

**NOTICE OF INTENT TO ADOPT AN ADVISORY OPINION OF THE
GEORGIA GOVERNMENT TRANSPARENCY AND
CAMPAIGN FINANCE COMMISSION**

TO ALL INTERESTED PERSONS AND PARTIES:

Notice is hereby given that pursuant to the authority set forth below, the Georgia Government Transparency and Campaign Finance Commission (hereinafter "Commission") proposes to adopt:

Advisory Opinion No. 2021-01

This notice, together with an exact copy of the proposed advisory opinion is being mailed to all persons who have requested, in writing, that they be placed on a mailing list. A copy of this notice, and an exact copy of the advisory opinion may be reviewed between the hours of 8:30 a.m. to 4:30 p.m. Monday through Friday, except official State holidays, at the Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 - West Tower, Atlanta, Georgia 30334. These documents will be available for review on the Georgia Government Transparency and Campaign Finance Commission website (www.ethics.ga.gov). Additional copies may be requested by contacting the Commission at 404-463-1980.

A public hearing is scheduled to begin at 10:00 AM on September 30, 2021 in Room 403 at the Georgia Capitol, 206 Washington St. SW, Atlanta, GA 30334 to provide the public an opportunity to comment upon and provide input into the proposed advisory opinion. At the public hearing anyone may present data, make a statement, comment, or offer a viewpoint or argument whether orally or in writing. Lengthy statements or statements of a considerable technical or economic nature, as well as previously recorded messages, must be submitted for the official record. Oral statements should be concise and will be limited to five (5) minutes per person. Written comments are welcome. Such written comments must be legible, signed, and should contain contact information from the maker (address, telephone and/or facsimile number, etc.). To ensure their consideration, written comments must be received on or before September 29, 2021. Written Comments should be addressed to Christopher Phelps, Paralegal, Georgia Government Transparency and Campaign Finance Commission, 200 Piedmont Avenue SE, Suite 1416 – West Tower, Atlanta, Georgia 30334 or Fax: 404-463-1988 or cphelps@ethics.ga.gov.

The proposed advisory opinion will be considered for adoption by the Commission at its meeting scheduled to begin at 10:00 a.m. on September 30, 2021 at the Georgia Capitol, Room 403, 206 Washington St. SW, Atlanta, GA 30334.

The Georgia Government Transparency and Campaign Finance Commission has the authority to adopt this advisory opinion pursuant to authority contained in O.C.G.A. § 21-5-6(b)(13).

This 21st day of September, 2021.


Robert S. Lane, Deputy Executive Secretary



GEORGIA GOVERNMENT TRANSPARENCY & CAMPAIGN FINANCE COMMISSION

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In response to an advisory opinion request on August 18, 2021, from Matthew M. Weiss, the Georgia Government Transparency and Campaign Finance Commission ("Commission") advises that a candidate, campaign committee, public officer holding elective office, or member of their staff may expend campaign contributions on a home security system and that such an expenditure must not constitute a capital improvement¹ on the home they occupy. If a candidate, campaign committee, public officer holding elective office, or member of their staff utilize campaign funds to purchase a security system for their home that constitutes a capital improvement² to the home, this would not be an ordinary and necessary expense as contemplated by O.C.G.A. § 21-5-33(a).

If a candidate, campaign committee, public officer holding elective office, or member of their staff desire to purchase, install, and maintain a home security system utilizing campaign funds this home security system should be "rented"³ and not purchased. Renting the home security system with monthly payments will not turn the home security system into a personal asset, as the security company owns the home security system, rather than the homeowner. In the instances of utilizing a Ring camera, Ring security camera, SimpliSafe, or any other home security device in which you purchase the hardware and then buy a monthly subscription service, the candidate or campaign would need to buy the hardware using personal funds and the campaign or candidate could then pay for the monthly/yearly subscription service using campaign funds until such time as they leave office or cease to be a candidate for public office.

Question Presented in Request for Advisory Opinion 2021-01

Does the installation and maintenance of a home security system constitute an "ordinary and necessary expense," as defined in O.C.G.A. § 21-5-3(18), for which a candidate, campaign committee, public officer holding elective office, or member of their staff may expend contributions pursuant to O.C.G.A. § 21-5-33(a)?

Factual Background

Pursuant to a written request for advisory opinion dated August 18, 2021, Mr. Scott Hogan, Executive Director for the Democratic Party of Georgia, by and through counsel, Mr. Manoj S.

¹ Property improvements that either will enhance the property value or will increase the useful life of the property. Capital Improvement, Black's Law Dictionary (2nd ed. 1995).

² To assist the Commission in interpreting O.C.G.A. § 21-5-3(18), the Commission has utilized the standard that if a candidate or campaign is able to demonstrate that the expense would not have been incurred but for a campaign for office, then the expense, more likely than not, will constitute an ordinary and necessary expense.

³ Most home security systems such as ADT, Ackerman, and EMC charge a monthly fee for service/equipment that would constitute a rental of the home security system rather than ownership of the home security system and can retrieve the security system once the contract has ended.



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Varghese and Mr. Matthew M. Weiss, Counsel for the Democratic Party of Georgia, seeks guidance as to whether installation and maintenance of a home security system is an ordinary and necessary expense for which a candidate, campaign committee, public officer or their staff may expend campaign contributions. An ordinary and necessary expense includes but is not limited to,

“[...] expenditures made during the reporting period for qualifying fees, office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41, contributions to nonprofit organizations, flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, attorney fees connected to and in the furtherance of the campaign, and all other expenditures contemplated in Code Section 21-5-33.”

O.C.G.A. § 21-5-3(18).

Mr. Weiss correctly asserts that the Commission, in C.F.C. AO 2014-03(2015), has considered this issue before and issued a blanket ban on home security systems being considered an ordinary and necessary expense under O.C.G.A. § 21-5-33. Mr. Weiss urges the Commission to overturn this previous guidance and opines that home security systems are an ordinary and necessary expense of campaigns and public office holders due to the changing political climate where threats of violence against politicians seem to be rising. In requesting this new interpretation of O.C.G.A. § 21-5-33, Mr. Weiss cites Federal Elections Commission (“FEC”) guidance and other state regulatory bodies which allow for campaign funds to be utilized for home security systems. *See* FEC AO 2017-07.

Discussion and Legal Analysis

The Ethics in Government Act enacted by the Georgia General Assembly was adopted to shed light and transparency on how campaign funds are accepted and expended by public office holders and those seeking public office. *See generally* O.C.G.A. § 21-5-2. A primary function of the Commission is to prevent the misuse of campaign funds. One common way campaign funds are misused is when they are converted to personal assets of the candidate or public office holder. This may occur when a candidate expends money on personal expenses that exist independent of the campaign or fulfillment of office, rather than using campaign funds to defray ordinary and necessary expenses. *See generally* O.C.G.A. § 21-5-33. The General Assembly adopted a broad and flexible definition for what is considered an “ordinary and necessary expense”, the definition includes but is not limited to:



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“[...] expenditures made during the reporting period for qualifying fees, office costs and rent, lodging, equipment, travel, advertising, postage, staff salaries, consultants, files storage, polling, special events, volunteers, reimbursements to volunteers, repayment of any loans received except as restricted under subsection (i) of Code Section 21-5-41, contributions to nonprofit organizations, flowers for special occasions, which shall include, but are not limited to, birthdays and funerals, attorney fees connected to and in the furtherance of the campaign, and all other expenditures contemplated in Code Section 21-5-33.”

O.C.G.A. § 21-5-3(18).

This flexible and broad definition of “ordinary and necessary expense” is purposefully vague because an expenditure for the same item or service can be an “ordinary and necessary expense” in one context and in another context be converted to a personal asset. A typical example of this occurs where a candidate uses campaign funds to buy ten Chick-Fil-A sandwiches for campaign staff to fuel a campaign strategy session. There is no dispute that this is an ordinary and necessary expense. However, when a candidate or public office holder buys those same ten Chick-Fil-A sandwiches using campaign funds and then brings them home to their family, campaign funds are converted into a personal asset.

The Act expressly forbids candidates and public office holders from converting campaign contributions into personal assets. *See* O.C.G.A. 21-5-33(c). As illustrated above, the line separating an ordinary and necessary expense from the conversion of campaign funds to personal assets can be slim. The Commission must balance in this advisory opinion the interest in security of candidates and public office holders while also acknowledging that candidates shall not convert campaign funds to personal assets or utilize campaign funds to enrich themselves or make capital improvements upon their residence.

Although in C.F.C. 2014-03 (2015) the Commission issued a blanket ban on installation of home security systems, the Commission would be remiss not to recognize that the political landscape since 2014 has continued to change. With the ever-evolving use of social media, the public now engages with public officers and candidates faster and, in some cases, more severely than ever before. While there are some benefits to candidates and citizens engaging each other on social media, a corresponding downside has evolved in the form of threatening and aggressive rhetoric targeting public officers and candidates, threats which often implicate a public officer’s or candidate’s family members. The reality of this new and evolving political climate has been heavily addressed in multiple contexts and has been the subject of recent FEC discussion.



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The FEC has issued guidance on this exact question previously in FEC AO 2017-07. The FEC advised that Members of Congress may use campaign funds to pay the reasonable fair market costs to install (or upgrade) and monitor residential security systems that do not constitute structural improvements to the Member's home. FEC AO 2017-07. The FEC, in a distinguishing manner from the present question, asked the United States House of Representatives Sergeant of Arms to assess the threat level to the present office holders in Congress. The Sergeant at Arms determined that Members of Congress were receiving daily anonymous threats and determined that Members were at a higher level of danger because of these threats. Subsequently, the FEC authorized that campaign funds could be utilized for, "monitoring costs of cameras, sensors, distress devices, and similar non-structural security devices, as well as locks in and around a Member's residence." *Id.*⁴ However, FEC guidance notably prohibits the use of campaign funds to make "structural improvements" upon the home for Members of Congress if they were to utilize campaign funds for security systems, rationalizing that such an improvement transcends campaign purposes. Therefore, under federal law, the use of campaign funds for the purchase of a security system is permissible so long as the purchase does not result in a structural improvement to the home.

Under Georgia law, a candidate is able to comply with the guidance provided by this advisory opinion by purchasing security equipment (system, cameras, motion detectors, etc.) with their personal funds and then paying for the subscription or monthly service with campaign funds. Alternatively a candidate, if they so desired, may pay for a security system entirely with campaign funds when the terms of service permit the security equipment to be rented from the home security company and the candidate pays for the monthly security service along with the rental fee for the equipment. In either scenario provided above, the use of campaign funds would not constitute the conversion of campaign funds into personal assets.

This is in line with how the Commission has advised candidates and public office holders to permissibly spend money on other forms of technology such as laptops. A laptop serves an ordinary and necessary purpose when it functions to manage campaign payroll, facilitate communications with constituents, or design advertisements or signs for the campaign. But when a public officer or candidate finishes their campaign or leaves office the computer or laptop ceases to be an ordinary and necessary expense and can easily be turned into a personal asset. The guidance from the Commission has continuously been once a public officer leaves office their campaign should sell the laptop for fair market value and the proceeds of that sale go back to the campaign. In the alternative, a public office or candidate may also use campaign funds to rent a laptop or computer and then return the laptop or computer upon the completion of the campaign or public officer's service.

⁴ It is worth noting that no similar threat level assessment has been conducted as it relates to the safety of state level public office holders and no evidence has been presented to the Commission indicating that a similar threat level exists at the state level.



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Accordingly, the Commission advises that the procurement of a home security system would be considered an ordinary and necessary expense provided such a security system or improvement does not constitute a permanent capital improvement upon the candidate or public officer's home. Further, the Commission holds that this advisory opinion shall supersede its prior guidance issued in C.F.C. AO 2014-03.

Conclusion

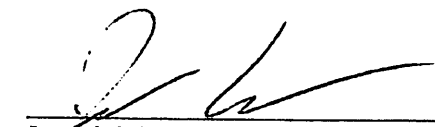
The Georgia Government Transparency and Campaign Finance Commission advises that the installation of a home security system may constitute an ordinary and necessary expense as defined by O.C.G.A. § 21-5-3(18), for which a candidate, campaign committee, public officer holding elective office, or member of their staff may expend contributions pursuant to O.C.G.A. § 21-5-33(a) provided that the home security system does not become a capital improvement upon their home.

This Advisory Opinion concerns the application of the Georgia Government Transparency and Campaign Finance Act, or regulations prescribed by the Georgia Transparency and Campaign Finance Commission, to the specific facts, transaction, or activity set forth for Advisory Opinion 2021-01.

Advisory Opinion 2021-01 is hereby adopted by the Commission in conformity with O.C.G.A. § 21-5-6(13) on September 30, 2021

Chairman

AO 2021-01 prepared by:



Joseph M. Cusack

Senior Staff Attorney