determining the surplus. Accordingly, as a general rule, unspent Primary matching funds may be used in a General Election without having to return the unspent Primary matching funds to the PCFB.

Exception

It should be noted that there is an exception to this general rule.

When a candidate is unopposed in a Primary Election, they can receive funds if there is a Primary in one of the major parties, up to 50% of the maximum. Those funds can only be spent on expenditures made on or before the Primary Election. Election Law §14-203(3) provides:

> No participating candidate for nomination for an office who is not opposed by a candidate on the ballot in a primary election shall be entitled to payment of public matching funds, except that, where there is a contest in such primary election for the nomination of at least one of the two political parties with the highest and second highest number of enrolled members for such office, a participating candidate who is unopposed in the primary election **may receive public funds before the primary election, for expenses incurred on or before the date of such primary election**, in an amount equal to up to half the sum set forth in paragraph one of this section (emphasis added).

Because the language "for expenses incurred on or before the date of such primary election" is limiting, if an unopposed candidate has any unexpended public matching funds after the Primary Election, such funds must be returned.

It is important to note that while these funds are designated for expenditures before the primary election, there are costs that are applicable to both the Primary and General Elections. Expenditures such as buttons, lawn signs, palm cards, and other similar campaign materials may be considered as shared expenses and can be appropriately purchased with the primary public funds.