STATE OF NEW YORK

4458

2021-2022 Regular Sessions

IN SENATE

February 4, 2021

Introduced by Sens. KRUEGER, ADDABBO, GOUNARDES, LIU, MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Elections

AN ACT to amend the election law, in relation to campaign funds for personal use

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 14-130 of the election law, as amended by section 9 of part CC of chapter 56 of the laws of 2015, paragraphs (ix) and (x) of subdivision 3 as amended and paragraph (xi) of subdivision 3 as added by chapter 136 of the laws of 2019, is amended to read as follows:

§ 14-130. Campaign funds for personal use. 1. Contributions received by a candidate or a political committee may **only** be expended for [~~any lawful purpose. Such funds shall not be converted by any person to a personal use which is unrelated to a political campaign or the holding of a public office or party position.~~] **bona fide purposes directly related to either:**

[~~2. No contribution shall be used to pay interest or any other finance charges upon monies loaned to the campaign by such candidate or the spouse of such candidate.~~

~~3. For the purposes of this section, contributions "converted by any person to a personal use" are expenditures that are exclusively for the personal benefit of the candidate or any other individual, not in connection with a political campaign or the holding of a public office or party position. "Converted by any person to a personal use", when meeting the definition in this subdivision, shall include, but not be limited to, expenses for the following:~~

~~(i) any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence of a candidate or officeholder or a member of the candidate's or officeholder's family that are not incurred as a result~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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~~of, or to facilitate, the individual's campaign, or the execution of his or her duties of public office or party position. In the event that any property or building is used for both personal and campaign use or as part of the execution of his or her duties of public office or party position, personal use shall constitute expenses that exceed the pro-rated amount for such expenses based on fair-market value.~~

~~(ii) mortgage, rent, or utility payments to a candidate or officeholder for any part of any non-residential property that is owned by a candidate or officeholder or a member of a candidate's or officeholder's family and used for campaign purposes, to the extent the payments exceed the fair market value of the property's usage for campaign activities;~~

~~(iii) clothing, other than items that are used in the campaign or in the execution of the duties of public office or party position;~~

~~(iv) tuition payments unrelated to a political campaign or the holding of a public office or party position;~~

~~(v) salary payments or other compensation provided to any person for services where such services are not solely for campaign purposes or provided in connection with the execution of the duties of public office or party position;~~

~~(vi) salary payments or other compensation provided to a member of a candidate's family, unless the family member is providing bona fide services to the campaign. If a family member provides bona fide services to a campaign, any salary payments or other compensation in excess of the fair market value of the services provided shall be considered payments for personal use;~~

~~(vii) admission to a sporting event, concert, theater, or other form of entertainment, unless such event is part of, or in connection with, a campaign or is related to the holding of public office or party position;~~

~~(viii) payment of any fines or penalties assessed against the candidate pursuant to this chapter or in connection with a criminal conviction or by the joint commission for public ethics pursuant to section ninety-four of the executive law or sections seventy-three or seventy-three-a of the public officers law or the legislative ethics commission pursuant to section eighty of the legislative law;~~

~~(ix) dues, fees, or gratuities at a country club, health club, recreational facility or other entities with a similar purpose, unless they are expenses connected with a specific fundraising event or activity associated with a political campaign or the holding of public office or party position that takes place on the organization's premises;~~

~~(x) travel expenses including automobile purchases or leases, unless used for campaign purposes or in connection with the execution of the duties of public office or party position and usage of such vehicle which is incidental to such purposes or the execution of such duties; and~~

~~(xi) childcare expenses, other than expenses incurred in the campaign or in the execution of the duties of public office or party position.~~

~~4. Nothing in this section shall prohibit a candidate from purchasing equipment or property from his or her personal funds and leasing or renting such equipment or property to a committee working directly or indirectly with him to aid or participate in his or her nomination or election, including an exploratory committee, provided that the candidate and his or her campaign treasurer sign a written lease or rental agreement. Such agreement shall include the lease or rental price, which shall not exceed the fair lease or rental value of the equipment. The~~

~~candidate shall not receive lease or rental payments which, in the aggregate, exceed the cost of purchasing the equipment or property.~~

~~5. Nothing in this section shall prohibit an elected public officeholder from using campaign contributions to facilitate, support, or otherwise assist in the execution or performance of the duties of his or her public office.~~

~~6. The state board of elections shall issue advisory opinions upon request regarding expenditures that may or may not be considered personal use of contributions. Any formal or informal advisory opinions issued by a majority vote of the commissioners of the state board of elections shall be binding on the board, the chief enforcement counsel established by subdivision three-a of section 3-100 of this chapter, and in any subsequent civil or criminal action or proceeding or administrative proceeding.~~]

a. promoting the nomination or election of a candidate; or

b. performing duties of public office or party position which are not paid for or eligible for reimbursement by the state or any political subdivision or private party, and ordinary and necessary expenses relating to the holding of public office or party position.

2. Campaign funds shall not be converted to personal use, which shall be defined as expenditures that:

a. are for the personal benefit of or to defray normal living expenses of the candidate, officeholder, immediate family or domestic partner of either or any other person;

b. are used to fulfill any commitment, obligation, or expense that would exist irrespective of the candidate's campaign or duties as an officeholder; or

c. are put to any use for which the candidate or officeholder would be required to treat the amount of the expenditure as gross income under section 61 of the Internal Revenue Code.

3. Expenditures for personal use shall also include, but are not limited to, expenditures for:

a. residential or household items, supplies, maintenance or other expenditures, including mortgage, rent, utilities, repairs, or improvements for any part of any personal residence of a candidate or officeholder, his or her immediate family or domestic partner;

b. rent or utility payments that exceed fair market value for use of any part of any non-residential property owned by a candidate, or a member of a candidate's family or domestic partner used for campaign purposes;

c. salary and other fees for bona fide services to a campaign or legislative office that exceed fair and reasonable market value of such services;

d. interest or any other finance charges for monies loaned to the campaign by the candidate or the spouse or domestic partner of such candidate;

e. tuition payments;

f. dues, fees, or gratuities at private clubs, recreational facilities or other nonpolitical organizations, unless connected to a specific widely attended fundraising event that takes place on the organization's premises;

g. automobile purchases or long term leases; short term car rentals and cellular equipment and services not used exclusively for campaign purposes or duties as an officeholder;

h. admission to sporting events, concerts, theaters, or other forms of entertainment, unless part of a specific campaign or officeholder related activity; and

i. payment of any fines, fees, or penalties assessed pursuant to this chapter.

Nothing in this section shall prohibit a candidate from purchasing office equipment with personal funds and leasing or renting such equipment or property to a committee working with or for the candidate, provided the candidate or the campaign treasurer signs a written lease or rental agreement and files it with the appropriate required campaign financial filing which shall include the lease or rental price which shall not exceed the fair lease or rental value of the equipment or in the aggregate exceed the cost of its purchase.

§ 2. Section 14-132 of the election law, as added by section 2 of part C of chapter 286 of the laws of 2016, is amended to read as follows:

§ 14-132. Disposition of campaign funds. [~~1.~~] Upon the death of a candidate, former candidate or holder of elective office, [~~where such candidate or candidate's authorized committee~~] who received campaign contributions, all [~~such funds~~] contributions shall be disposed of [~~by any of the following means, or any combination thereof, within two years of the death of such person:~~

~~(a) returning, pro rata, to each contributor the funds that have not been spent or obligated;~~

~~(b) donating the funds to a charitable organization or organizations that meet the qualifications of section 501(c)(3) of the Internal Revenue Code;~~

~~(c) donating the funds to the state university of New York or the city university of New York;~~

~~(d) donating the funds to the state's general fund; or~~

~~(e) contributing or transferring the funds to a candidate, party, constituted or political committee in accordance with the applicable limits, if any, set forth in this article.~~

~~2. No such candidate's authorized political committee shall dispose of campaign funds by making expenditures for personal use as defined in section 14-130 of this article.~~

~~3. If funds are not disposed of within the time required by this section, such funds shall be recoverable by the chief enforcement counsel of the state board of elections in a special proceeding in state supreme court in the manner prescribed by section 16-116 of this chapter and deposited into the state's general fund~~] within twelve months of the death of the candidate pursuant to subdivision one of this section.

1. Any political committee required to dispose of funds pursuant to this section shall, at the option of the representative of the estate of the candidate, or the treasurer of a political committee formed solely to promote the passage or defeat of a ballot proposal, dispose of such funds by any of the following means, or any combination thereof:

a. returning, pro rata, to each contributor the funds that have not been spent or obligated;

b. donating the funds to a charitable organization or organizations that meet the qualifications of section 501(c) (3) of the Internal Revenue Code;

c. donating the funds to the state university;

d. donating the funds to the state's general fund;

e. transferring the funds to a political party committee registered with the state board of elections; or

f. contributing the funds to a candidate or political committee such that this does not exceed the limits set forth in section 14-114 of this title.

2. No representative of the estate of a candidate or political committee shall dispose of campaign funds by making expenditures for personal use as defined in section 14-130 of this title.

§ 3. This act shall take effect on the sixtieth day after it shall have become a law; provided, that the state board of elections shall notify all registered campaign committees of the applicable provisions of this act within thirty days after this act shall have become a law.