



**INTERPRETATION
BULLETIN No.**

ESKIB-2019/01

EFFECTIVE DATE: NOVEMBER 1, 2019

SUBJECT

PARTY VS. CANDIDATE EXPENSES

REFERENCE

SECTION 220(F), 243(1), 252(1), 278(1) AND 278(2) OF *THE ELECTION ACT, 1996*

Disclaimer

This interpretation bulletin sets out Election Saskatchewan’s current interpretation of provisions of *The Election Act, 1996* (the “Act”) and are issued to provide assistance and guidance in understanding and complying with the Act. The views expressed in interpretation bulletins are not law and are not intended to replace the official text of the Act. How the Act applies to any particular case will depend on the individual circumstances of that case. Elections Saskatchewan reserves the right to reconsider any interpretations expressed in interpretation bulletins, either generally or in light of the actual circumstances of any case, and in accordance with continuing legislative and judicial developments.

Introduction

This bulletin discusses what, during an election or a by-election, is an election expense of a registered political party and what should be considered an election expense of a candidate.

In the application of applicable provisions of the Act, Elections Saskatchewan takes the view that it may be necessary in some circumstances to allocate an election expense to a candidate that was incurred by a political party, and in other circumstances (arising much less frequently) to allocate an election expense to a political party that was incurred by a candidate.

Election Expenses - Definition

The Act contains a definition of “election expenses” that refers to costs incurred for the purpose of promoting or opposing a political party as well as costs incurred for the purpose of promoting or opposing the election of a candidate. This definition is found in section 220(f) of the Act:

220(f) “election expenses” means the cost of goods and services used during an election for the purpose of promoting or opposing, directly or indirectly, a registered political party or the election of a candidate, regardless of whether those costs are incurred before, during or after the election, and includes the following:

- (i) the cost of acquiring the right to use time on the facilities of any broadcasting undertaking or of acquiring the right to publish an advertisement in any newspaper;
- (ii) the cost of acquiring the services of any person, including remuneration and expenses paid to him or her or on his or her behalf, as a chief official agent or business manager or otherwise;
- (iii) the cost of acquiring meeting space and acquiring, distributing and mailing objects, material or devices of a promotional nature;
- (iv) the cost of the salary, candidate campaign expenses or other remuneration paid or agreed to be paid to a candidate, on account of his or her being a candidate, by his or her business manager or by a registered political party;
- (v) the cost incurred for literature, posters, signs or audio or visual materials, including films, recordings, records or video tapes or other materials or devices of an advertising nature used during an election;
- (vi) in the case of the leader of a registered political party, the reasonable costs incurred during the election for the purposes of campaigning for the registered political party;
- (vii) interest accrued during the election on loans or lines of credit taken to acquire goods and services used during the election;
- (viii) the cost related to the conduct of election surveys or other surveys or research conducted during an election;

but does not include any exempt election expense

Limits on election and advertising expenses

Section 243 and 252 of the Act place dollar limits on election spending by both parties and candidates. A political party is prohibited from incurring election expenses that exceed a certain amount. Similarly, candidates are prohibited from incurring election expenses that exceed a certain amount.

243(1) No registered political party and no chief official agent and no other person acting within the scope of that person's authority on behalf of a registered political party shall incur election expenses that exceed in the aggregate:

- (a) in the case of a general election, the adjusted amount of \$673,783;
- (b) in the case of an election other than a general election:
 - (i) in a constituency lying north of the dividing line described in the schedule to *The Constituency Boundaries Act, 1993*, the adjusted amount of \$39,082 with respect to a candidate endorsed by the registered political party at the election;
 - (ii) in a constituency lying south of the dividing line described in the schedule to *The Constituency Boundaries Act, 1993*, the greater of the following amounts with respect to a candidate endorsed by the registered political party at the election:
 - (A) the adjusted amount of \$32,567;
 - (B) the amount obtained when the adjusted amount of \$2.60 is multiplied by the number of names on the voters' list for the candidate's constituency.

252(1) No candidate and no business manager or other person acting on behalf of a candidate within the scope of that person's authority shall incur election expenses that exceed in the aggregate:

- (a) in a constituency lying north of the dividing line described in the schedule to *The Constituency Boundaries Act, 1993*, the greater of the following amounts:
 - (i) the adjusted amount of \$52,108;
 - (ii) the amount obtained when the adjusted amount of \$5.21 is multiplied by the number of names on the voters' list for the candidate's constituency;
- (b) in a constituency lying south of the dividing line described in the schedule to *The Constituency Boundaries Act, 1993*, the greater of the following amounts:
 - (i) the adjusted amount of \$39,082;
 - (ii) the amount obtained when the adjusted amount of \$2.60 is multiplied by the number of names on the voters' list for the candidate's constituency.

Authorization to Incur Election Expenses

Section 278 of the Act places limits on who can incur election expenses by prohibiting expenses from being incurred by anyone other than:

- a candidate;
- the business manager of a candidate;
- anyone acting on behalf of the candidate with the candidate's knowledge and consent;
- the chief official agent of a registered political party; or
- anyone acting on behalf of the registered political party with the knowledge and consent of the leader of the registered political party.

Sub-section 278(2) prohibit a registered political party from incurring election expenses that are incurred primarily for the purpose of promoting the election of a candidate (and that are not incurred primarily for the purpose of promoting or opposing a registered political party). Sub-section 278(3) provides an exception to this prohibition if the expenses are incurred on behalf of a candidate with the candidate's knowledge and consent.

278 (2) No chief official agent of a registered political party and no other person acting on behalf of a registered political party with the actual knowledge and consent of an officer of the registered party shall incur election expenses during an election that:

- (a) are incurred primarily for the purpose of promoting the election of a particular candidate or particular person likely to become a candidate; and
- (b) are not incurred primarily for the purpose of promoting or opposing a particular registered party.

(3) Subsection (2) does not apply to expenses that are incurred on behalf of a particular candidate and with the particular candidate's actual knowledge and consent.

Chief Electoral Officer's Interpretation

Section 220 of the Act contains a definition of "election expenses" that combines (as two components of one statutory term) costs incurred for the purpose of promoting or opposing a political party and costs incurred for the purpose of promoting or opposing the election of a candidate.

The term "election expenses" is then used in various provisions of the Act that place controls on election spending. Among other provisions, section 243(1) of the Act, prohibits a registered political party from incurring election expenses that exceed a certain amount and under section 252(1) of the Act, a candidate is prohibited from incurring election expenses that exceed a certain amount.

Under the terms of section 278 of the Act, no person other than a registered political party or a candidate, or their respective agents as described therein, is permitted to incur election expenses during an election (subject to an exception contained in section 278(5) that allows non-partisan political organizations to incur expenses to gain support for views on public policy or to advance the aims of the organization).

Of particular note for purposes of this bulletin, section 278(2) prohibits a registered political party from incurring election expenses that are incurred primarily for the purpose of promoting the election of a particular candidate, but section 278(3) states that this prohibition is inapplicable to expenses that are incurred on behalf of a particular candidate and with the particular candidate's actual knowledge and consent.

In the application of these provisions, Elections Saskatchewan takes the view that it may be necessary, and appropriate, in some circumstances to allocate an election expense that was incurred by a political party to a candidate, and in other circumstances (arising much less frequently) to allocate an election expense that was incurred by a candidate to a political party.

The following policy decisions are a direct result of this interpretation:

1. If a political party incurs an election expense for the primary purpose of promoting or opposing the election of a particular candidate, that election expense should be allocated to the party's candidate, despite it being incurred by the political party. Elections Saskatchewan considers any reference to a candidate in an advertisement to qualify as promoting or opposing the election of that candidate.
2. If a candidate incurs an election expense for the primary purpose of promoting or opposing a political party, that election expense should be allocated to the candidate's political party, despite it being incurred by the candidate. Elections Saskatchewan considers any advertisement that **does not** refer to a candidate to have the primary purpose of promoting or opposing a political party.
3. If an election expense is incurred both to promote or oppose a political party and to promote or oppose a particular candidate and neither purpose is incidental, it may be necessary upon review of the specific circumstances to split the cost between the political party and the party's candidate on some reasonable basis.

Political parties and candidates should refer to Interpretation Bulletin ESKIB-2019/02 Advertisements under Section 215 of *The Election Act, 1996* to ensure advertisements are properly authorized.

The above interpretation is considered by Elections Saskatchewan to reflect a balanced and practical approach. It maintains a level playing field for candidates by preventing one candidate, to the detriment of opposing candidates, from obtaining the benefit of financial support to an extent that exceeds the intended spending limit for a candidate. It negates the possible monetary incentive of having a candidate (eligible for 60% reimbursement under subsection 265(6) of the Act) incur expenses for the benefit of a political party (eligible for 50% reimbursement under subsection 264(6) of the Act). It is also in keeping with broad concepts behind election expense controls as generally reflected in legislative and judicial developments.

Consider the following examples:

Business Manager of Candidate A:

- a) pays the campaign manager for the candidate a salary during an election.
- b) pays interest accrued during an election on a loan taken to help acquire goods and services used by the candidate during the election.
- c) purchases lawn signs that have the candidate's name on the front and identify the candidate's political party.
- d) pays for leaflets that features the party's election platform and contains the candidate's name and constituency on the ad.

In example **a)**, the salary is paid to acquire the services of a person to directly or indirectly promote the election of the candidate during an election and would be considered a candidate's election expense.

In example **b)**, the interest is paid on the loan used during an election for the purpose of directly or indirectly promoting the election of the candidate and would be considered a candidate's election expense.

In example **c)**, the signs are primarily for the purpose of promoting the election of the candidate and would be considered a candidate's election expense.

In example **d)**, the leaflets are intended to promote the candidate by using the party's platform as the basis for the promotion. The inclusion of the candidate's name and constituency in the leaflet is sufficient grounds to allocate the expense to the candidate.

Chief Official Agent of Party B:

e) pays a salary to Candidate A during the election for running as a party candidate in the election.

f) pays the leader of the party for costs associated with campaigning for the party during an election.

g) pays for an ad that exclusively features the party leader promoting the party during an election.

h) pays for a television ad that primarily features the party leader and has incidental reference to the party's candidates. The party and candidate(s) have a signed joint agreement related to the ad in question.

In example **e)**, the salary is paid for by the party, but is used to promote the election of the candidate. This expense would be considered a donation in kind from the party to the candidate. The candidate would report the commercial value of the salary as both a contribution from the party, and an expense (with amount paid equal to zero) on their election expense return. Despite having paid for the salary, the party would not record anything in their election expense return related to this transaction.

In example **f)**, the cost is paid to promote the party during an election and would be considered an election expense of the party.

In example **g)**, the cost is incurred to promote the party during an election and would be considered an election expense of the party.

In example **h)**, the cost has been paid to promote both the party and the candidate(s) during an election and a joint agreement is in place. This expense would be considered to be partially an election expense of the party and partially an election expense of each of the candidate(s). The actual value of the split would be determined by the joint agreement. Any expense allocated to the party would be considered an election expense of the party. If no reimbursement is made by the candidate, any expense allocated to the candidate would be considered a gift in kind commercial value donation, making it both a contribution from the party to the candidate and an election expense of the candidate.

Generally speaking, advertisement costs will be considered to be entirely either a party expense or a candidate expense. In the circumstance described in example **h)**, where there is a joint agreement in place and the advertisement promotes or opposes both a party and candidate(s), the election expense will be allocated between the party and candidates in accordance with the terms set out in the joint agreement.

In certain circumstances, Elections Saskatchewan recognizes that it may be impractical to make specific mention of candidates in broadcast advertisements governed by a joint agreement. In such cases, the authorization of the business manager for the candidate(s) will be considered sufficient to qualify the advertisement as promoting the candidate(s).



MICHAEL D. BODA, D.PHIL., PH.D.
CHIEF ELECTORAL OFFICER
PROVINCE OF SASKATCHEWAN

November 1, 2019