



Ohio Elections Commission

77 South High Street, Suite 1850

Columbus, Ohio 43215

614•466•3205

www.elc.ohio.gov

Terrance J. Conroy
Chairman

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Vice-Chair

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Helen E. Balcolm

Lynn A. Grimshaw

Jayne P. Smoot

Degee Wilhelm

Philip C. Richter
Executive Director

Fax: (614) 728-9408

May 12, 2016

Ohio Elections Commission Advisory Opinion 2016ELC-04

SYLLABUS: In the process of terminating a ballot issue committee, it is permissible for the ballot issue committee to return to contributors, on a pro rata basis, their campaign contributions in an effort to exhaust the remaining funds in the ballot issues committee's account.

To: Donald J. McTigue, Esq.
Attorney at Law

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

In the process of terminating a ballot issue committee, is it permissible for the ballot issue committee to return to individual contributors their campaign contributions, on a pro rata basis, from the committee's remaining balance of campaign funds?

The statutory provisions in Ohio Revised Code §3517.13(O), (P), (Q) & (R) are in place to assure that campaign funds are used for proper campaign purposes and to restrict an individual's ability to convert campaign funds for personal use. In an effort to consistently apply these provision across political organizations, recent advisory opinions of the Commission, 2012ELC-03 and 2016ELC-03, have applied the provisions of R.C. §3517.13(O) et seq. to expenditures by Political Action Committees (PACs) and Political Contributing Entities (PCEs). In those opinions the Commission held that, for purposes of Ohio campaign finance laws, it "logically follows that all of the provisions concerning the expenditure of funds by a campaign committee must also be applied to PACs."

In advisory opinion 99ELC-03, the Commission referred to a number of statutory provisions, R.C. §3517.13(O) et seq., as well as R.C. §3517.102, R.C. §3517.109 & R.C. §3517.992, for its holding that prohibited the refund of contributions by candidate campaign committees. While highlighting the fact that R.C. §3517.13(O) et seq. does not specifically list refunds as one of the allowable uses of campaign funds, the Commission then went on to look to the other statutory provisions (R.C. §3517.102, R.C. §3517.109 & R.C. §3517.992) to limit the use of campaign committee funds to make refunds. That opinion,

however, was specifically directed to candidate related committees not ballot issue committees. As ballot issue committees are not specifically identified in Ohio's statutory scheme, they are more akin to PACs, thus the Commission is obligated to critically look at whether it is appropriate to extend the holding in opinion 99ELC-03 to ballot issue committees (ballot issue PACs).

Unlike the holding in 99ELC-03 where the Commission looked to the interplay of the applicable statutes to deny refunds, in this scenario, the provisions contained in R.C. §3517.102, R.C. §3517.109 & R.C. §3517.992 cannot be applied to ballot issue PACs as they are only applicable to candidate related committees. The Commission must rely only on the terms in R.C. §3517.13(O) et seq. Yet it must do so in consideration of the rules of statutory construction. Penal statutes must be limited in their application. The Commission has a duty to assure that Ohio's campaign finance laws comport with constitutional scrutiny, particularly in the context of campaign finance activity that implicates fundamental First Amendment rights of freedom of speech and association.

A proper application of R.C. §3517.13(O) et seq. obligates the Commission to limit its interpretation of the statute. In this context, as the statute does not specifically comment on a certain type of expenditure, i.e. refunds, it would be an unacceptable extension of the limitations on campaign expenditures in the context of a ballot issue committee, or more appropriately a ballot issue PAC, to prevent it from refunding a contribution in the process of terminating the ballot issue committee. The dangers inherent in such refunds that could potentially inure to the benefit of an individual candidate, or the beneficiary of a campaign fund, are not present with a ballot issue committee.

The Commission, therefore, declares that the restriction on the making of refunds in advisory opinion 99ELC-03 is inapplicable to ballot issue committees. The provisions on which the Commission primarily relied when it issued 99ELC-03 to declare refunds an inappropriate use of campaign funds for candidate campaign committees are not applicable to ballot issue committees.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that in the process of terminating a ballot issue committee, it is permissible for the ballot issue committee to return to contributors, on a pro rata basis, their campaign contributions in an effort to exhaust the remaining funds in the ballot issues committee's account.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terry Conroy", is written over the typed name and title.

Terry Conroy
Chair