



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

August 30, 2016

Re: JIC Advisory Opinion 2016-18.

Dear

Your recent request for an advisory opinion was reviewed by the Judicial Investigation Commission. The facts giving rise to your request are as follows: The local bar association is raising money to pay for an official portrait of you for display at the courthouse. Your campaign committee has approximately \$2000.00 left in its treasury following payment of all expenditures for your May 2016 election campaign. You want to know if your campaign committee can donate the excess funds to the bar association for your portrait.

To answer your question, the Commission has reviewed Rules 4.1(A)(7) and 4.2(A)(2) of the Code of Judicial Conduct which provide as follows:

Rule 4.1 Political and Campaign Activities in General

- (A) Except as permitted by law . . . A judge or a judicial candidate shall not:
 - (7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others.

Rule 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections

- (A) A judge or candidate subject to public election shall:
- (2) comply with all applicable election, election campaign and election campaign fund-raising laws and regulations of this jurisdiction;

W. Va. CSR § 146-3-7 states that no person may receive or utilize excess campaign assets for personal economic gain. W. Va. Code § 3-8-10 sets forth the **only** allowable expenditures of excess campaign funds which include but are not limited to charitable donations in unlimited amounts, transfer of the funds from a candidate's committee to the same candidate's committee for a subsequent election year, return of contributions on a pro-rata basis to each donor, contributions to state or local political party executive committees in limited amounts, and the offsetting of any usual and customary expenses incurred in connection with the duties as a holder of public office.¹ With respect to the latter, in order for the expense to be "usual and customary," there must be some evidence of a common usage for their purpose. Moreover, any items purchased become the property of the State, district, county or municipality of the office held.

Based upon the foregoing, the Commission is of the opinion that your campaign committee cannot donate excess campaign contributions to the local bar association for your official portrait since it is not an allowable expenditure under the Code of Judicial Conduct or state law. We hope this opinion fully addresses the issue which you have


¹ This provision also allows limited contributions to another candidate's committee which is forbidden by Rule 4.1(A)(5) of the Code of Judicial Conduct which states that "a judge or judicial candidate shall not make a contribution to a candidate for public office." This provision also permits limited contributions to political action committees and legislative caucus committees which may violate Rules 4.1(A)(10) and (11) of the Code of Judicial Conduct, which state:

[A] judge or a judicial candidate shall not:

- (10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
- (11) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat