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October 5, 2015

To: 2015 Special Committee on Ethics, Elections, and Local Government

From: Edward Penner, Research Analyst

Re: Campaign Finance - Transferability

This memorandum summarizes the legal and legislative histories regarding the transfer of unused campaign funds to a new candidacy for any other office established by the same candidate in Kansas. The memorandum discusses the approaches taken by several other states to the same issue.

Cole v. Mayans: The Kansas Supreme Court Overturns Kansas Governmental Ethics Commission Interpretation of the Law

On December 15, 2003, the Kansas Supreme Court ruled the Campaign Finance Act (Act) prohibited former State Representative Carlos Mayans from transferring unused legislative campaign funds to his campaign for election to be mayor of Wichita. This ruling came after the Kansas Governmental Ethics Commission (KGEC) had issued several opinions, over a number of years, stating such transfers were permitted under the Act. Former Representative Mayans had sought and received such an opinion. He also received an opinion from the Wichita city attorney that the transfer would not violate a City of Wichita ordinance dealing with campaign finance.

The Kansas Supreme Court disagreed with the KGEC's interpretation and overruled the Trial Court and the Court of Appeals, stating:

> We hold that the Campaign Finance Act and the related regulations, when coupled with the purpose for the Campaign Finance Act, must be construed to limit the transfer of campaign contributions from a candidate's campaign account for a specific office to the same candidate's campaign account for election to that same office. Thus, there are only two situations in which the transfer can be made. The first is when an incumbent runs for reelection to the same office. The second is when a candidate loses an election for a specific office but seeks reelection to the same office in a subsequent election. (Opinion Pg. 16)

The Kansas Supreme Court further suggested the Legislature: (a) define the term "*bona fide* successor candidacy," which, currently, is contained (but not defined) in KGEC administrative rules and regulations; and (b) require the KGEC to promulgate rules and regulations for the "orderly return of contributions to donors who have contributed to a candidate for a specific office but do not want to contribute to the same candidate if he or she decides to run for a different office."

Legislative History

Beginning with the 2004 Legislative Session, 11 bills addressing this issue have been considered. Two of the bills passed both chambers and were vetoed: 2004 House Sub. for SB 376 and 2006 SB 142. Both of these bills contained other provisions. The 11 bills differed in their detail. The most recent of these bills is 2015 HB 2215, which is currently on General Orders in the House of Representatives, having been recommended for passage as amended by the House Committee on Elections.

The table below compares several of the major provisions of the three most recent bills addressing this issue.

Provision	HB 2215 (2015) As Amended by H-Elec.	HB 2112 (2013) As Amended by H-Elec.	HB 2309 (2012)
Authorizes transfer of funds to "*bona fide* successor committee or candidacy" (after all debts satisfied in original campaign account).	Included	Included	Included
Adds definition of "*bona fide* successor committee or candidacy" as initiated at termination of original committee or candidacy or initiated at time of transfer of all money to new committee or candidacy when debt in original committee or candidacy and original committee or candidacy not terminated.	Included	Included	Not Included
Excludes such transfers from the definition of "contribution."	Included	Included	Included
Adds definition of "Public Office" as state or local office.	Included	Included	Not Included
May accept contributions to original candidacy after transferring (to pay off debt).	Not Included	Included	Not Included
Must terminate original candidacy or make it inactive in order to transfer.	Not Included	Not Included	Included
May NOT transfer money back to original candidacy once transferred.	Not Included	Not Included	Included

Approaches Taken By Other States

Many states do not address the transfer of unused campaign funds explicitly in their campaign finance statutes. Of the approximately half of the states that do explicitly address the issue, various approaches are used. The following list of states is intended to be a sample of the various approaches and is not intended to be an exhaustive list of these approaches or intended to represent a 50-State survey of the issue.

Montana

Montana statutes expressly disallow the transfer of surplus funds to another campaign, including the candidate's own future campaign. Montana has the lowest individual contribution limits in the country for legislative candidates, allowing $170 per candidate per election. Montana allows $650 per gubernatorial slate per election.

Kentucky

Kentucky allows the surplus funds to be retained for use in future campaigns, but only for the same candidate running for the elective office for which the contributions were received. Kentucky allows $1,000 per candidate per election for all offices in individual contributions.

Michigan

Michigan allows the surplus funds to be transferred to a different candidate committee of the same person. However, Michigan only allows such transfers if the committee receiving the transfer has contribution limits greater than or equal to the limits of the committee making the transfer. Michigan allows $3,400 per candidate per election cycle for statewide candidates, $1,000 per candidate per election cycle for the Senate and $500 per candidate per election cycle for the House of Representatives in individual contributions.

Colorado

Colorado allows for surplus funds to be transferred to any future committee of the same candidate. However, such transferred funds count towards the political party contribution limit, which is 20 percent of the voluntary expenditure limit for each particular office. Colorado allows $550 per candidate per election in statewide elections and $200 per candidate per election in legislative elections in individual contributions. (Those amounts may be doubled in certain circumstances.)

Nevada

Nevada allows for the use of surplus money in the same candidate's next election, regardless of whether the candidate is running for the same elected office. Nevada allows $5,000 per candidate per election in individual contributions for all offices.

Delaware

Delaware allows surplus funds to be transferred to any other candidate committee. However, if the candidate committee receiving the funds is for a candidate other than the candidate making the transfer, then contribution limits apply. Delaware allows individual contributions of $1,200 per candidate per election cycle in statewide races and $600 per candidate per election cycle in all other races.

Indiana

Indiana allows a candidate's surplus funds to be transferred to any one or more candidate's committees. Indiana allows unlimited individual campaign contributions.

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