

Office of the Attorney General
State of North Dakota

Opinion No. 81-91

Date Issued: August 20, 1981

Requested by: Honorable James Gerl
State Representative

--QUESTIONS PRESENTED--

I.

Whether a corporation, cooperative association or association may utilize monies from fees, dues, treasury funds or otherwise obtained in a commercial transaction to hire an administrator for a separate segregated fund to be used for political purposes under Section 16.1-08-02(2) of the North Dakota Century Code.

II.

Whether a political committee may accept funds from persons other than employees, patrons or members in return for such items as dinner or dance tickets, hats, and other similar items or accept such funds from any persons without making the disclosures required by Section 16.1-08-02(1)(b) and (c).

III.

Whether a political committee may keep the assets of a separate and segregated fund in an interest-bearing account.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that money from fees, dues, treasury funds or otherwise obtained in a commercial context may be used to hire an administrator of a political committee.

II.

It is my further opinion that a political committee may not accept funds from persons other than employees, patrons or members in return for items such as dinner or dance tickets or other sundry items and may not accept such funds from any persons without making the required disclosures.

III.

It is my further opinion that a political committee may keep the assets of its separate and segregated fund in an interest-bearing account and may utilize the interest received thereon for political purposes.

--ANALYSIS--

I.

Section 16.1-08-02(1), N.D.C.C., provides that no corporation, cooperative corporation or association shall make a direct contribution for political purposes. Subsection 2 of that same section makes it clear that nothing prohibits the establishment of a separate and segregated fund to be utilized for political purposes but also provides that money from 'dues, fees, treasury funds or other money required as a condition of membership in an association, or as a condition of employment' may not be used for political purposes, although such monies are specifically allowed to be used to 'pay costs of the administration of the fund.'

The section does not define, or in any manner limit, the term 'costs of administration'. It is, therefore, our opinion that any reasonable costs of administration would be allowed. A determination of what costs are reasonable must be made in each individual instance after considering all the relevant facts and circumstances. One of the relevant circumstances would be the size of the political committee, both in terms of the assets of the fund and in terms of the number of members or employees of the association or corporation sponsoring the fund. Obviously, administrative expenditures in excess of the moneys available for political purposes would not be reasonable.

However, if the size of the sponsoring corporation or association and the contemplated activities of the political committee are such that a full-time paid administrator is reasonably necessary for the efficient solicitation of contributions and administration of the fund, we see no reason why employing such an administrator would not be a permissible cost of administration.

The authority to expend monies from dues, fees, or treasury funds for the administration of a separate designated fund does not, however, alter the responsibility of the corporation or association to comply with the other provisions of Section 16.1-08-02, N.D.C.C. Subsection 1 prohibits such groups from making direct contributions for political purposes. The activities of an administrator must be in furtherance of the political committee in general, and it is possible that activities of an administrator whose salary is paid from dues, fees, or treasury funds which are in direct support of a partisan political candidate or party, and which are undertaken during normal working hours, may be considered a contribution of the value of the salary to that candidate or party in violation of Section 16.1-08-02(1), N.D.C.C.

II.

In your request for this opinion, you cite the common practice of raising funds by 'conducting rummage sales, dances, auctions, dinners, and the selling of various sundry items.' Your question is whether the purchase of such tickets or items is a contribution within the meaning of Section 16.1-08-02(2)(e), N.D.C.C., which prohibits any contribution to be accepted from any person who is not an employee, stockholder, patron, or member of the corporation, cooperative corporation, or association maintaining the political committee.

Section 16.1-08-01(3), N.D.C.C., defines 'contribution' as follows:

'Contribution' means a gift of money or property, subscription, loan, advance, or deposit of money, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. Contribution also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes, and includes funds received by a political committee which are transferred to that committee from another political committee or other source.'

In our opinion, to the extent the payment for such an item exceeds the fair value of the item, the payment is a 'gift of money' which may not be accepted by anyone who is not a member or employee. If the sale was not considered a 'contribution', it would be a 'commercial transaction', the proceeds of which could not be used by the political committee pursuant to Section 16.1-08-02(1)(a), N.D.C.C.

For the same reasons, the disclosure requirement required by Section 16.1-08-02(1)(b) and (c), N.D.C.C., must be given. This disclosure may be given orally by the person accepting the contribution, or may be printed on the ticket or other item given in exchange for the contribution.

III.

Although Chapter 16.1-08, N.D.C.C., does not specifically mention the receipt of interest income by a political committee, it is our opinion that such receipt is permissible. Section 16.1-08-02 affirmatively allows establishment of a political committee and prohibits the solicitation and expenditure of certain funds. The section does not prohibit the receipt or expenditure of money earned as interest on funds otherwise lawfully acquired by a political committee. The only possible prohibition is the prohibition in Section 16.1-08-02(2)(a), N.D.C.C., against using the money 'obtained in any commercial transaction'. It is our opinion that defining the term 'commercial transaction' so as to include the earning of interest is an unreasonably broad interpretation of the term.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C., and governs the actions of public officials until such time as the question is presented or decided by the courts with the applicable provisions of law amended or appealed.

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