

2009-10-20-RoseC-to-BastonR-R-1799-10712

From: Ros Baston
Sent: 20 October 2009 14:20
To: Nadia Huq
Subject: FW: Candidate expenditure guidance / outstanding questions

Follow Up Flag: Follow up
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-----Original Message-----

From: chrisrose [mailto:chrisrose]
Sent: 20 October 2009 14:10
To: Ros Baston
Subject: Candidate expenditure guidance / outstanding questions

Dear Ros,

Thanks for your letter about the initial guidance on candidate's election expenditure for the General Election. I had already downloaded and read a copy, and am pleased to see that you are soliciting feedback.

On 9th October I sent a set of related questions to your pef@ address, and could do with answers by 22nd October as I have a meeting on the 23rd with organisers in those of our constituencies who are most affected by the issues raised. You may feel, in the light of your answers, that some of these matters need to be clarified in the guidance.

I now have questions and concerns on two other points that relate to candidate's expenditure.

1). A lot of our local groups raise the cost of the £500 'deposit' by selling bonds, usually in denominations of £5-£50, on the promise that the money will be returned if the deposit is saved. I have had discussions with the Commission about this in the distant past.

Given that deposits are not a candidate's election expense, the issue of who buys them and any associated costs used to be ignored.

The question now is, is the production/administrative cost a 'campaign expense', and is the purchaser making a loan to the party and therefore subject to permissibility criteria at the £200+ level? If the bonds are issued in the name of a specified constituency, and the whole thing is handled by the 'prospective' candidate, does such a scheme stay 'off the books' entirely?

2). As far as I can see the legislation extending the regulated period for General Election candidate's expenses creates a complete mess by failing to properly integrate the issue of when someone is legally recognised as a candidate or agent. This has, understandably, been carried through to the initial guidance document.

My question is this: Are we to take it that between 1/10/2009 and the legal appointment of an Agent (when as far as the law is concerned there is no agent), that all expenditure that is candidate's expenditure must be incurred and paid by the candidate? If so that is an unhelpful extra burden, especially for candidates with higher-spending campaigns that are already well underway.

Or is the best plan to treat everything as a notional expense and donation and have the party organisation buy it? The outcome, in terms of reduction in burden of proof would be the same since you say that:

6.9 The agent must keep invoices or receipts for all payments over £20. You do not need these for items bought before the agent was appointed, or for notional expenditure (see paragraphs 6.13-18 for more information on notional expenditure).

To be honest, I wonder if there's any longer any point in requiring any proof of expenditure any more!

All this in turn leads to:

6.10 You will need to keep sufficient records to complete the election expenses return. Both the candidate and the agent must sign a declaration that the return is complete and correct to the best of their knowledge and belief. It is an offence to make a false declaration knowingly.

which makes the agent potentially legally liable for expenses incurred months before they were legally appointed, and for which no supporting paperwork is required.

In the light of that it may be helpful to suggest that candidates do keep invoices / receipts in case of legal problems, and for the peace of mind / scrutiny of persons considering being their agent, but point out that they are not obliged to submit them with the Return.

The donations section in your guidance talks solely about donations being dealt with by the agent, when the law already provides for them to go through candidates before an agent is appointed. I think it would be helpful if this were made clear in the guidance.

My previous set of questions now follows.

Yours sincerely, Chris Rose. National Election Agent, Green Party of England and Wales.

FROM: Chris Rose. National Election Agent, Green Party of England and Wales.

Dear Sir/Madam,

I'm writing to get a written clarification/opinion/advice on a number of election expenditure issues.

STAFF - ALLOCATION OF WAGE COSTS TO CONSTITUENCIES

The Commission has made it clear in 'Candidates' expenses, Initial guidance for a 2010 UK Parliamentary general election' that staff costs must be treated as election expenses (sect 4.4.) and that:

4.18 You must count all paid staff time spent on the campaign during the regulated period, including any fees for acting as agent. This includes the value of any staff seconded to you who are still paid by their employer. You do not need to include time spent by volunteers.

In 'Campaign expenditure: Guidance for party treasurers and campaigns officers January 2009' the Commission states that the following do not count as 'campaign expenditure':

'any remuneration or allowances paid to staff employed by the party. This includes permanent, fixed term and temporary staff, provided that they are employed by the party. In our view, it does not include agency workers or staff seconded to the party, as they do not have an employment contract with the party. If you use seconded staff, you may need to report the value as notional expenditure on your campaign expenditure return. See Chapter 5 for more information. You may also need to report a donation on your next quarterly return.'

** QUESTION: Can you confirm that if a member of staff employed and paid by a (national) party organisation spends some time working on the national campaign, and some time working on the election campaign for one or more specific constituencies, then that fraction of the cost applicable to the national campaign does not have to be declared anywhere, whilst that fraction applicable to each constituency for the (newly extended) regulated period has to be declared as an election expense for the relevant candidate(s)?

This is the approach we are taking at present. Section 6.26-6.30 touches on the subject, but does not explicitly cover the scenario I have mentioned. Assuming I'm right then I would like to be confident that all parties are doing likewise, and are not going to gain a competitive advantage by thinking that by employing staff nationally or regionally they can remove such costs from the candidates' expenses tabs.

Your advice that:

4.18 You must count all paid staff time spent on the campaign during the regulated period, including any fees for acting as agent. This includes the value of any staff seconded to you who are still paid by their employer. You do not need to include time spent by volunteers.

7.12 Parties and candidates may use shared facilities during the course of an election campaign. If so, both the party and the candidate will need to ensure that they include in their expenditure returns an accurate proportion of the relevant expenditure incurred.

confirm my view. As far as 4.18 is concerned, election law still treats a candidate's campaign as separate from the party, so national/regional staff are to my mind seconded workers paid by an employer. 7.18 establishes the principle of sharing such costs where appropriate.

STAFF - WHICH COSTS TO BE DECLARED?

In the 'Campaign expenditure' document the Commission advises that:

Staff costs

5.10 You should value seconded staff who are still paid by their contractual employer as follows:

- where the employee provides services which the employer is in business to provide (such as IT services or consultancy), the value is the commercial charge the employer would make for the employee's services under normal circumstances • otherwise, the value is the salary and allowances paid to the employee during the period in which he or she works for the party (not including the value of any contributions for which the employer is liable)

** QUESTION: If staff are under contract to, and paid by a national/regional party, and are under instruction to work for particular constituencies, how does the Commission believe that relationship should be reflected in the Return of Expenses, assuming that the cost should appear there? Should the whole cost be declared. or should they be treated as seconded. If seconded, then does the formula set out in the 'Campaign expenses' guide apply to candidates' expenses so that the value of any contributions for which the employer is liable can be discounted? Can you be specific about the employer contributions that can be discounted if treated as seconded? National insurance payments?

ELECTION AGENT CONTROL OVER EXPENSES - BACS PAYMENTS

I've been asked about management of BACS payments, specifically in relation to payment of staff wages that may be attributable to candidate's expenses. These payments are ongoing payments, made by Standing Orders.

As I understand it these payments only require the authority of a single person, though more than one person can have the power (password etc.) to authorise payments.

** QUESTION: would the Commission advise that arrangements should be made for the relevant Agent to control BACS staff payments that are election expenses in the relevant period? Given that staff may have their time divided between different constituencies, or be shared between different parts of the party organisation, then is it better to keep the systems as they are and treat the relevant proportion(s) of the wages as donations/notional expenses?

TEMPORARY OFFICE

I have been asked by a local Green Party if they are on safe ground if they take on a rented office for the election period that will also deal with basic party administration, but that they will only be able to retain it if they win the seat.

My view is that as long as they can demonstrate that basic admin was being done there then only a portion of the cost is candidate's expenses and the fact it may only be open during the election period does not mean they would be held liable for declaring the whole amount as candidate's expenses.

** QUESTION - Do you agree with my opinion on this?

VOLUNTEER TRAVEL COSTS

I am concerned about the following:

4.11 Most transport in the regulated period will be by people's personal cars. This is exempt from election expenses if it is given free of charge.

In our view, the exemption includes fuel costs.

4.12 You must include in your election expenses public transport costs, and any means of transport that was not acquired mainly for personal use by its owner. This includes hire cars.

Apart from the unfortunate fact that this encourages car use over public transport, it does not appear to be consistent with the traditional distinction made between capital costs incurred in buying equipment for personal use and additional running costs that are only incurred because of an election campaign.

** QUESTION: Will the Commission look at this 'ruling' again and change it, because it appears to be inconsistent, and then to discriminate against parties whose volunteers may prefer to use public transport.

In my opinion, the cost of petrol used in the course of travel to and from and within constituencies for the purposes of promoting a candidate's election prospects should be counted as an election expense.

** Am I right in thinking that a further effect of this ruling would be to curtail the democratic freedoms of, say, 16 year olds, or require their travel costs to be re-imbursed? As I understand it, if a 16 year old (therefore not on the register) who lives in London wants to help in Brighton (random example ...) then they are restricted to two day trips (at £17 return each) because a third would amount to £51 in notional expenses/total donation and would require them to be a permissible donor - which they are not - unless they were repaid by the party?

'ADVERTISING' ON COMPANY BLOG

** QUESTION: I realise that policy on 'new media' is still evolving, but can you give me an opinion on how an endorsement that might be given on a commercial company's blog should be treated from an expenses point of view? They are not an advertising company. Does it make a difference whether the endorsement is presented in 'advert style' or is simply presented as 'comment' in a longer piece of text?

Thanks for your attention.

Yours sincerely, Chris Rose. National Election Agent, Green Party of England and Wales.