

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. 340 Department or Agency Alabama Ethics Commission
Rule No. 340-X-1-.06
Rule Title: Policy Regarding Use of Campaign Funds
 New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? N/A

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? YES

Is there another, less restrictive method of regulation available that could adequately protect the public? NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? N/A


Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? YES

Does the proposed rule have an economic impact? NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer 

Date 3/28/16

(DATE FILED)
(STAMP)

(Agency Name)
(Agency Division, if applicable)

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Ethics Commission

RULE NO. & TITLE: Rule 340-X-1-.06 Policy Regarding Use of Campaign Funds

INTENDED ACTION: To create a rule which codifies what are presumed to be proper expenditures of campaign funds and what are presumed to not be proper expenditures of campaign funds.

SUBSTANCE OF PROPOSED ACTION: While the Fair Campaign Finance Act sets out how campaign funds may and may not be expended, candidates at all levels of government frequently need guidance as to what are and what are not proper uses of campaign funds. This rule is intended to provide clarity.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may present their views in writing to the Director of the Alabama Ethics Commission on or before May 5, 2016 or orally, if requested in writing 48 hours in advance, to the Director of the Alabama Ethics Commission, by personally appearing at the office of the Alabama Ethics Commission at 10:00 AM on May 5, 2016.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: May 5, 2016

CONTACT PERSON AT AGENCY:



(Signature of officer authorized
to promulgate and adopt
rules or his or her deputy)

340-X-1-.06 Policy Regarding use of Campaign Funds

Ala. Code § 17-5-7 (2015) states:

“(a) Except as provided in subsection (d) and in Section **17-5-7.1**, a candidate, public official, or treasurer of a principal campaign committee as defined in this chapter, may only use campaign contributions, and any proceeds from investing the contributions that are in excess of any amount necessary to defray expenditures of the candidate, public official, or principal campaign committee, for the following purposes:

(1) Necessary and ordinary expenditures of the campaign.

(2) Expenditures that are reasonably related to performing the duties of the office held. For purposes of this section, expenditures that are reasonably related to performing the duties of the office held do not include personal and legislative living expenses, as defined in this chapter.

...”

Ala. Code § 36-25-6 (2015) states:

“Contributions to an office holder, candidate, or to a public official’s inaugural or transitional fund shall not be converted to personal use.”

Using campaign funds for personal use is prohibited. The Commission uses the “but for” test to determine whether expenses are for personal use or are legitimate expenses. Personal use is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any person that exists for reasons irrespective of the person’s status as a candidate or office holder. Stated in terms of the applicable test, if the expense would not exist “but for” the person’s status as a candidate or office holder, then it may be paid for with campaign funds. Accordingly, the Commission promulgates the following Administrative Rule.

The Commission presumes the following expenses to be for personal use and neither “reasonably related to performing the duties of the office held” nor “necessary and ordinary expenditures of the campaign”:

1. Personal and legislative living expenses as defined in the Fair Campaign Practices Act, Ala. Code § 17-5-1 et seq, which includes: household supplies, personal clothing, tuition payments, mortgage, rent, or utility payments for a personal residence; admission to an entertainment event or fees for a country club or social club, unless tied to a specific campaign event or functions involving constituents;
2. Any expense, excluding food and beverages, that would exist irrespective of a candidate’s campaign or an office holder’s official duties;
3. Household food items purchased for consumption by the candidate, office holder, and his or her dependents;
4. Funeral, cremation and burial expenses;
5. Tuition payments for the candidate or office holder’s family or dependents;

6. Mortgage, rent and utility payments for candidate's or office holder's personal residence, even if a portion of the space is used for campaign or official purposes;
7. Investment expenses, unless all of the investment and its proceeds are used for campaign purposes or one of the specifically enumerated purposes in the FCPA;
8. Entertainment expenses;
9. Dues and gratuities for health clubs, recreational facilities and other nonpolitical organizations unless tied to a specific campaign event;
10. Salary payments to the candidate's family, unless the family member is providing a bona fide service to the campaign and the payments reflect the fair market value of those services and properly documented by the campaign.

The Commission presumes the following expenses NOT to be for personal use and to be either "reasonably related to performing the duties of the office held" or "necessary and ordinary expenditures of the campaign":

1. Any permitted use under the FCPA;
2. Flowers or cards for funerals of deceased supporters, constituents or colleagues, provided the amount expended is reasonable and customary, and in lieu of flowers donations to charities, organizations, etc. as the family of the deceased publicly designates;
3. Any expenditure to a 501(c)(3) organization unless in doing so the expenditure is converted to personal use by the candidate or office holder, their family or a business with which they are associated;
4. Actual and necessary transportation, lodging expenses, food, beverages, and registration fees actually incurred and required for the attendance of a candidate, office holder, and his or her spouse or family member or staff at a conference or event, where but for the person's status as a candidate or office holder he or she or the others attending would not attend, and where the primary purpose for attending is campaign related or is official and is consistent with the person's official duties (for example, the person speaks on a subject related to his or her official position, duties, committee assignment, etc.), and provided the candidate or office holder is not reimbursed for these expenses from any other source;
5. De minimis gifts or promotional items that are campaign-related or appropriate for the occasion (e.g., graduation, holiday season, etc.), as well as seasonally or occasion-appropriate cards which are provided to friends, supporters, colleagues, constituents or campaign staff;
6. Campaign signs, literature, t-shirts, hats, stickers, and banners;
7. Dues and donations for organizations commonly referred to as "civic organizations" which includes any service club (for example, Rotary, Lions, Kiwanis, etc), local Chambers of Commerce, veterans' post, fire or rescue groups, or local civic league (for example, Junior League, etc.).

These are not exhaustive lists and may be modified by formal action of the Commission.