



Ohio Elections Commission

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October 12, 2000

OHIO ELECTIONS COMMISSION

Advisory Opinion 2000ELC-04

SYLLABUS: Allowable maintenance and repair expenses pursuant to R.C. §3517.101(D)(2) are expenses which maintain the essential elements of the asset and include preventative maintenance, periodic repairs, and replacement of structural components. Such expenses are more than routine janitorial and utility costs or expenses for operating costs of the facility.

TO: Ohio Republican Party
Kurtis A. Tunnell, Esq.

You have requested an advisory opinion on the following issue:

What constitutes permissible maintenance and repair of a facility purchased, constructed, or renovated using monies from a building fund account pursuant to Ohio Revised Code §3517.101?

Ohio Revised Code §3517.101(D)(2) provides as follows:

Any moneys remaining in an account under division (D)(1) of this section after the construction, renovation, or purchase of an office facility shall be used only for the maintenance and repair of the facility or for the construction, renovation, or purchase of another office facility as described in division (B) of this section and shall not be used for operating costs of the facility or for any other purpose. (Emphasis added)

This entire section of law relates to the establishment and use of the account created therein for the purposes of either constructing, renovating, or purchasing a political party office facility. The apparent intent of the General Assembly in enacting this section was to enable a political party to solicit a broader base of contributions to establish a permanent office location for its activities. This section allows contributions from corporate entities for this particular purpose which are

otherwise prohibited to party candidates. This division, however, goes on to place certain restrictions on the use of these monies.

The limitations on the use of these funds commences at the time the contribution is received by the party and continues even after a subsequent sale of the property. The statute directs that once a gift is made to this fund, it cannot be used for any partisan purpose. Further, as stated in this section, the monies which are contributed to this fund can only be used for “any office facility that is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office.”

Aside from the specific prohibition that the funds “shall not be used for operating costs of the facility or for any other purpose,” the statute does make one exception which allows for the funds to be used “for the maintenance and repair of the facility.” Neither this phrase nor the words “maintenance” or “repair” are otherwise defined in this division, or in any other section of title XXXV of the Revised Code. In order to satisfactorily define this phrase, it is necessary to look elsewhere for guidance.

There are few instances in Ohio statutes or rules in which the words maintenance and repair appear in a similar context. One such instance occurs in Ohio Administrative Code §3301-92-02. This section contains definitions for the allowable uses for school district tax levies for permanent improvements authorized by R.C. §5705.21, and specifically the Capital and Maintenance Fund established in R.C. §3315.18. These sections establish the parameters with which school districts must comply after a tax levy has been passed for permanent improvements in a school district.

O.A.C. §3301-92-02(A)(5) defines the phrase “maintenance or repair” as

... the act of keeping a permanent improvement in normal working condition. “Maintenance or repair” includes preventative maintenance, periodic repairs and replacement of parts, structural components and other activities needed to maintain the asset but does not include routine janitorial and utility costs. (Emphasis added.)

This Commission believes that this definition is adaptable to the situation at issue in this advisory opinion request. Further, this Commission believes that the phrase “routine janitorial and utility costs,” emphasized above, is sufficiently akin to the phrase “for operating costs of the facility or for any other purpose,” which is stated in R.C. §3517.101.

The phrases “maintenance and repair” in R.C. §3517.101 and “maintenance or repair” in O.A.C. §3301-92-02, are intended to give guidance on the use of certain

otherwise restricted monies. In essence, the use of the funds will allow the political party to maintain the essential elements of the asset, the office facility. These expenses must be for more than simple operating costs such as janitorial expenses, utility costs, taxes, management or administrative costs, day-to-day energy costs, or other routine expenses.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that allowable maintenance and repair expenses pursuant to R.C. §3517.101(D)(2) are expenses which maintain the essential elements of the asset and include preventative maintenance, periodic repairs, and replacement of structural components. Such expenses are more than routine janitorial and utility costs or expenses for operating costs of the facility.

Sincerely,



Alphonse P. Cincione
Chairman