



COMMONWEALTH of VIRGINIA

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The Honorable Jeffrey L. McWaters
Member, Senate of Virginia
1207 Laskin Road
Virginia Beach, Virginia 23451

Dear Senator McWaters:

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

Issue Presented

You ask whether, during the General Assembly legislative session, a member of the General Assembly may continue to raise funds for a candidate for federal office.

Response

It is my opinion that a member of the General Assembly is not precluded from raising funds for a candidate for federal office while the General Assembly is in session.

Applicable Law and Discussion

As you note, a previous opinion of this Office addressed the question of whether a member of the General Assembly could solicit funds for *his own* campaign for federal office.¹ You ask whether a member may solicit funds for *another* candidate for federal office.

The prior opinion concluded that the restrictions imposed by § 24.2-954 of the *Code of Virginia* are expressly limited to campaigns for state offices.² Neither the opinion nor the statute makes reference to nor distinguishes whether the member's solicitation is on behalf of his own campaign or that of another candidate for federal office. Rather, applying the plain language of the statute,³ this Office concluded "in

¹ 2010 Op. Va. Att'y Gen. 131.

² *Id.* at 132-33.

³ Section 24.2-954 provides, in relevant part, that:

A. 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

enacting § 24.2-954[], 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 . . .” related to persons seeking or campaigning “for an office of the Commonwealth or one of its governmental units.”⁴ Clearly, a candidate for President of the United States, or for any federal office, whether a member of the General Assembly or not, is not seeking “an office of the Commonwealth or one of its governmental units.” Thus, the logic of the previous opinion applies to the situation you present as well. Given that, since issuance of the prior opinion, § 24.2-954 has not been amended to include candidates or campaigns for federal office, I again conclude that the statute does not prohibit fundraising for *any* candidate for federal office while the General Assembly is in session.

As the previous opinion also noted, however, the analysis does not end with § 24.2-954 because federal law regulates campaigns for federal office. The Federal Election Campaign Act of 1971⁵ (“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.”⁶ 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.”⁷ I continue to 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.

Conclusion

Accordingly, it is my opinion that a member of the General Assembly is not precluded from raising funds for a candidate for federal office while the General Assembly is in session.

With kindest regards, I am

Very truly yours,



Kenneth T. Cuccinelli
Attorney General

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.

B. 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.

Section 24.1-945.1 expressly excludes “a federal political action committee” from the definition of “political committee.”

⁴ 2010 Op. Va. Att’y Gen. at 132.

⁵ See Pub. L. No. 92-225, 86 Stat. 3 (codified in scattered sections, as amended, at 2 U.S.C. §§ 431 to 457).

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

⁷ 11 C.F.R. § 108.7(b)(3) (2009).