

April 20, 2010

The Honorable Paul G. Clark, President
New Castle County Council
209 Meadowdale Drive
Newark, DE 19711

Re: State Election Commissioner Advisory Opinion 2010-01

Dear President Clark:

You have requested an Advisory Opinion pursuant to 15 *Del. C.* § 8041(2) regarding the use of campaign funds to pay for legal fees and expenses incurred in connection with an Attorney General's investigation of allegations of criminal misconduct. I understand that the Attorney General's investigation related to your conduct as an elected official.

Your request mirrors factually a similar request made in the past and I conclude that the issue as you have framed it should be resolved the same way. Therefore, I am incorporating the contents of the attached correspondence from the State Solicitor at that time, Malcolm S. Cobin, to then Commissioner Frank Calio.

Based on the analysis of Mr. Cobin, it is my opinion that Delaware Code, Title 15, Chapter 80 lacks a specific prohibition against the use of campaign funds as you have described. Moreover, I rely upon Mr. Cobin's analysis of the difficulties involved in prosecutions under 15 *Del. C.* § 8043(b), which has not been amended since Mr. Cobin wrote the attached 2004 advice letter. Please note, however, that I do not have the authority to bind the Attorney General's prosecutorial discretion and whether the payment of legal fees from your campaign account is deemed a criminal violation is a decision only the Attorney General's office may make.

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You do not indicate whether the New Castle County government has already reimbursed you for your legal fees. Please note that, should New Castle County government reimburse you for your legal fees in connection with the Attorney General's investigation, you will be required to reimburse your political campaign account for the legal fees.

Thank you for your request for an Advisory Opinion.

Very truly yours,

Elaine Manlove
State Election Commissioner

Cc: Hon. Jack Markell, Governor
Hon. Joseph R. Biden, III, Attorney General
A. Ann Woolfolk, Deputy Attorney General
Mr. John Daniello, Delaware Democratic Committee
Mr. Thomas Ross, Delaware Republican Committee
Mr. Lawrence E. Battle, Working Families Party
Mr. David McCorquodale, The Green Party of Delaware
Mr. Jeffrey Brown, Blue Enigma Party
Mr. Brad Thomas, Libertarian Party of Delaware
Mr. Pell Sherman, Constitution Party of Delaware
Mr. Wolfgang von Baumgart, Independent Party of Delaware
Mr. Roy Inglee, Socialist Workers Party