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## LEGAL MEMORANDUM

**TO:** Interested Persons

**FROM:** Office of Legislative Legal Services

**DATE:** July 5, 2022

**SUBJECT:** Frequently asked questions and answers involving the conversion or use of unexpended campaign funds<sup>1</sup>

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The purpose of this memorandum is to provide clarification, by means of a question and answer format, to questions commonly raised by members of the General Assembly, especially newly-elected members, concerning the conversion or use of unexpended campaign funds.

**Q: What are unexpected campaign contributions, and what can I do if I have them?**

**A:** Unexpended campaign contributions means the balance of funds on hand in any candidate committee at the end of an election cycle, less the amount of all unpaid monetary obligations incurred prior to the election in furtherance of such candidacy. [Colo. Const. art. XXVIII, sec. 2 (15)]. Thus, unexpended campaign contributions are the remaining funds a candidate committee has on hand at the end of the applicable election cycle after it has paid the debts it has incurred prior to the election.

As discussed in the answer to the next question in this memorandum, unexpended campaign contributions held by a candidate's candidate committee are treated as political party contributions for contribution limit purposes.

The political party contribution limits ("PPCL") for Senate candidates in the current election cycle are \$24,425 per 4-year election cycle and the PPCL for House candidates is \$17,625 for a two-year election cycle. Under the Colorado constitution, the PPCLs are set at twenty percent of the

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<sup>1</sup> This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

applicable voluntary spending limit for a particular race. [Colo. Const. art. XXVIII, sec. 3 (3)(d)].<sup>2</sup> These limits express the maximum amount of money a political party may donate to a candidate committee during any one election cycle under the contribution limits specified in the Colorado constitution.

Under the most current set of campaign and political rules promulgated by the Secretary of State's Office, in the case of a candidate committee that has a remaining fund balance (or, unexpended funds), at the end of an election cycle, the candidate committee must identify 2 "pots of money":

- Money the committee intends to roll over to the next election cycle up to the applicable political party contribution limit ("PPCL") - which may be used by the candidate committee for any of the purposes specified in section 1-45-106 (1)(a) or 1-45-106 (1)(b), C.R.S; and
- Money the committee intends to roll over to the next election cycle in an amount that exceeds the applicable PPCL, which amounts in excess of the PPCL are subject to the statutory restrictions on the use of unexpended funds specified in section 1-45-106 (1)(b). The committee may also contribute such money to a political party, donate the funds to a charitable organization recognized by the Internal Revenue Service, or return the funds to contributors.<sup>3</sup>

These rules allow candidate committees to retain and roll over to the next election cycle funds on hand at the end of the current election cycle in excess of the PPCL, although any funds rolled over beyond the applicable PPCL for the candidate's office are treated as unexpended funds and are subject to the spending restrictions specified in section 1-45-106 (1)(b), C.R.S., as well as the additional permissive uses noted above. Money rolled over to the next election cycle in an amount that is equal to or less than the applicable PPCL for the candidate's office may be used by the candidate committee for any of

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<sup>2</sup> See also Rule 10.17 (h) of the Secretary of State's Rules Concerning Campaign and Political Finance.

<sup>3</sup> See Rules 2.2.4 (b)(3) and 2.2.4 (c) (5) of the Secretary of State's Rules Concerning Campaign and Political Finance. Thus, in terms of all of the permissible uses of unexpended campaign contributions specified in section 1-45-106 (1) (a) or (1) (b), C.R.S., money retained above the PPCL limit may not be contributed to a candidate committee established by the same candidate for a different public office, as otherwise permitted in section 1-45-106 (1) (a) (I) (B), C.R.S., or be retained by the committee for use by the candidate in a subsequent campaign, as otherwise permitted in section 1-45-106 (1) (a) (I) (D), C.R.S.

the purposes specified in section 1-45-106 (1)(a) or 1-45-106 (1)(b), C.R.S.

Moreover, money that is rolled over by a candidate committee to the next election that is treated as "party money", that is, money that is retained above the particular PPCL for that office, will reduce or eliminate that candidate's ability to solicit and receive additional contributions from a political party in the new election cycle. This requirement is more fully discussed under the next question in this memorandum.

A candidate committee is no longer required to spend down money retained in excess of the PPCL before the beginning of the new election cycle. But if the candidate committee chooses to spend such "party money", it is subject to the spending restrictions in section 1-45-106 (1)(b), C.R.S. as amplified by the additional set of permissive uses described above. These restrictions would bar the use of such money for more overtly political purposes such as supporting or opposing a candidates' election or reelection.

**Q: Are unexpended campaign contributions held by a member-elect's candidate committee treated as political party contributions for contribution limit purposes?**

**A: Yes.** The amount of unexpended campaign contributions held by a Senator-elect or Representative-elect candidate committee on the first day of the next election cycle<sup>4</sup> are treated as contributions from a political party, regardless of the original source, for purposes of the limit on political party contributions in that election cycle. [Colo. const. art. XXVIII, sec. 3 (3)(e)]<sup>5</sup>. In that regard, all unexpended contributions convert or are "morphed" into political party contributions. It should be noted that retained amounts will not be listed on disclosure reports as contributions from a political party.

**Q: Is there a campaign finance violation if the amount of unexpended campaign contributions exceeds the applicable political party contribution limit?**

**A: No.** If a Senator-elect or Representative-elect has an amount of unexpended campaign contributions on the first date of the new election cycle

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<sup>4</sup> In relevant part, Colo. const. art XXVIII, sec. 2 (6) (a) defines "election cycle" to mean "[t]he period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the next general election for that office".

<sup>5</sup> See also Rule 2.2.4 (a) of the Secretary of State's Rules Concerning Campaign and Political Finance, which states in relevant part that "[a] candidate committee must report its unexpended balance as the ending balance throughout the election cycle. A candidate committee must report its unexpended balance from the report filed 30 days after the major election as the beginning balance in the next election cycle."

that exceeds the applicable limit on political party contributions, the candidate committee is not required to spend down the amount of money that exceeds the PPCL, but the amount of any such party money is subject to the spending restrictions specified in 1-45-106 (1)(b).

**Example:** Senator-elect Smith's candidate committee has \$25,425 in unexpended campaign contributions on the first day of the new election cycle. The amount held by Sen. Smith's candidate committee is \$1,000 more than the limit (\$24,425) on political party contributions to a Senate candidate for the election cycle. Sen. Smith's candidate committee is not required to spend down to \$24,425 by the beginning of the next election cycle, but the \$1,000 excess is subject to the spending restrictions specified in section 1-45-106 (1)(b).

**Q. Does the amount of unexpended campaign contributions affect the amount of political party contributions a member-elect's candidate committee may accept in next election cycle?**

**A. Yes.** The amount of political party contributions a Senator-elect or Representative-elect may accept in the new election cycle will depend on the amount of his or her unexpended campaign contributions as of the date of the commencement of such new election cycle. That political party contribution limit will be an amount equal to the applicable political party contribution limit calculated pursuant to section 3 (3)(d) of Article XXVIII less the unexpended campaign contributions in the member-elect's candidate committee account as of the end of the election cycle. [See: Rule 2.2.4 (b) (1) of the Secretary of State's Rules Concerning Campaign and Political Finance]

**Example:** Representative-elect Baker's candidate committee has \$10,000 in unexpended campaign contributions on the date of the commencement of the new election cycle. Her committee may accept up to \$7,625 (\$17,625 - \$10,000) in political party contributions in such new election cycle.

**Q: What are the permissible uses of unexpended campaign contributions?**

**A.** The permissible uses and expenditures of unexpended campaign contributions are described in the list attached hereto as "Exhibit "A". To summarize, any unexpended campaign contributions in an amount that is below the applicable PPCL for the candidate's office may be used for any of the purposes specified in section 1-45-106 (1)(a) or section 1-45-106 (1)(b), C.R.S. Any unexpended campaign contributions in an amount that exceeds the

applicable PPCL for the candidate's office must be used for any of the purposes specified in section 1-45-106 (1)(b). The committee may also contribute such money to a political party, donate the funds to a charitable organization recognized by the Internal Revenue Service, or return the funds to contributors. The permissible uses of such money include "[a]ny expenses that are directly related to such person's official duties as an elected official..."<sup>6</sup> Except for the limited purpose of reimbursing the candidate for reasonable and necessary expenses for child or dependent care,<sup>7</sup> unexpended campaign contributions are not to be used for personal purposes not reasonably related to supporting the election of the candidate.<sup>8</sup>

**Q: Would a permissible use of unexpended campaign contributions include the retention of one or more legislative aides?**

**A:** Yes. As specified in "Addendum A", unexpended campaign contributions may be utilized for the purpose of paying expenses that are directly related to the member's official duties as an elected official. This category of expenses would include the retention of legislative aides for the assistance of the member in assuming his or her official duties as a member of the General Assembly.

**Q: Is there a deadline for spending all of a candidate committee's unexpended campaign contributions:**

**A:** Yes. A candidate committee for a former officeholder or a person not elected to office must expend all of the candidate committee's unexpended campaign contributions no later than nine years from the date he officeholder's term expired or the date of the election at which the person was a candidate for office, whichever is later. See section 1-45-106 (1)(a)(III), C.R.S.

**Q. Is the amount or total of contributions to a candidate committee from other permissible sources in the next election cycle impacted by the conversion of unexpended campaign contributions to political party contributions?**

**A: No.** As noted, the amount of unexpended campaign contributions held by a candidate committee at the commencement of the new election cycle determines the limit on political party contributions in that

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<sup>6</sup> See section 1-45-106 (1)(b)(V), C.R.S.

<sup>7</sup> See section 1-45-103.7 (6.5).

<sup>8</sup> See section 1-45-106 (1)(a)(II), C.R.S.

cycle. This limit *only* impacts political party contributions. The limit does not impact: 1) The amount of contributions that may be accepted from other permissible sources, such as individuals, political committees, small donor committees, etc., subject to the relevant limits, or 2) The total amount of contributions from all sources that a candidate committee may accumulate in that election cycle.

**Example:** Representative-elect Baker has \$10,000 in unexpended campaign contributions on the date of the commencement of the new election cycle. She is limited to accepting up to \$7,625 (\$17,625 - \$10,000) in political party contributions in such new election cycle. During the course of the election cycle, she accepts \$4,000 in political party contributions and \$20,000 from other permissible sources and within the applicable limits for those sources. The balance in her campaign account at one point exceeds \$30,000. All of the contributions and the total accrued are permissible under the campaign finance law in that election cycle<sup>9</sup>. At the beginning of the next election cycle, her unexpended campaign contributions will again be treated as political party contributions for purpose of the limitation on such contributions in that cycle.

**Q. May campaign contributions be utilized for the same purposes as unexpended campaign contributions?**

**A. Yes.** A candidate committee may expend campaign contributions during an election cycle for the purpose of expressly advocating the election or defeat of a candidate. [Colo. const. art. XXVIII, sec. 2 (8)]. Further, there is no prohibition on also utilizing contributions for any of the permissible purposes for which unexpended campaign contributions may be distributed or expended, including expenses that are directly related to the member's official duties as an elected official. The definition of "unexpended campaign contributions" does not alter this conclusion. [See Colo. const. art. XXVIII, sec. 2(15)]. All such uses and expenditures are subject to the FCPA's reporting requirements.

**Example:** Representative-elect Baker has a \$0 balance in her candidate committee account on the first day of the new election cycle. During the subsequent calendar year, she receives

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<sup>9</sup> Please note that Colo. const. art. XXVIII, sec. 5 (2) provides that **candidates who accept voluntary expenditure limits** agree that their personal contributions to their own campaign shall be counted as political party contributions and subject to the aggregate limit for those contributions. For those candidates, the allowable amount of political party contributions the committee may accept will be reduced by the amount of personal contributions the candidate makes to the committee.

campaign contributions totaling \$1,000. She wants to expend \$500 of the contributions on constituent mailings. This is a permissible expenditure of these funds.

**Q: If I, as a Senator-elect or Representative-elect, draw down my unexpended campaign contributions, when must these expenditures be disclosed?**

A: As with any other expenditure by a candidate committee, the use of unexpended campaign contributions must also be disclosed. In connection with the 2022 election cycle and the subsequent election cycle that commences December 8, 2020, any such expenditures donated or used between October 27, 2022, and November 30, 2022, should be disclosed on the regular report of contributions and expenditures that is required to be filed 30 days after the major election, or on or before December 8, 2022, in accordance with section 1-45-108 (2)(a)(I)(E), C.R.S. Any such expenditures donated or used between December 1 and March 31, 2023, should be disclosed on the subsequent regular report of contributions and expenditures that is required to be filed quarterly in off-election years, or on or before April 15, 2023 in accordance with section 1-45-108 (2)(a)(I)(A), C.R.S.

Please contact the Office of Legislative Legal Services at (303) 866-2045 if you have any additional questions concerning the matters discussed in this memorandum.

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## **Permissible uses of unexpended campaign contributions.**

### **Section 1-45-106, C.R.S.**

Unexpended campaign contributions in an amount below the applicable PPCL may be:<sup>10</sup>

- Contributed to a political party;
- Contributed to a candidate committee that you establish for a different office, subject to any contribution limits;
- Donated to charitable organizations;
- Returned to contributors;
- Retained for use in a subsequent campaign.

Unexpended campaign contributions in any amount (above or below the applicable PPCL) may also be utilized:<sup>11</sup>

- To defray expenses for constituent mailings and similar communications;
- For voter registration;
- For political issue education;
- For post-secondary educational scholarships;
- To pay expenses that are directly related to the member's official duties as an elected official including but not limited to expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, meetings on legislative issues, and telephone and pager expenses, and the retention of legislative aides.

As noted in the memorandum above, unexpended campaign contributions in an amount that exceeds the applicable PPCL must only be

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<sup>10</sup> *SEE* SECTION 1-45-106 (1)(a).

<sup>11</sup> *SEE* SECTION 1-45-106 (1)(b).

## **ADDENDUM A**



used for the purposes specified in the second set of bulleted items below. Such funds may also be contributed to a political party, donated to a charitable organization, or returned to contributors. But such money may not be contributed to a candidate committee for a different office or retained for use in a subsequent campaign.

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