



COMMONWEALTH OF VIRGINIA

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The Honorable Robert Hurt
Member, Senate of Virginia
P.O. Box 2
Chatham, Virginia 24531

Dear Senator Hurt:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether § 24.2-954 prohibits a member of the General Assembly from soliciting or accepting campaign contributions for his federal campaign committee during a regular session of the General Assembly.¹ You further inquire whether federal law would preempt § 24.2-954 when a member of the General Assembly is raising the funds as part of a campaign for federal office.

Response

It is my opinion that § 24.2-954 precludes members of the General Assembly from engaging in fundraising activity in connection with a campaign for *state office* during a regular session of the General Assembly. However, it is my further opinion that such prohibition does not restrict fundraising activity related to a campaign for *federal office*. Finally, it is my opinion that federal law preempts Virginia's fundraising prohibition when a General Assembly member solicits or accepts contributions solely for a federal office.

Applicable Law and Discussion

As you note, there are overlapping state and federal laws on the questions you present. Turning first to state law, under a well-established principle of statutory construction, § 24.2-954 must be read together with the Campaign Finance Act of 2006² ("2006 Act"), rather than in isolation.³

¹For purposes of this opinion, the phrase "regular session of the General Assembly" means "on and after the first day of a regular session of the General Assembly through adjournment sine die of that session." VA. CODE ANN. § 24.2-954(A) (2006).

²See VA. CODE ANN. tit. 24.2, ch. 9.3, §§ 24.2-945 to 24.2-953.5 (2006 & Supp. 2009).

Section 24.2-954(A) provides that:

No member of the General Assembly or statewide official and no campaign committee of a member of the General Assembly or statewide official shall solicit or accept a contribution for the campaign committee of any member of the General Assembly or statewide official, or for any political committee, from any person or political committee on and after the first day of a regular session of the General Assembly through adjournment sine die of that session.

Section 24.2-945.1(A) of the 2006 Act defines a “campaign committee” as “the committee designated by *a candidate* to receive all contributions and make all expenditures for him or on his behalf in connection with his nomination or election.” (Emphasis added.) A “candidate” is “a person who seeks or campaigns for an office *of the Commonwealth or one of its governmental units.*”⁴ Additionally, § 24.2-954(B) provides that:

No person or political committee shall make or promise to make a contribution to a member of the General Assembly or statewide official or his campaign committee on and after the first day of a regular session of the General Assembly through adjournment sine die of that session.

For purposes of § 24.2-954, the term “solicit” means to “request a contribution, orally or in writing, but shall not include a request for support of a candidate or his position on an issue.”⁵

I conclude that in enacting § 24.2-954(A), the intent of the General Assembly was to prohibit fundraising during a regular session of the General Assembly by persons running for state office. The General Assembly did not prohibit all fundraising. Instead, it targeted specific fundraising activities directed at a campaign committee. A “campaign committee” is “the committee designated by *a candidate*,” which is a person who seeks or campaigns for a state office,⁶ “to receive all contributions and make all expenditures for him or on his behalf in connection with his nomination or election.”⁷ Therefore, if the fundraising does not occur “for an office of the Commonwealth,” the prohibition in § 24.2-954(A) would not apply. This conclusion is supported by other statutes regulating elections, which demonstrate a consistent intent by the General Assembly for these laws to apply to candidates for state and local offices, not candidates for federal office.⁸ Thus, § 24.2-954 does not apply to fundraising

³ See *Alston v. Commonwealth*, 274 Va. 759, 769, 652 S.E.2d 456, 462 (2007) (noting cardinal rule of statutory construction that statutes dealing with specific subject must be construed together to arrive at object sought to be accomplished).

⁴ Section 24.2-101 (Supp. 2009) (emphasis added); see also § 24.2-945.1(A) (Supp. 2009) (referring to § 24.2-101 for definition of “candidate”).

⁵ Section 24.2-954(D) (2006).

⁶ See *supra* note 4 and accompanying text.

⁷ Section 24.2-945.1(A).

⁸ See § 24.2-945(A) (Supp. 2009) (exempting candidates for United States Congress from 2006 Act); § 24.2-947.1(A) (Supp. 2009) (requiring that statements of organization be filed only for individuals “seeking or campaigning for an office of the Commonwealth or one of its governmental units”); see also § 24.2-502 (2006) (requiring that statements of economic interests be filed by candidates for state or local office).

activities by a General Assembly member in connection with a campaign for federal office. In the facts you present, a person who is campaigning for the United States House of Representatives is not seeking an office “of the Commonwealth or one of its governmental units.” For the same reason, I must conclude that § 24.2-954(B) does not prohibit a contribution to the campaign committee of a candidate for federal office.

The analysis, however, does not end with § 24.2-954 because federal law regulates campaigns for federal office. The Federal Election Campaign Act of 1971⁹ (“FECA”) provides that “the provisions of this Act, and of rules prescribed under this Act, supersede and preempt any provision of State law with respect to election to Federal office.”¹⁰ The Federal Election Commission (“FEC”) has promulgated regulations that address fundraising, specifically providing that “[f]ederal law supersedes State law concerning the ... [l]imitation on contributions and expenditures regarding Federal candidates and political committees.”¹¹ I find no restriction under federal law that would prevent a member of the General Assembly from soliciting or accepting contributions during a regular session of the General Assembly.

The FEC has not construed § 24.2-954. However, the FEC has issued an advisory opinion concluding that FECA preempted a Georgia statute, similar to Virginia’s, that prohibited fundraising by a member of the Georgia General Assembly when it was in session.¹² The United States Court of Appeals for the Eleventh Circuit reached the same conclusion with respect to this Georgia statute.¹³ Further, the FEC consistently has concluded in other contexts that federal law preempts state law restrictions on fundraising by candidates for federal office.¹⁴

Under the Supremacy Clause¹⁵ of the Constitution of the United States, when a state law conflicts with a federal law that the federal government had proper constitutional authority to promulgate, state law

⁹See Pub. L. No. 92-225, 86 Stat. 3 (codified in scattered sections, as amended, at 2 U.S.C. §§ 431 to 457).

¹⁰2 U.S.C.S. § 453(a) (LexisNexis Supp. 2009).

¹¹11 C.F.R. § 108.7(b)(3) (2009).

¹²See Adv. Op. Fed. Election Comm’n 1995-48 (1996), available at http://saos.nictusa.com/saos/searchao?SUBMIT=continue&PAGE_NO=-1 (search for 1995-48). Drawing from the text and the legislative history of the statute, the FEC concluded that the FECA “occup[ies] the field with respect to elections to Federal office and that the Federal law will be the sole authority under which such elections will be regulated.” *Id.* (quoting H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 10 (1974)). Therefore, notwithstanding state law to the contrary, a member of the Georgia General Assembly who was also a candidate for the United States Senate could accept contributions during the period the Georgia legislature is in session. *Id.*

¹³See *Teper v. Miller*, 82 F.3d 989 (11th Cir. 1996) (upholding preliminary injunction enjoining application of Georgia statute as preempted by FECA).

¹⁴See Adv. Op. Fed. Election Comm’n: 1994-2 (1994), available at <http://saos.nictusa.com/saos/searchao?SUBMIT=ao&AO=966> (search for 1994-02) (concluding that FECA preempts Minnesota statute barring lobbyists from contributing to candidate during regular session of state legislature); 1993-25 (1994), available at <http://saos.nictusa.com/saos/searchao?SUBMIT=ao&AO=966> (search for 1993-25) (advising that FECA preempts Wisconsin statute restricting time period during which lobbyists can contribute to candidates); 1992-43 (1993), available at <http://saos.nictusa.com/saos/searchao?SUBMIT=ao&AO=966> (search for 1992-43) (concluding that FECA preempts Washington statute barring state officials from accepting campaign contributions during legislative sessions).

¹⁵U.S. Const. art. VI, cl. 2.

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must give way.¹⁶ In light of the clear language of FECA, its regulations, its consistent interpretation by the FEC, and persuasive precedent from the Eleventh Circuit, it is my opinion that FECA would preempt § 24.2-954 insofar as it restricts a member of the General Assembly, during a session of the General Assembly, from soliciting or accepting funds for a campaign related to a federal office.

Conclusion

Accordingly, it is my opinion that § 24.2-954 precludes members of the General Assembly from engaging in fundraising activity in connection with a campaign for *state office* during a regular session of the General Assembly. However, it is my further opinion that such prohibition does not restrict fundraising activity related to a campaign for *federal office*. Finally, it is my opinion that federal law preempts Virginia's fundraising prohibition when a General Assembly member solicits or accepts contributions solely for a federal office.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli", with a horizontal line underneath the name.

Kenneth T. Cuccinelli
Attorney General

1:485; 1:941/10-005

¹⁶ See, e.g., *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 663 (1993).