

September 18, 2003

OHIO ELECTIONS COMMISSION

Advisory Opinion 2003ELC-01

SYLLABUS: A candidate may use campaign funds to pay for costs incurred (court costs, attorney fees, transcripts, etc.) in the prosecution of an election protest against a candidate, or candidates, that may be potential opponents of the candidate making the expenditure.

TO: Richard A. Spencer, Esq.

You have requested an advisory opinion on the following issue:

Can a campaign committee use campaign funds to pay for costs incurred (court costs, attorney fees, transcripts, etc.) in the prosecution of an election protest against candidates that are potential opponents of the candidate making the expenditure?

The Commission issued an advisory opinion in 1988 which responded to a somewhat similar question. Ohio Elections Commission Advisory Opinion 88-1 held that the use of campaign funds to pay for legal representation to determine a candidate's right to appear on the ballot was a proper use of campaign funds. The difference in the question posed in this instance is that the payment is not to defend a challenge to ballot access, but rather to prosecute such a challenge.

In Advisory Opinion 88-1, the Commission relied on certain language from a previous opinion. In citing to language included in Advisory Opinion 87-15, the Commission restated as a part of its basis, that "legal fees incurred in defending a certain campaign activity are truly related to campaign activity and are therefore legitimate."

In this instance the campaign committee is not defending any particular activity as it was in the prior circumstances, but the presence or absence of ballot opposition is germane to the candidate and his campaign committee. A proper challenge, based on a valid legal premise, may be as important to a candidacy as assuring that candidate's rightful place on the ballot, as was the situation surrounding the issuance of Advisory Opinion 88-1. Assuring that a challenger is properly placed on the ballot will have a direct effect on the nature of a campaign.

Ohio Revised Code §3517.13(O) establishes the parameters for determining the propriety of campaign expenditures. Four concepts comprise the statutory foundation for making such a determination. In reliance on the provisions of the Code, the Commission must determine whether any expenditure is legitimate and verifiable, ordinary and necessary. The Commission first defined these terms in Advisory Opinion 87-4 and, as with a continuing line of opinions, again relies on these definitions. The Commission declares that an expenditure to challenge a prospective ballot opponent is a legitimate and verifiable, ordinary and necessary expenditure as stated in R.C. §3517.13(O).

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a candidate may use campaign funds to pay for costs incurred (court costs, attorney fees, transcripts, etc.) in the prosecution of an election protest against a candidate, or candidates, that may be potential opponents of the candidate making the expenditure.

Sincerely,

Benjamin F. Marsh
Chairman