



Ohio Elections Commission

21 West Broad Street, Suite 600
Columbus, Ohio 43215
614•466•3205

October 12, 2000

OHIO ELECTIONS COMMISSION

Advisory Opinion 2000ELC-05

SYLLABUS: The use of campaign committee funds from a political campaign fund for a candidate for County Prosecutor may be used to pay for the settlement of litigation against the candidate, when the allegations of the underlying litigation meet the statutory requirements of Ohio Revised Code §3517.13(O)(2).

TO: Konrad Kircher, Esq.

You have requested an advisory opinion on the following issue:

Can a political campaign fund for a candidate for County Prosecutor be used to pay for the settlement of litigation against the candidate, when the allegations of the underlying litigation are based upon political actions taken by the candidate?

This Commission has been asked on numerous occasions to declare whether a particular expense from a candidate's campaign account is proper. The question posed in your advisory opinion request, however, has not been previously addressed. The closest related situation was in Ohio Elections Commission Advisory Opinion 98ELC-01 to the Cuyahoga County Republican Party.

That situation, however, did not involve a settlement of a pending dispute, but rather an actual judgment rendered against the county party. The request in Advisory Opinion 98ELC-01 was whether Ohio Political Party Fund monies under Ohio Revised Code §3517.17 could be used to pay the judgment. The Commission affirmed that such use was proper, primarily because the case was based on a dispute about staff compensation of the county party, which is a proper use for the Political Party funds.

The situation at issue, however, does not involve the Political Party fund. Rather, the issue before us are the allowable uses of campaign funds and the proper duties of a public office holder. The situation in this request involves a dispute between the current Butler County Auditor and the now deceased Butler County Prosecuting Attorney. The Auditor filed suit in United States District Court for

the Southern District of Ohio alleging defamation, invasion of privacy and tortious interference with an employment relationship for comments made by the Prosecutor regarding the Auditor. You are now seeking an opinion from this Commission as to the propriety of using funds in the deceased candidate's campaign committee to resolve this matter.

In reviewing matters involving the use of campaign funds, this Commission has consistently analyzed such situations by reviewing the statutory terms regarding the use of such funds. Ohio Revised Code §3517.13(O)(2) states in part that

No beneficiary of a campaign fund shall convert or accept for personal or business use ... anything of value from the beneficiary's campaign fund ... except as reimbursement for ... legitimate and verifiable, ordinary and necessary prior expenses incurred by the beneficiary in connection with duties as the holder of a public office.

In such analysis, the Commission has consistently relied on whether such an expense is legitimate, as first defined by this Commission in Advisory Opinion 87-4, issued on January 30, 1987. In that opinion, the Commission stated that an expense is legitimate if it is "conforming to recognized principles or accepted rules and standards."

In the situation that is the basis for this advisory opinion request, the allegations in the Auditor's complaint assert that the deceased Prosecutor made certain statements during a press conference regarding the Auditor which she asserts were malicious and done in retribution for the Auditor's involvement in a request for investigation into certain activities of the prosecutor. In the complaint, the Auditor states that the statements by the Prosecutor involved "... a purely private matter ... which had no bearing on the Plaintiff's public office." Further, the Auditor asserts that the "... Defendant made good on his threats to attack Republican office holders by sending a letter ... alleging unethical conduct by Plaintiff."

The actions of the former Prosecutor would appear to fit within the provisions of R.C. §357.13(O) either as an action conducted by a candidate in furtherance of the interests of his campaign committee, or in carrying out the proper duties of a public office holder. While this Commission has no specific statement from the deceased Prosecutor or any representative of the Prosecutor's campaign committee, considering that the former Prosecutor was responding to certain allegations leveled against him as both an office holder and a candidate, the actions taken by him as alleged in the complaint would be appropriate as a reasonable defense to those allegations and a legitimate campaign activity. It is not out of the ordinary for the activities of a public office holder to coincide with his campaign activities, as would appear to be the case in this instance. Further, R.C. §309.08 states the duties of the office of county prosecutor. Division (A) of that section

states that "(t)he prosecuting attorney may inquire into the commission of crimes within the county." If, in his opinion, the Prosecutor believed that the actions of the Auditor merited further investigation, the submission of the letter to the Executive Director of the Ethics Commission and the resulting press conference fit within those duties.

The statements made by the Prosecutor were made under the color of the office of the Prosecutor. Without commenting on the nature of the comments made, the circumstances at the time of these activities were related to the duties of the office of county prosecutor and can be recognized as such.

Based on all of this, it is apparent that the deceased Prosecutor was acting in a manner which conforms "to recognized principles or accepted rules and standards," and "... in connection with duties as the holder of a public office," as required by R.C. §3517.13(O)(2). Since the actions taken were appropriate within the terms of the statute, such an expenditure would be an appropriate use of campaign funds.

Be advised that this opinion is being issued based on the facts particular to this situation. The Commission believes that the events that lead to the request for this advisory opinion are such that they merit the conclusion in this opinion. Any other persons who believe that they are similarly situated should request an opinion relating to their specific factual situation.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the use of campaign committee funds from a political campaign fund for a candidate for County Prosecutor may be used to pay for the settlement of litigation against the candidate, when the allegations of the underlying litigation meet the statutory requirements of Ohio Revised Code §3517.13(O)(2).

Sincerely,



Alphonse P. Cincione
Chairman