



Ohio Elections Commission

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Ohio Elections Commission Advisory Opinion 2014ELC-02

SYLLABUS: It is not permissible for an 'entity' as established in R.C. §3517.101(C) to refund a 'gift' as identified in R.C. §3517.101(A)(1).

To: John Schmarr, Treasurer
Delaware County Democratic Party

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

1. If gifts are received and deposited into the section 3517.101 "office facility" account, may the gifts be refunded to the donors if the funds are not used for the 'Office Project'?
2. If only a portion of the funds (deposited into the section 3517.101 "office facility" account) are expended for the 'Office Project', may the remainder be refunded proportionately to the donors?

The provisions of R.C. §3517.101 set the framework for certain 'entities' to create an account to accept 'gifts' which cannot be used "for the purpose of directly influencing the election of any individual candidate in any particular election for any office ...", but instead, these 'gifts' can be used for any of the four purposes as set out in R.C. §3517.101(A)(1)(a) through (d). Essentially, this provision allows for the establishment of a 'building fund' (or 'office facility' or 'Office Project', as phrased in the question) so that any one of the entities can have an 'office facility' and set up a physical location. While the provisions of R.C. §3517.101 are included in the campaign finance provisions of Ohio elections laws, R.C. §3517.101(B) concludes with the statement that a 'gift' under this section "shall not be considered a contribution or expenditure prohibited by any section of the Revised Code."

In adopting the revised provisions of R.C. §3517.101(A)(1) in House Bill 59 of the 130th General Assembly, the legislature established four purposes for which the 'gifts' received by the entities can be used. The four purposes are as follows:

R.C. §3517.101(A)(1)

- (a) The construction, renovation, purchase, or lease of an office facility and any real property taxes associated with the facility;
- (b) Furniture and fixtures to be installed in an office facility;
- (c) Equipment and supplies to be used in an office facility, including telecommunications and computer hardware and software;
- (d) The operating costs, maintenance, and repair of an office facility, other than personnel costs.

The limitations on the use of 'gifts' contained in this provision are very specific and are all centered on the 'Office Project'. Among those items listed are construction, renovation, purchase, lease, furniture and fixtures, equipment, operating costs and maintenance and repair. There is no mention of refunds.

In Ohio Elections Commission Advisory Opinion 99ELC-03, the Commission addressed the issue of refunds in the context of a candidate campaign committee which relied on the definition of an 'expenditure' in R.C. §3517.01(B)(6). In that opinion, the Commission stated that an expenditure did not include a refund of a contribution except in certain circumstances. The Commission went on to state that "(w)hen the statutes of the state of Ohio do discuss the concept of a refund, it is only done in the context of campaign contribution limits and statewide candidacies and not on a more comprehensive scale across a wider array of political campaigns in this state", and that "(s)ince the General Assembly limited the concept of refunds ... it would be inappropriate for this Commission to extend the concept of a 'refund of a contribution' further" than the statutes allow.

While the Commission acknowledges that the 'gifts' identified in R.C. §3517.101(A)(1) are not to be considered a 'contribution or expenditure' as those terms were considered by the Commission in Advisory Opinion 99ELC-03, the Commission must still abide by the principle which the Commission adopted when it indicated that "it would be inappropriate for this Commission to extend the concept of a 'refund of a contribution'. The Commission must recognize that the exclusion of the term 'refund' in any of the provisions of R.C. §3517.101 by the General Assembly, just as the term 'refund' is limited to certain provisions in R.C. §3517, must indicate that the General Assembly had no intent to allow for such action. While the Commission acknowledges the difficulty that such a holding places on the 'entity', any such extension of the concept of a refund must be made by the General Assembly.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that it is not permissible for an 'entity' as established in R.C. §3517.101(C) to refund a 'gift' as identified in R.C. §3517.101(A)(1).

Sincerely,

A handwritten signature in black ink, appearing to read "Kly a", with a long horizontal flourish extending to the right.

Kimberly Allison
Chair