



Ohio Elections Commission

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February 16, 2012

Ohio Elections Commission Advisory Opinion 2012ELC-03

SYLLABUS: It is permissible for an Ohio political action committee to use a portion of its funds to pay for the services of a registered lobbyist.

To: Donald J. McTigue, Esq.
Counsel

You have requested an advisory opinion on a question concerning Ohio campaign finance law. The question posed to the Commission is as follows:

May an Ohio political action committee use a portion of its funds to pay for the services of a registered lobbyist?

A Political Action Committee (PAC) is defined in R.C. §3517.01(B)(8) as ... a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy ...

While the Commission has issued eleven advisory opinions concerning PACs, only one speaks to the issue identified in this advisory opinion request, Commission Advisory Opinion 94-2. It is helpful in consideration of this question.

As defined in R.C. §3517.01(B)(1), a campaign committee is

an entity that is formed by a candidate or a combination of two or more persons authorized by a **candidate** under section §3517.081 of the Revised Code to receive contributions and make expenditures and that is legally liable for any debts, contracts, or expenditures incurred or executed in its name. [Emphasis Added]

In 94-2, the Commission identified a dichotomy in the law between campaign committees and PACs that created an ambiguity concerning a PAC's ability to receive contributions and subsequently expend any funds it receives. As the opinion generously states, the statutory scheme concerning PAC fund expenditures is 'vague'. To relieve this ambiguity, the Commission declared

that a PAC's ability to receive contributions and make expenditures was equivalent to a candidate campaign committee. In establishing these parameters, the Commission stated

The only way in which PACs can participate in the political process is if they have authority to collect and distribute money ... it is necessary to infer that the General Assembly intended to give [PACs] the same authority ... Accordingly, one must read into the definition of a PAC the same authority to "receive contributions and make expenditures" language which lies within the definition of a campaign committee.

Since the Commission equated PACs and campaign committees as it relates to contributions and expenditures, it then logically follows that all of the provisions concerning the expenditure of funds by a campaign committee must also be applied to PACs. The definition of a contribution, as contained in Ohio Revised Code §3517.01(B)(6), identifies an expenditure as "the disbursement or use of a contribution for the purpose of influencing the results of an election or of making a charitable donation under division (G) of section 3517.08 ..." In 94-2 the Commission relied on the provisions referred to in R. C. §3517.08 to prohibit the payment of the PAC's funds to a certain organization, as it was not one of the 501(c) organizations identified in that division. The Commission did not, however, refer to certain provisions in R.C. §3517.13, as they were not applicable to the question posed at that time, but its terms are significant in responding to this question.

Divisions (O), (P), (Q) and (R) of §3517.13 lay out certain parameters for the use of campaign committee funds that go beyond "the purpose of influencing the results of an election" stated in R.C. §3517.01(B)(6) and are intended to assure contributors that funds will be used properly. These provisions allow for the use of campaign funds to a candidate's campaign committee for a limited number of other circumstances. R.C. §3517.13(O) begins this sequence of provisions by directing that no "**beneficiary of a campaign fund ... or other person shall convert for personal use ... anything of value from the beneficiary's campaign fund ...**" [Emphasis added]

R.C. §3517.01(B)(11) contains the definition of a "Beneficiary of a campaign fund". The term as defined in this provision

means a candidate, a public official or employee for whose benefit a campaign fund exists, and any other person who has ever been a candidate or public official or employee and for whose benefit a campaign fund exists.

Clearly a candidate campaign committee is established solely for the benefit of the candidate, and that candidate has a personal interest in the committee and is precluded from using campaign funds for personal use.

The Commission has authored numerous opinions concerning these provisions explaining what is (or is not) an authorized expenditure from campaign funds and what may be considered “for personal use” of the beneficiary. None of the questions posed in those prior opinions were similar to this request.

In the situation present in this advisory opinion request, there can be no “beneficiary” as discussed in R.C. §3517.01(B)(11) or in R.C. §3517.13(O), (P), (Q), and (R). A PAC does not have an individual for whom it is responsible, as a PAC must be comprised of “two or more persons”. A PAC is more closely related to an issue, public policy or a philosophy and the PAC’s interest in this philosophy will often extend well beyond any single election or any particular activity that would “influence the result of any election”.

While the primary or major purpose of a PAC is required by statute, certainly the reason that a PAC exists is to affect an issue, public policy or a philosophy. This philosophical propensity, and the PAC’s ongoing existence beyond a single election, could easily stand as a basis for a PAC to engage a registered lobbyist to espouse its particular philosophy after an election to candidates, now office holders, that would be concerned about this particular issue, public policy or philosophy. Once the election is over a PAC can be reasonably expected to continue to espouse the PAC’s philosophy, whether by the two or more persons coming together as required by the statutory definition of a PAC, or by a registered lobbyist who is engaged by the “two or more persons” to speak on behalf of the PAC. There is a logical nexus between the ongoing existence of the PAC and the possibility of the PAC hiring a registered lobbyist to urge the PAC’s issue, public policy position or philosophy.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that it is permissible for an Ohio political action committee to use a portion of its funds to pay for the services of a registered lobbyist.

Sincerely,



Bryan H. Felmet
Chair