



## Ohio Elections Commission

21 West Broad Street, Suite 600  
Columbus, Ohio 43215  
614•466•3205  
www.state.oh.us/elc

Charles Calvert  
Chairman

John R. Mroczkowski  
Vice-Chairman

Danielle R. Blue

Bryan Felmet

Harvey H. Shapiro

Jayne P. Smoot  
Larry Wolpert  
Philip C. Richter  
Executive Director

**SYLLABUS:** The remaining funds in a candidate's campaign account may be used to pay for a portrait of the candidate at his retirement to be placed along with other portraits of prior holders of the office.

Fax: (614) 728-9408

**TO:** Hon. Judge Bill Spicer  
Summit County Court of Common Pleas  
Probate Division

January 21, 2010

### OHIO ELECTIONS COMMISSION

#### Advisory Opinion 2010ELC-01

You have requested an advisory opinion on the following issue:

Can a retiring candidate's campaign account be used to pay for a portrait of the candidate to be placed along with all of the other prior office holders' portraits by using a portion of the remaining funds in the candidate's campaign committee account at the conclusion of the candidate's term of office?

This Commission has issued previous opinions on the propriety of certain expenditures from the remaining funds contained in a candidate's campaign account as the candidate is about to retire from his or her position as the holder of a public office. The most recently issued opinion on this subject is 2004ELC-03 in which the Commission approved a request from a retiring judge who wished to utilize the funds remaining in her campaign account to host a retirement party for supporters of her previous political campaigns and other persons related to her judicial office.

That opinion made reference to certain previous opinions of the Commission in which the Commission defined the terms "legitimate and verifiable ordinary and necessary prior expenses" incurred as a holder of a public office [Advisory Opinion 87-4] found in Ohio Revised Code §3517.13(O)(2), and identified how the Commission established a "but-for" test [AO 87-13] that determines the proper relationship between a candidate\officeholder and a campaign expense. The Commission's "but-for" test for such expenditures states that "but for the fact that he/she is a candidate or officeholder, would he/she be making such an expenditure?"

In the situation that you describe in your request letter, there are included on the walls of the Probate Courtroom the portraits of the 21 previous Probate Judges

of Summit County. You desire to have your portrait included with your predecessors and, in lieu of using any other funding source whether public or private, you would like to use the remaining funds in your existing campaign committee account. These funds are available since you cannot seek office at the next election as you are barred by statute from serving another judicial term.

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Considering the public nature and location of this display, it would seemingly be appropriate for public money to be used to pay for a portrait such as this. With public funds being strained across the state, and in this particular situation with respect to Summit County, due to the overall economic climate in the state of Ohio, the use of a remaining balance in a campaign account for such an expenditure would appear to be reasonable. Pertinent to this situation, it is readily apparent that "but-for" the fact that you have been a judge of the Summit County Court of Common Pleas, Probate Division, you would not otherwise have need for such a portrait to be painted and placed on public display. Such an expenditure is consistent with the parameters that the Commission established when it adopted advisory opinions 87-4 and 87-13 in amplification of R.C. §3517.13(O)(2).

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the remaining funds in a candidate's campaign account may be used to pay for a portrait of the candidate at his retirement to be placed along with other portraits of prior holders of the office.

Sincerely,



Charles Calvert  
Chairman