



## STATE ETHICS COMMISSION

### **ADVISORY OPINION NO. 2025-01**

February 7, 2025<sup>1</sup>

### **QUESTIONS PRESENTED<sup>2</sup>**

1. Legislators can use campaign funds to cover expenses around legislative duties. Can campaign funds be used by a legislator to cover childcare expenses? If yes, are there only specific situations when this would be allowed?
2. Can campaign funds be used for childcare by a candidate for office who is not yet a legislator?

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<sup>1</sup> This is an official advisory opinion of the New Mexico State Ethics Commission. Unless amended or revoked, this opinion is binding on the Commission and its hearing officers in any subsequent Commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion. NMSA 1978, § 10-16G-8(C).

<sup>2</sup> The State Ethics Commission Act requires a request for an advisory opinion to set forth a “specific set of circumstances involving an ethics issue[.]” NMSA 1978, § 10-16G-8(A)(2) (2019). On January 6, 2025, the Commission received a request for an advisory opinion that detailed the issues as presented herein. “When the Commission issues an advisory opinion, the opinion is tailored to the ‘specific set’ of factual circumstances that the request identifies.” State Ethics Comm’n Adv. Op. No. 2020-01, at 1-2 (Feb. 7, 2020), *available at* <https://nmonesource.com/nmos/secap/en/item/18163/index.do> (quoting § 10-16G-8(A)(2)). For the purposes of issuing an advisory opinion, the Commission assumes the facts as articulated in a request for an advisory opinion as true and does not investigate their veracity. This opinion is based on current law, and the conclusions reached herein could be affected by changes in the underlying law or factual circumstances presented.

## ANSWERS

1. Yes, a legislator is permitted to use campaign funds to pay for childcare expenses in the narrow circumstances where a legislator incurs childcare expenses as a direct result of the specific duties of legislative office, and where the expenses are reasonably related to performing the duties of office and would not exist but for the legislator's office.
2. Yes, a candidate for office who is not yet a legislator may use campaign funds to pay for childcare expenses in the narrow circumstances where the candidate incurs childcare expenses as a direct result of the candidate's campaign, and where the expenses are related to the campaign and would not exist but for the candidate's campaign.

## ANALYSIS

At the outset, it is worth noting that campaigns generally enjoy “wide discretion in deciding how to spend their funds.”<sup>3</sup> The government generally has no interest in dictating how a candidate spends contributions in pursuit of election (assuming the expenditures are not otherwise unlawful, i.e., bribes and kickbacks). The government's legitimate interest is to ensure that campaign expenditures do not directly or indirectly enrich the candidate. Put differently, the underlying purpose of governmental restrictions on the use of campaign funds is the same as the restriction on contribution amounts: (i) preventing corruption and the appearance thereof; and (ii) “increas[ing] participation in the political process by allowing contributors to support a campaign without worrying that their funds will be converted to personal use.”<sup>4</sup>

New Mexico's Campaign Reporting Act<sup>5</sup> provides “[i]t is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for . . . (1) expenditures of the campaign; [or] (2) expenditures of

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<sup>3</sup> See Federal Election Commission, *Making disbursements*, <https://www.fec.gov/help-candidates-and-committees/making-disbursements/> (last accessed Jan. 24, 2025).

<sup>4</sup> *Federal Election Comm'n v. O'Donnell*, 209 F.Supp.3d 727, 740 (D. Del. 2016).

<sup>5</sup> NMSA 1978, §§ 1-19-25 to -37 (1979, as amended through 2024).

legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses[.]”<sup>6</sup> The New Mexico Secretary of State has promulgated a regulation defining “expenditures of the campaign” which further interprets “personal” expenses:

Expenditures that are reasonably attributable to the candidate’s campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure.<sup>7</sup>

This regulation follows that imposed in federal law under the Federal Election Campaign Act. That statute similarly provides:

A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual –

- (1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;
- (2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office . . . .<sup>8</sup>

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<sup>6</sup> NMSA 1978, § 1-19-29.1(A)(1)-(2) (2009). Section 1-19-29.1(A) sets out additional permissible uses of campaign funds, but those uses are not relevant to the request.

<sup>7</sup> 1.10.13.25(B)(2) NMAC.

<sup>8</sup> 52 U.S.C. § 30114(a).

After identifying the permitted uses of contributions, the federal statute then identifies prohibited uses, explaining “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of Federal office[.]”<sup>9</sup>

New Mexico’s Campaign Reporting Act and campaign regulations largely follow the structure set out in federal law, that is, a campaign may expend funds for expenditures of the campaign or for expenditures reasonably related to the duties of office, but may not use contributions for personal expenses.<sup>10</sup> Because there is no New Mexico case law applying the Campaign Reporting Act’s personal-use prohibition, and because the Campaign Reporting Act and the accompanying regulations are almost identical to their federal counterparts, the Commission will look to cases and administrative decisions interpreting similar provisions of law outside of New Mexico for guidance in applying this rule to the childcare expenditures presented by the request.<sup>11</sup>

Over the last twenty years, the Federal Elections Commission (“FEC”) has issued a number of advisory opinions determining that in certain circumstances a legislator or legislative candidate is permitted to use campaign funds to pay for childcare expenses. The FEC explained the relevant analysis:

Child care expenses are not listed among those expenditures that would be considered per se personal use. The regulations state that the Commission will determine on a case by case basis whether other uses (not listed as per se personal use) of funds in a campaign account would fulfill a commitment, obligation or expense that would

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<sup>9</sup> 52 U.S.C. § 30114(b)(2).

<sup>10</sup> While it is ultimately the language of the statute that is controlling, the Secretary of State is charged with “adopt[ing] and promulgat[ing] rules and regulations to implement the provisions of the Campaign Reporting Act.” NMSA 1978, § 1-19-26.2 (1997). The regulations adopted by the Secretary of State follow a comparable provision in federal law and merely expand on what constitutes a “personal” expense under the Campaign Reporting Act.

<sup>11</sup> See *State v. Martinez*, 2006-NMCA-148, ¶ 12, 140 N.M. 792 (stating that “federal law interpreting [a] rule is instructive,” when the federal rule is similar to its New Mexico counterpart), *aff’d*, 2008-NMSC-060, 145 N.M. 220.

exist irrespective of the candidate's campaign or duties as a Federal officeholder, and, therefore, would be personal use.<sup>12</sup>

The FEC has reviewed the question of whether a candidate's or officeholder's expenditure of campaign funds for childcare expenses constitutes an "expenditure in connection with the campaign" or "for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office" in a variety of circumstances, concluding that such expenditures are permissible where they are "incurred as a direct result of" and "would not exist irrespective of" the campaign activity or duties of office.<sup>13</sup>

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<sup>12</sup> Fed. Elect. Comm'n Adv. Op. 1995-42 (McCrery) (Jan. 11, 1996) (footnote omitted) (citing 11 CFR 113.1(g)(1)(ii)).

<sup>13</sup> *Id.* (concluding a legislator was permitted to use campaign funds for occasional childcare in the limited circumstances where the legislator was campaigning for re-election, his district was a large district which required the legislator to travel extensively, often including overnight stays, and his wife who often accompanied him to campaign-related events which were inappropriate for the legislator's infant son was integral to the campaign team and her presence at such events was vital); Fed. Election Comm'n Adv. Op. 2018-06 (Liuba) (May 10, 2018) (concluding a candidate for legislative office could use campaign funds to pay for childcare where, prior to becoming a candidate she worked from home as a consultant and cared for her young children full time, her husband worked full time, and since starting campaigning she had forgone her income and hired a part-time caregiver for the children so the legislator could fulfill her responsibilities as a federal candidate); Fed. Election Comm'n Adv. Op. 2019-13 (MJ for Texas) (July 25, 2019) (concluding a legislative candidate could use campaign funds for childcare where she left her job to work full-time on her campaign and proposed to pay for a full-time daycare for her children when her campaign activities prevented her from providing the care herself); Fed. Election Comm'n Adv. Op. 2022-07 (Swalwell) (July 25, 2022) (concluding a legislator could use campaign funds to pay for overnight childcare if he traveled for campaign events for his campaign and his spouse was not available to care for their children, where the legislator and his wife worked full-time, had three young children at home, and where the legislator's campaign activities occasionally required him to incur expenses for overnight childcare during those times when his spouse was unavailable to care for their children); and Fed. Election Comm'n Adv. Op. 2024-09 (Barragán) (Oct. 10, 2024) (concluding a legislator who was the primary caretaker of her mother was permitted to use campaign funds to pay for eldercare expenses for unanticipated gaps in care to the extent those expenses were incurred as a direct result of campaign activity for her own campaign as well as where those expenses were incurred when traveling for official business for a Congressional Member Delegation and when she was in Washington, D.C. to cast votes in Congress, as those constituted duties as a federal officeholder).

Following the FEC’s lead, states with similar campaign finance laws reviewing comparable provisions of law have also overwhelmingly issued guidance concluding that campaign funds may be expended on childcare expenses in certain circumstances.<sup>14</sup>

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<sup>14</sup> See Ala. Ethics Comm’n Adv. Op. No. 2018-04, at 1 (June 6, 2018) (“[T]he requestor’s principal campaign committee, may use campaign funds to pay for the childcare expenses described in the request to the extent such expenses are incurred as a direct result of campaign activity and are tied to specific campaign events. Under the facts supplied, the candidate would not have needed the childcare but for the fact that she is a candidate and without childcare she cannot participate in the described activities.”); Ga. Gov’t Transparency & Campaign Fin. Comm’n, Adv. Op. 2023-01, at 2 (“In the present analysis, the childcare and dependent costs are being incurred as a direct result of campaign activity or holding public office. Because these costs are incurred by candidates in furtherance of their campaign (i.e., they can attend a campaign function because they have childcare) or are in fulfillment of their public office (i.e., they can fulfill their duty as a public official because they have childcare), childcare or dependent care directly incurred because of campaign activity or fulfilling a public office is considered an ordinary and necessary expense.”); State of Haw. Campaign Spending Comm’n, Adv. Op. 25-01 at 2 (July 10, 2024) (“The Commission agrees with the FEC. A candidate for state or local office may use campaign funds to pay for childcare expenses that are directly related to the candidate’s campaign activities and would not exist in the absence of the candidate’s campaign activities for office.”); Idaho Sec’y of State, Adv. Ltr., at 1 (Oct. 11, 2024) (“To the extent [caregiving] expenses are incurred in connection with the campaign for public office of the candidate, or other permissible purposes, as listed in Idaho Code § 67-6610C(1), these expenses may be permissible.”); Ind. Elec. Comm’n Adv. Op. 2024-01, at 2 (Feb. 27, 2024) (“Indiana Code 3-9-3-4(b) permits contributions to a candidate’s committee to be used to pay for the following childcare expenses that are: (1) a direct result of the candidate’s campaign activities; (2) a direct result of the candidate’s participating in continuing political activity. (3) a direct result of the elected official’s activity related to service in an elected office.”); Kan. Gov’t Ethics Comm’n Op. No. 2018-04 (Aug. 22, 2018) (“In circumstances where facts demonstrate such a nexus between constraints imposed by a campaign or holding office, and childcare, we opine use of campaign funds to pay for childcare expenses is permitted.”); Ky. Reg. of Elec. Fin. Adv. Op., Ltr. (Oct. 5, 2018) (“The bottom line is if childcare expenses are incurred as a direct result of campaign activity, then the childcare expenses may be permissibly paid with campaign fund [sic].”); Md. State Bd. of Elec., Child Care Expenses (May 16, 2019) (“Maryland law requires campaign funds to be used solely for the purpose of supporting or opposing a candidate, question, or political committee. Moreover, there must exist a nexus between the expenditure and the candidacy for which the expenditure relates. In other words, the expenditure is permissible if it would not have occurred but for the fact a candidacy is being promoted, supported or opposed. Therefore, child care expenses would have to have an electoral purpose in order for them to be permissible.” (citation omitted)); N.C. State Bd. of Elec. Adv. Op. (June 22, 2023) (“In conclusion, under N.C.G.S. § 163-278.16B, a candidate or office holder may use committee

In addition to the guidance discussed above, many states have also adopted laws expressly permitting the expenditure of campaign funds for childcare expenditures, the majority of which provide for a similar analysis, that is, whether

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funds for caregiving expenses, such as the cost of a nanny to look after a child or a nurse or other caregiver to look after an elderly parent, if the need for such services results from the candidate or office holder carrying out work or activities for the campaign or office holding. For such expenses to “result[] from” the campaign or public office holding, N.C.G.S. § 163-278.16B(a)(1)–(2), the candidate or office holder would need to otherwise be responsible for personally providing the supervision or care, and the demands of the campaign or office holding must be keeping the candidate or office holder from providing that supervision or care.” (alteration original)); Okla. Ethics Comm’n, Adv. Op. 2023-01, at 5 (“The Ethics Rules allow for use of contributions to a campaign committee to pay for dependent care expenses as an ordinary and necessary expense, when (1.) the candidate or officeholder has primary caregiving responsibility for a dependent, such as a dependent child or an elderly parent; (2.) the candidate or officeholder needs to have the dependent cared for to allow the candidate or officeholder to attend or participate in an event that would not exist but for the campaign or officeholder’s position; and (3) the costs associated with caring for this dependent would not be incurred if there were no campaign or office holding.”); Commonwealth of Va., Office of the Att’y Gen., Adv. Op. at 3 (Sept. 10, 2021) (“Virginia’s campaign finance statutes allow for the use of campaign funds for childcare expenses if those expenses are the direct result of campaign activity. Such an expense is no different from paying for services such as those of campaign staff because without it, the individual would be prevented from expressly advocating for their election to elected office and for the defeat of their opponent.”); Wis. Ethics Comm’n, Adv. Op. 2018 Eth 01 (“In the present matter, the Commission holds that a candidate is permitted to use campaign funds for childcare expenses to the extent that such expenses would be incurred only as a direct result of campaign activity and would not otherwise exist.”); and Tx. Ethics Comm’n Adv. Op. 547 (June 27, 2018) (“According to the facts presented, the candidate began paying for childcare services only after becoming a candidate, and the candidate’s stated purpose in acquiring the childcare services is to allow or facilitate her participation in campaign activities. Thus, in our opinion, the payments would not primarily further individual or family purposes not connected with the performance of duties or activities as a candidate and therefore would not constitute personal use.”). *But see* LA. Bd. of Ethics Docket No. 2018-1210 (Mar. 29, 2019) (issuing a conclusory one-page 6-4 decision determining simply that “La. R. S. 18: 1505. 2I provides that campaign funds may not be used for any personal use unrelated to the candidate’s campaign or his holding of public office” with no analysis or explanation for this conclusion noted in the opinion); Iowa Ethics and Campaign Disclosure Bd. Adv. Op. 2018-02 (July 13, 2018) (explaining the issue could be argued either way and concluding “[w]e believe the legislature is the most appropriate body to draw the line between campaign purposes and personal expenses with respect to childcare given the potential for significant financial output on the part of the campaign and the ongoing nature of the expense”).

the childcare expenditures are related to campaign activities or the duties of legislative office and would not exist but for those activities.<sup>15</sup> Several states

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<sup>15</sup> See Ark. Code Ann. § 7-6-203(f)(2)(B) (“The use of campaign funds to pay a candidate’s childcare expenses shall not be considered a taking of campaign funds as personal income if the campaign funds are used to pay for childcare for the time the candidate is engaging in campaign activity and *the childcare expenses would not exist in the absence of the campaign[.]*” (emphasis added)); Cal. Gov’t Code § 89513(i)(2) (“Campaign funds may be used to pay or reimburse a candidate for reasonable and necessary childcare expenses for a dependent child resulting directly from the candidate engaging in campaign activities. For purposes of this paragraph, ‘directly’ means that the *candidate would not have incurred the childcare expenses if the candidate did not engage in the campaign activities.*” (emphasis added)); Colo. Rev. Stat. § 1-45-103.7(6.5) (“Notwithstanding any other provision of law, a candidate committee established in the name of a candidate may expend contributions received and accepted by the committee during any particular election cycle to reimburse the candidate for *reasonable and necessary expenses for the care of children* or other dependents the candidate *incurs directly in connection with the candidate’s campaign activities* during the election cycle.” (emphasis added)); Del. Code Ann. tit. 15, § 8020(20) (“No political committee may make any expenditure except for the following purposes: . . . Reasonable and necessary expenses for the care of the candidate’s child or children *incurred in connection with the candidate’s campaign activities.*” (emphasis added)); 10 Ill. Comp. Stat. § 5/9-8.10(a)(11) (“A political committee shall not make expenditures: . . . For payments to a public official or candidate or his or her family member unless for compensation for services actually rendered by that person. The provisions of this item (11) do not apply to expenditures by a political committee for expenses related to providing childcare for a minor child or care for a dependent family member *if the care is reasonably necessary for the public official or candidate to fulfill political or governmental duties.*” (emphasis added)); Minn. Stat. § 10A.01(26)(a)(11) (“‘Noncampaign disbursement’ means a purchase or payment of money or anything of value made, or an advance of credit incurred, or a donation in kind received, by a principal campaign committee for any of the following purposes: . . . costs of child care for the candidate’s children *when campaigning[.]*” (emphasis added)); N.H. Rev. Stat. Ann. § 664:2(IX)(a)(4) (“‘Expenditure’ includes, but is not limited to, disbursement of funds for: . . . Childcare expenses incurred by a candidate *if the expenses are a direct result of the candidate’s activities.*” (emphasis added)); N.Y. Elec. Law § 14-130(3)(xi) (“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: . . . childcare expenses, *other than expenses incurred in the campaign or in the execution of the duties of public office or party position.*” (emphasis added)); 17 R.I. Gen. Laws § 17-25-7.2(c) (“Any expense that results from campaign or officeholder activity is permitted use of campaign funds. Such expenditures may include: . . . Childcare expenses *that are incurred as a result of campaign activity or the officeholder’s responsibilities.*” (emphasis added)); Utah Code § 20A-11-104(2)(n) (“‘[P]ersonal use expenditure’ does not include an expenditure made: . . . to pay childcare expenses of: (i) a candidate while the *candidate is engaging in campaign activity*; or (ii) an officeholder while the



provide additional guardrails by law on the expenditure of campaign funds for childcare expenses.<sup>16</sup> Again, however, these additional considerations would largely already fall under the case-by-case determination as to whether an expenditure is reasonably related to a campaign or the duties of legislative office and whether the expenditure is “to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate’s campaign or responsibilities as a legislator.”<sup>17</sup>

We find the weight of the foregoing authorities persuasive. New Mexico law permits a candidate to expend campaign funds for “expenditures of the campaign” and further allows a legislator to make “expenditures reasonably related to performing the duties of the office held,” so long as those expenditures do not pay for “personal and legislative session living expenses.”<sup>18</sup> The campaign finance regulations promulgated by the Secretary of State further interpret “personal use”

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*officeholder is engaging in the duties of an officeholder.” (emphasis added)); Wash. Rev. Code § 42.17A.445(2) (“Contributions received and reported . . . may only be paid to a candidate, or a treasurer or other individual or expended for such individual’s personal use under the following circumstances: . . . Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. For example, *expenses for child care or other direct caregiving responsibilities may be reimbursed if they are incurred directly as a result of the candidate’s campaign activities.* . . .” (emphasis added)).*

<sup>16</sup> See Conn. Gen. Stat. § 9-601(32) (defining “‘Child care services’ means services rendered to a candidate for the care of any child who is under thirteen years of age and for whom such candidate is the parent or legal guardian, which services *are necessary as a direct result of campaign activity that would not exist but for such candidate’s campaign*” (emphasis added)), § 9-607(g)(2)(L) (authorizing a committee treasurer to pay the expenses of child care services “provided (i) the candidate and any member of his immediate family shall not receive compensation, and (ii) compensation for child care services is reasonable and customary for the services rendered”); Mont. Code Ann. § 13-37-220 (allowing that “[w]hile a candidate is engaged in campaign activity, a candidate may use contributions deposited in the candidate’s primary campaign depository as provided in 13-37-205 to pay the candidate’s reasonable and necessary child-care expenses[,]” as well as including specific reporting responsibilities, providing “the candidate may not expend surplus campaign funds for the candidate’s child-care expenses . . .” after a closing campaign report is filed, and clarifying that “[i]n-kind child care provided to the candidate while the candidate is engaging in campaign activity by the candidate’s family or an individual known to the candidate is not a contribution and is not reportable under this chapter”).

<sup>17</sup> § 1-19-29.1(A); 1.10.13.25(B) NMAC.

<sup>18</sup> § 10-19-29.1(A)(2).

to largely track the definition of personal use in federal campaign law.<sup>19</sup> As with federal law, the regulations do not include “childcare expenses” in the list of items “considered to be per se personal use[.]”<sup>20</sup> While New Mexico law does not specifically identify “childcare” expenses, the framework for determining whether a certain expenditure of campaign funds is permissible under New Mexico law applies equally to a childcare expense as it does to other expenditures.<sup>21</sup> Accordingly, a legislator would be permitted under New Mexico law to expend campaign funds on expenditures for childcare expenses the legislator incurs as a direct result of the specific duties of legislative office, so long as the expenses would not exist regardless of the responsibilities as a legislator, and the expenses are reasonably related to those duties. And the foregoing analysis and conclusion correspondingly apply to the use of campaign funds for childcare expenses incurred because of campaign activities as to those incurred which are reasonably related to the duties of legislative office.<sup>22</sup>

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<sup>19</sup> The Federal Election Campaign Act provides “a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person *that would exist irrespective of* the candidate’s election campaign or individual’s duties as a holder of Federal office[.]” 52 U.S.C. § 30114(b)(2) (emphasis added). New Mexico’s campaign regulations identify personal use as “any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator *that would exist regardless of* the candidate’s campaign or responsibilities as a legislator.” See 1.10.13.25(B)(2) NMAC (emphasis added). While the language is not identical, there is not a material difference between the terms “regardless of” and “irrespective of.” See *Irrespective of*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/irrespective%20of> (defining “irrespective of” to mean “regardless of”).

<sup>20</sup> 1.10.13.25(B)(2) NMAC.

<sup>21</sup> See, e.g., N.M. State Ethics Comm’n Adv. Op. 2024-02 (Apr. 5, 2024), available at <https://nmonesource.com/nmos/secap/en/18968/1/document.do> (concluding that a legislator’s campaign funds may be used to pay for a legislator’s training and travel expenses for educational conferences and professional development course so long as they are “reasonably related” to performing the legislator’s duties).

<sup>22</sup> Cf. Az. Att’y Gen. Op. No. I24-014(R24-009) (Sept. 16, 2024) (concluding it was permissible to expend “privately raised campaign money for dependent care if, and only if, the expenses are for the purpose of enabling the candidate or other person to perform campaign activities” but that campaign funds could not be used for an officeholder given the specific language in Arizona law). The Arizona Attorney General distinguished Arizona law from states that have permitted both candidates and officeholders to make dependent-care expenditures with campaign funds, explaining that in those state “the laws appear in the same section, and deal with a single account[.]” while Arizona “laws regarding campaign finance and those regarding officeholder accounts appear in different titles. They reference different accounts, one type maintained by a

This is not to say any expenditure for childcare expenses is permissible. Rather, a legislator or candidate may use campaign funds for part-time or full-time childcare only in the narrow circumstances where the legislator or candidate incurs childcare expenses that they would not have incurred but for the individual's legislative responsibilities or campaign activities.<sup>23</sup> In such circumstances, the expenditure must be reasonable, and the candidate or legislator should consider obtaining quotes or researching rates charged by providers, as well as maintain invoices or other records for services rendered which would tend to establish the reasonableness of the expenditure and the specific dates and circumstances of the childcare expenses in order to document how the expense was related to the

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candidate, the other by an officeholder. The money in those accounts may not intermingle, except in very carefully circumscribed ways.” *Id.* at 14–15 (citations omitted). New Mexico law is more like the states distinguished in that opinion, with the permissible expenditures for the campaign and for legislators that are reasonably related to performing the duties of legislative office are both contained within the same subsection of the Campaign Reporting Act and its accompanying regulations. *See* § 1-19-29.1(A); 1.10.13.25(B)(2).

<sup>23</sup> *See, e.g.*, Kan. Gov’t Ethics Comm’n Op. No. 2018-04 (Aug. 22, 2018) (“Expenditures to defray normal living expenses for the candidate or the candidate’s family are personal. So are expenditures for personal benefit having no direct connection with or effect upon the campaign of the candidate or holding of public office. However, if childcare expenses would not exist irrespective of the candidacy for public office, then such expenses would have a direct connection with or effect upon the campaign of the candidate.”); Ky. Reg. of Elec. Fin. Adv. Op., Ltr. (Oct. 5, 2018) (“[I]t is impermissible for a candidate to use campaign funds to pay for childcare expenses that existed prior to their candidacy or occur during the candidacy but have nothing to do with the campaign, as that would bestow a ‘private pecuniary benefit’ on the candidate. However, if the childcare enables the candidate to promote his or her campaign in a reasonable way, then it would be considered an actual expense made directly and primarily in support of the candidate.”); Okla. Ethics Comm’n, Adv. Op. 2023-01, at 5 (“It is important to note for both the officeholder expenses and campaign expenses, that regular dependent care expenses (i.e., daily daycare, elder care expenses, nursing assistance for a disabled person, etc.) that would be incurred irrespective of the officeholder’s status or candidate’s status, would not be a permissible expense. For example, a candidate who pays for regular dependent care prior to entering a campaign, should not consider this expense as a campaign expense. This dependent care does not pass the ‘but for’ test since the dependent care expenses were already incurred prior to the campaign and would be incurred irrespective of the campaign.”).

campaign or duties of legislative office.<sup>24</sup> This is especially so where the recipient of the expenditure of campaign funds is a relative of the legislator or candidate.<sup>25</sup>

## **CONCLUSION**

A legislator or candidate for legislative office may use campaign funds to pay for childcare expenses where the legislator or candidate: 1) incurs childcare expenses as a direct result of the specific duties of legislative office or of a campaign, 2) where the expenses are reasonably related to performing the duties of office or to the campaign, and 3) the expenses would not exist but for the legislator's office or the candidate's campaign.

**SO ISSUED.**

**HON. WILLIAM F. LANG, Chair**

**JEFFREY L. BAKER, Commissioner**

**STUART M. BLUESTONE, Commissioner**

**HON. CELIA CASTILLO, Commissioner**

**HON. GARY L. CLINGMAN, Commissioner**

**HON. DR. TERRY MCMILLAN, Commissioner**

**DR. JUDY VILLANUEVA, Commissioner**

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<sup>24</sup> See Ala. Ethics Comm'n Adv. Op. No. 2018-04, at 1 (June 6, 2018) ("Even though allowed under these circumstances, as we have held with other expenses the payments must be reasonable and customary for the services rendered and must be properly documented by the campaign."); Ga. Gov't Transparency & Campaign Fin. Commission, Adv. Op. 2023-01, at 2–3 ("Because of the part-time nature of holding office, the Commission advises it is best practice to keep a log of childcare expenses and corresponding political activities in case of an investigation or audit."); Wis. Ethics Comm'n, Adv. Op. 2018 Eth 01 ("As with any disbursement, the expenditure should be reported by date made and include the full name and address of the recipient, along with the specific purpose for which the disbursement was made. To ensure compliance with this opinion, the committee should also include a comment with the transaction detailing the campaign activity that required the childcare expense." (citation omitted)).

<sup>25</sup> See N.M. State Ethics Comm'n Adv. Op. 2023-09, at 4 (Dec. 15, 2023), available at <https://nmonesource.com/nmos/secap/en/18950/1/document.do> (explaining the steps a candidate should take if the campaign pays for bona fide services provided by a candidate's family member).