



NORTH CAROLINA STATE BOARD OF ELECTIONS

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Mr. Antoine Marshall
The Committee to Elect Antoine G. Marshall
P.O. Box 1371
Raleigh, North Carolina 27602

April 20, 2020

Re: Request for an Advisory Opinion under N.C.G.S. § 163-278.23 regarding
childcare expenditures

Dear Mr. Marshall,

Thank you for contacting our office. This written opinion is in response to your request under N.C.G.S. § 163-278.23 as to whether candidate campaign committee funds may be used to pay for babysitters and daycare.

North Carolina law limits a candidate's use of contributions to the permissible uses outlined in N.C.G.S. § 163-278.16B. It is permissible for you, as the candidate, to use candidate campaign committee funds ("committee funds") for "expenditures resulting from the campaign for public office." N.C.G.S. § 163-278.16B(a)(1). The general rule for determining whether an expenditure is permitted is to ask whether the expenditure would have been made absent the campaign for public office. NORTH CAROLINA STATE BOARD OF ELECTIONS, CAMPAIGN FINANCE MANUAL 55 (2020). If the answer to that question is "yes," the expenditure should not be made.

In general, personal expenditures for food, clothing and housing must be made regardless of the campaign for public office. However, when expenditures for meals and housing are incurred only as a direct result of the campaign, these expenditures may be made using committee funds. N.C.G.S. § 163-278.16B(a)(1). In previous advisory opinions, executive directors have concluded that expenditures caused by the necessity of being away from home and traveling are authorized under N.C.G.S. § 163-278.16B. Written Opinion 2007-01-12 (regarding expenditures caused by the necessity to live in Raleigh while the General Assembly is in session); Written Opinion 2011-07-12 (regarding incurred mileage resulting from activities related to campaigning). When childcare is a direct result of the candidate's absence from the home due to campaign activities, it too is allowable under N.C.G.S. § 163-278.16B(a)(1).

You are a licensed attorney. You noted that you have two young daughters who live in Raleigh with you. Due to your wife's employment in the Detroit Public Schools, you are tasked with your daughters' daily care. Your daughters have been enrolled in daycare prior to and after you declared your candidacy in 2019.

In accordance with N.C.G.S. § 163-278.16B(a)(1), you may use committee funds to hire a babysitter or to obtain the services of a licensed childcare facility (“childcare expenditures”) when childcare expenditures directly result from your absence at times when you would have personally cared for your children because you are attending campaign meetings or events.

You may not use committee funds for childcare expenditures resulting from any other meetings or events. For example, you may not use committee funds to pay for childcare expenditures that result from meeting with your legal clients, attending court proceedings or attending to personal matters.

You noted in your request that your children have been enrolled in daycare prior to and after you declared your candidacy. Childcare expenditures may only be charged to your campaign if your job circumstances have changed such that you would have personally cared for your children during the hours you are now attending campaign meetings or events.

Typically, billing by licensed childcare facilities is not hourly – often these invoices are monthly, weekly or daily. Paid babysitters do not always issue invoices and receipts. For accounting purposes, you will need to determine an hourly rate. It is up to you to obtain documentation and to appropriately account for the childcare expenditures that result from your campaign versus the childcare expenditures that results from non-campaign activities.

You noted in your letter that you have relied on family in the area to assist with the care of your daughters. You have not proposed using committee funds to hire a family member as a paid babysitter or childcare provider. I would encourage you to seek an additional written opinion before making any childcare expenditures to your spouse, children, parents, brothers or sisters or other relations, or to entities owned by these same family members.

If you have any further questions, please don’t hesitate to contact my office.

The opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and North Carolina Administrative Code.

Sincerely,

A handwritten signature in black ink that reads "Karen Brinson Bell". The signature is written in a cursive style with a large initial "K".

Karen Brinson Bell
Executive Director
North Carolina State Board of Elections

Cc: Molly Masich, Codifier of Rules



The Committee to Elect Antoine G. Marshall
P.O. Box 1371
Raleigh, NC 27602
919-436-5997

January 12, 2020

Ms. Karen Brison Bell
PO Box 2169
Raleigh, NC 27602-2169

Re: Request for Advisory Opinion under G.S. § 163-278.23

Dear Director Bell:

This is a request for a formal advisory opinion under G.S. § 163.278.23 regarding campaign finance rules and their application to the extent that a candidate can use campaign funds to pay for childcare expenses. On July 25, 2019, the Federal Elections Commission issued a final opinion on behalf of a Congressional Candidate's request to use campaign funds to pay for childcare expenses incurred during her candidacy.¹ Under Federal law, candidates can make any "expenditure in connection with the campaign for Federal office of the candidate."² Candidates are barred from converting campaign funds to "personal use."³ North Carolina has a similar requirement which permits campaign committees to engage in expenditures resulting from a campaign for public office,⁴ but there is no record of opinion as to whether childcare falls under a personal use definition.

I am a candidate for the North Carolina General Assembly House District 33 and The Committee to Elect Antoine G. Marshall is my authorized campaign committee. I am a licensed attorney based in North Carolina while my wife is a Program Associate for the Detroit Public Schools Community District. Together we have two young daughters, aged 2 and 3, who live in Raleigh with me. As such, I am tasked with their daily care. The children were enrolled in daycare prior to declaration of my candidacy in October 2019 and continue to be enrolled in daycare. Most evenings when there are campaign events, I have relied on family living in the area to watch them. However, in the instances when they are unavailable, I have had to face the choice of taking my children with me to campaign events or hiring paid babysitters. I am seeking to use campaign funds to pay for paid babysitters and requesting clarification on the extent to which campaign funds can be used for daycare.

From a broader standpoint, I am aware of the gender dynamics that exist in a society where women are defaulted as primarily responsible for child rearing and the barriers that lack of childcare can present for potential candidates running for office. I believe that this decision has the potential to eliminate a hurdle

¹ FEC Advisory Opinion 2019-13

² 52 U.S.C. § 30114(a)(1)

³ See 52 U.S.C. §30114(b); 11 C.F.R. §113.1(g)

⁴ N.C.G.S. §163A-1433

that prevents parents of young children from seeking public office and creates a body of elected officials as diverse as the voting populations they serve.⁵

Sincerely,

Antoine Marshall
Candidate for the North Carolina General Assembly
House District 33

⁵ Women only comprise of 26% of the General Assembly, and despite representing over 30% of eligible voters in North Carolina, fewer than 10% of the General Assembly, are under 40 years old.