

ELECTIONS:
CORRUPT
PRACTICE
ACT:

Candidate should include in expenses obligations incurred by others known and authorized by him; (2) candidate changing headquarters from one locality to another must include expense of both headquarters in statement; (3) expense of raising funds should be included in the statement.

August 27, 1940

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Honorable Carl F. Wymore
Prosecuting Attorney
Cole County
Jefferson City, Missouri



Dear Sir:

On August 26th, you submitted to this department three questions relating to what is commonly called the corrupt practice act, being Article XIV, Chapter 61, R. S. Mo. 1929. The questions relate specifically to Sections 10481 and 10482. For convenience, we are segregating the questions and will answer them individually, the first question being as follows:

"(1) If a person ostensibly in control of the conduct of a campaign incurs a substantial expense in long distance telephone calls and telegraphic communications, which were unauthorized by the candidate or his campaign director, who was in actual control of the campaign, are all these items deemed a part of the campaign expenditures or are they items exempt under our statutes?"

The pertinent part of Section 10481 is as follows:

"No candidate for congress or for any public office in this state, or in any county, district or municipality thereof, which office is to be filled by popular election, shall by himself or by or through any agent or agents, committee or organization, or any person or persons

whatsoever, in the aggregate pay out or expend, or promise or agree or offer to pay, contribute or expend any money or other valuable thing in order to secure or aid in securing his nomination or election, or the nomination or election of any other person or persons, or both such nomination and election, to any office to be voted for at the same election, or in aid of any party or measure, in excess of a sum to be determined upon the following basis, namely: For five thousand voters or less, two hundred dollars; for each one hundred voters over five thousand and under twenty-five thousand, four dollars; * * * "

The purpose of the above sections is to limit the expenditures of a candidate for any office and for the determination of the amount that he may expend. Section 10482 R. S. Mo. 1929, prohibits the issuance of a certificate of election to any successful candidate in any election until he has filed a statement of his expenditures with the officer empowered by law to issue his certificate of election. We herewith quote the pertinent part of said section:

"Every person who shall be a candidate before any caucus or convention, or at any primary election, or at any election for any state, county, city, township, district or municipal office, or for senator or representative in the general assembly of Missouri, or for senator or representative in the congress of the United States, shall, within thirty days after the election held to fill such office or place, make out and file with the officer empowered by law to issue the

certificate of election to such office or place, and a duplicate thereof with the recorder of deeds for the county in which such candidate resides, a statement in writing, which statement and duplicate shall be subscribed and sworn to by such candidate before an officer authorized to administer oaths, setting forth in detail all sums of money, except all sums paid for actual traveling expenses, including hotel or lodging bills, contributed, disbursed, expended or promised by him, and, to the best of his knowledge and belief, by any other persons or person in his behalf, wholly or in part, in endeavoring to secure or in any way in connection with his nomination or election to such office or place, or in connection with the election of any other persons at said election, and showing the dates when and the persons to whom and the purposes for which all such sums were paid, expended or promised."

The portion of the section which refers to expenditures appears to include all sums of money, except all sums paid for actual traveling expenses including hotel or lodging bills. We, therefore, come to the conclusion that the only exemption under the statute for any sum expended is for traveling and hotel expenses. Apparently, every other expenditure must be reported in the absence of any exemption which we may make in this opinion.

You use the word "ostensibly" in your letter. The question arises as to whether the candidate actually knew or did not know or did not bear or obligate himself for the expenses incurred for long distance telephone calls and telegraphic communications by the person in control. Ostensible means capable of being shown, exhibited, declared, avowed or apparent. Therefore, we conclude that the candidate was apparently aware that the person was incurring expenses

of the nature mentioned in your letter. However, you state the expenses were unauthorized by him or his campaign director. If the expenses were unauthorized, we logically conclude that the candidate did not obligate himself or did not have knowledge at the time such expenses were being incurred. Irrespective of the question as to whether or not the expenses should be reported, we are of the opinion that in the event such expenses are not reported, the candidate does not forfeit his office under Section 10482. We base this conclusion on State ex inf. v. Bland 144 Mo. 534, l.c. 556:

"It will be observed that it is not charged that Bland himself or any other person for him with his knowledge or consent spent more money than the law permits. The allegation is that what he spent and what his friends spent, partly with his knowledge and partly without his knowledge, exceeded the legal limit. It needs no deep discernment to see that if the expenditure of money for a candidate without his knowledge or consent would work a forfeiture of his office, an officer might be ousted for acts done by others beyond his control and without his knowledge. Under such a construction of the statute no man, however honest or law-abiding, would ever have a safe tenure of office, for if he can be ousted because of the acts of others done without his knowledge, then in order to accomplish this purpose it could only be necessary for some evil-minded or designing person to spend enough money added to the amount the officer had legitimately spent, to exceed the limit, and the innocent officer would lose the office to which the people had elected him. This is a reductio ad absurdum, but it points extremities to which we would be led if the sixth

charge was held good. No man was ever punished or deprived of an office for an act he did not commit himself or which was done without his knowledge or consent, where the integrity of the voter's will was not violated or the legality of the election itself was not questioned. It is too plain for argument therefore that the sixth charge states no cause of action against the defendant."

Our final conclusion is as follows: If the candidate did not have knowledge, did not obligate himself, did not give the person in question authority or make any agreement that such person was acting in his behalf rather than from the standpoint of friendship or a zealous interest in his candidacy, then such items of expense as were incurred by the person are not deemed a part of the campaign expenditures and need not be reported. On the other hand, if the reverse of the conditions as mentioned above be true, then such candidate should make a report of such expenditures made by the person. Incidentally, we pass on the question of whether or not the person who incurred the expenses listed in your question should make a report. We think this is determined by Section 10492, making it imperative that two or more persons, who shall be elected, appointed, chosen or associated for the purpose, wholly or in part, of raising, collecting or disbursing money, or of controlling or directing the raising, collecting or disbursement of money for election purposes, shall be deemed a political committee and be subject to the provisions of Section 10494. This section makes it necessary for such committee, club or aggregate of persons to make a report. Otherwise, the person in question, as an individual, need not make any report of the expenditures for telephone or telegraphic communications.

II.

Your second question is as follows:

"If a candidate establishes his campaign headquarters in one locality, honestly intending to operate therefrom, but he soon finds out he has erred in judgment and establishes headquarters in another locality, is the outlay incurred on the former deemed 'a campaign expense item' which he is required under the law to set forth in his statement, or may he disregard that wasted amount without rendering an accounting thereof?"

Referring again to Section 10482, the statute provides that a candidate for the offices mentioned therein file a statement in writing under oath setting forth all sums of money contributed, disbursed, expended or promised by him and by any other person or persons in his behalf, wholly or in part, in endeavoring to secure or in any way in connection with his nomination or election. The statute makes no exemption for any mistake or policy of expenditure by a candidate. It is assumed that all expenditures made by a candidate are for the purpose of promoting himself as a candidate in a primary or general election. Evidently, the candidate in question, when establishing his original headquarters, intended to make the same his permanent headquarters. Whatever money he spent in establishing such headquarters, whether said headquarters were successful or unsuccessful, was spent with the intent and purpose of promoting his candidacy. We are, therefore, of the opinion that under such circumstances the candidate should report the expenditures incurred in establishing his original headquarters, as well as the expense of his permanent headquarters.

III.

The third question is as follows:

"(3) Where a candidate simultaneously conducts two independent campaigns, one to raise funds with which to carry on his political campaign, the other actually conducting his campaign, are the items of

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expense incurred in raising of funds deemed expenses such as he would be required to set out as 'a campaign expense item' or may he disregard that as items totally unrelated to his political campaign. The candidate maintains one staff of clerks for the raising of funds, incurs printing and postage for that purpose, and he also maintains another staff to conduct his political campaign?"

Applying the same logic as contained in your question two, we are clearly of the opinion that both campaigns, one for the raising of funds, the other for actually promoting his candidacy, are expenses which should be included in Section 10482. It is a well known fact that candidates for major offices have various committees, such as financial, publicity, etc. They are formed for the purpose of promoting his candidacy and all expenses by any of such committees are expenses which bear directly on his candidacy.

We, therefore, conclude that in view of the fact that no hair-splitting distinctions can be made on expenses incurred in the manner which you have described, such expenses should be included in a statement to be made by the candidate under Section 10482.

Respectfully submitted,

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Assistant Attorney General

OWN:RT

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General