Ohio Elections Commission
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April 19, 2018

OHIO ELECTIONS COMMISSION

Advisory Opinion
2018ELC-01

SYLLABUS: A campaign finance report filed by a candidate campaign committee pursuant to R.C. §3517.10 and R.C. §3517.13(A), (B), (C) or (D), must be made to comply with the provisions of those sections and at a minimum must be "full, true and itemized," "complete and accurate" as well as timely. A determination of whether an expenditure is "unreasonable, excessive or otherwise prohibited by law" can only be made by the Ohio Elections Commission upon the filing of a complaint and a review of the pertinent facts that will determine compliance with the provisions of R.C. §3517.13(O), (P), (Q) & (R).

TO: Derek S. Clinger, Esq.

You have requested an advisory opinion on the following question:

> Would a [campaign] finance report filed by a candidate campaign committee under R.C. §3517.10 constitute a violation of that section or R.C. §3517.13(B), (C) or (D), if the report timely, fully and accurately reflects an expenditure by the campaign committee that is unreasonable, excessive or otherwise prohibited by law?

The specific dates for filing campaign finance reports by candidate campaign committees, among other political entities, are established in the first few subdivisions of Ohio Revised Code §3517.10(A). The provisions of R.C. §3517.13(B), (C) or (D) [along with subdivision (A), which must also be included in this analysis] state that no campaign committee shall fail to file a "complete and accurate statement" by those established deadlines. By other provisions, failure to comply with the schedules established by these statutes subjects a campaign committee to potential action by the Ohio Elections Commission.

This advisory opinion request is apparently an outgrowth of the Commission's decision in OEC Case No. 2017G-003, *Donahue v. Horton*. In that case, the Commission found a violation of allegations presented to the Commission in a complaint that contained an agreement between the parties. In reliance on that agreement, the Commission found a violation of certain statutes that were

included in the complaint and allowed for additional criminal proceedings by the Special Prosecutor that was the complainant in the case. That finding has caused some confusion as it relates to the application of the statutes that are at issue in this opinion request.

While the specific question that is contained in the first paragraph of this opinion simply asks for an opinion of the statutes listed, the advisory opinion request letter goes on to indicate that certain other provisions are not to be included in this analysis. Considering all of the statutory provisions that could come into play in these circumstances, and the limited admonitions in the statutes for which the opinion is being requested, excluding those provisions is not possible.

There are two essential phrases in the statutes, R.C. §3517.10 and §3517.13(A), (B), (C) & (D), that must be first addressed in this advisory opinion request. R.C. §3517.10(A) includes the phrase "a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures," when referring to what must be included in a campaign finance report. The critical phrase in all of the pertinent subsections of R.C. §3517.13 is the phrase "complete and accurate statement." Quite obviously, these phrases address the need for a campaign committee to file statements that are "full, true and itemized" along with being "complete and accurate." Compliance with both of these phrases is necessary to assure that the statutory requirements for campaign finance filings is met. That is, accurate campaign finance information. Such information is critical for any campaign finance report. Neither of these statutes, though, properly addresses whether a report contains an expenditure that is "unreasonable, excessive or otherwise prohibited by law," as the request letter desires.

The determination that an expenditure is "unreasonable, excessive or otherwise prohibited by law," can only be made after a "full, true and itemized," "complete and accurate" campaign finance report is filed by a campaign committee. Then, upon review of the report by the campaign finance staff at the office where the report is filed, the report is audited and if there is a problem with a particular expenditure, a determination may be made that that expenditure may be "unreasonable, excessive or otherwise prohibited by law." The basic act of filing the report is an obligation on all political committees and is separate and distinct from a determination of the propriety of any contribution or expenditure.

Regardless, any final determination of whether an expenditure is "unreasonable, excessive or otherwise prohibited by law" is a determination that is the responsibility of this Commission upon the filing of a complaint and a presentation of the pertinent facts. There is nothing in the provisions of R.C. §3517.10 or R.C. §3517.13 that provides a method to determine the propriety of

any particular expenditure. The provisions that allow either the staff at the Board of Elections or the office of the Secretary of State to assess whether an expenditure is "unreasonable, excessive or otherwise prohibited by law," or that the Commission must review to make such final determination on this question, are only contained in R.C. §3517.13(O), (P), (Q) & (R). Those provisions must be considered to make the necessary determination of the propriety of any expenditure.

The confusion that resulted from the Commission's determination in the *Horton* case is due to the fact that both the complainant and respondent in that case approached the Commission with an agreement already in place. The complaint already contained specific language that there was a violation of R.C. §3517.13(B) because that was the filing in which the expenditures that were determined to be "excessive" were found. The parties in that case approached the Commission with the agreement that there was a violation and a request that the matter be referred for further prosecution. No mention was made in the complaint of any reliance on the provisions of R.C. §3517.13(O) et seq., which is what should have been done. The Commission simply acted at the request of the parties. Unfortunately, the Commission did not control the preparation of the complaint and the agreement of the parties. All future considerations of whether an expenditure is "unreasonable, excessive or otherwise prohibited by law" can only be made by the Ohio Elections Commission and not based upon the simple submission of a complaint for the Commission's consideration pursuant to R.C. §3517.13.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a campaign finance report filed by a candidate campaign committee pursuant to R.C. §3517.10 and R.C. §3517.13(A), (B), (C) or (D), must be made to comply with the provisions of those sections and at a minimum must be "full, true and itemized," "complete and accurate" as well as timely. A determination of whether an expenditure is "unreasonable, excessive or otherwise prohibited by law" can only be made by the Ohio Elections Commission upon the filing of a complaint and a review of the pertinent facts to determine compliance with the provisions of R.C. §3517.13(O), (P), (Q) & (R).

Sincerely,

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