



Ohio Elections Commission
State Office Tower, 14th Floor
Columbus, Ohio 43266-0418
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October 29, 1990

Advisory Opinion No. 90-4

- SYLLABUS: 1. A candidate, who files a complaint with the Ohio Elections Commission regarding a matter related to his campaign, may use his or her campaign funds to pay legitimate legal expenses incurred in filing the complaint.
2. Funds received and payments made for legal expenses incurred in bringing a complaint before the Ohio Elections Commission are reportable as contributions and expenditures to the extent required by Ohio Revised Code section 3517.10.

TO: Rocco J. Colonna, 7th House District State Representative

You have requested an opinion on the following question:

May campaign funds be used to pay for legal expenses incurred in filing a complaint with the Ohio Elections Commission?

In Advisory Opinion No. 87-15 this Commission stated that a candidate may use campaign funds to pay for legal fees incurred in defending against charges before the Commission. This opinion was rendered pursuant to Division (O) of Revised Code section 3517.13 which provides in part that no beneficiary of a campaign fund shall convert or accept for personal or business use anything of value from the campaign fund, except that campaign funds may be used for "legitimate and verifiable prior campaign expenses incurred by the beneficiary". "Legitimate" expenses have been defined by this Commission as those that are truly or validly related to a purpose set forth in R.C. 3517.3(O).

The present question is distinguishable from that presented in Advisory Opinion No. 87-15 only in that the decision to file a complaint with the Ohio Elections Commission is discretionary with the complaining party while defending against such charges is not discretionary on the part of the respondent. The fact that charges before the Ohio Elections Commission are, of necessity, grounded in campaign activity formed the basis for the Commission's conclusion in Advisory Opinion No. 87-15. Consequently, the present question is whether the expenses involved in bringing a complaint before the Commission are also validly related to campaign activity.

A review of the pertinent policy considerations, while not conclusory in itself, tends to support the view that the payment of such expenses from campaign funds would further the legislative purpose behind the campaign finance and campaign practices laws. Primary among these considerations is that of encouraging individuals to bring complaints before the Commission which can best be done by placing as few obstacles as possible in the path of the complainant. In this context, it is important to note that the opposing candidate is often the person in the best position to bring a complaint. Other policy issues to be considered are those of allowing both complainant and respondent to proceed on an equal footing, ensuring that complainants will be able to proceed in a manner that will best frame the issues and assist them in obtaining information supporting their complaints.

The total effect of these considerations will be to encourage the bringing of complaints before the Commission and a wider enforcement of the election statutes. These considerations alone are not sufficient to establish that such expenses are proper under R.C. 3517.13(O), but do provide a basis for determining the legislative intent behind this statute.

A violation of Ohio election laws by a complainant's opponent can have a ready and obvious impact on the election as can the act of bringing a complaint regarding these acts before the commission. In consequence, these activities are rationally related to the campaign. It therefore follows that, pursuant to R.C. 3517.13(O), attorney fees incurred by a candidate in presenting complaints of alleged violations affecting their own campaign are legitimate campaign expenses and may be paid from campaign funds.

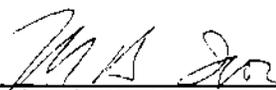
At the same time, a frivolous complaint, by its very nature, does not further the public purpose of the statute, nor bear any true relationship to the campaign or to the election process. Consequently, expenses related to the filing of such a complaint would not be legitimate campaign expenses. If the commission were to find a complaint to have been frivolous, pursuant to Ohio Administrative Code section 111:01-1-18, it would be possible for the respondent to bring a complaint in turn, alleging a conversion of campaign funds for personal use in violation of Ohio Revised Code 3517.13(O).

In an earlier opinion this commission held that funds received and payments made by a candidate for legal expenses involved in defending against charges before the commission must be reported by the candidate's campaign committee pursuant to R.C. 3517.10. See, Advisory Opinion No. 90-3. The commission's conclusion was based upon the following analysis: if an expense is legitimately related to a candidacy so that it may be paid from campaign funds, then funds used for that purpose are "contributions" and "expenditures" under the campaign finance laws. Consequently, it follows that any funds received and payments made in connection with bringing a complaint before the commission would also be reportable to the extent required by R.C. 3517.10.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that:

1. A candidate, who files a complaint with the Ohio Elections Commission regarding a matter related to his campaign, may use his or her campaign funds to pay legitimate legal expenses incurred in filing the complaint.
2. Funds received and payments made for legal expenses incurred in bringing a complaint before the Ohio Elections Commission are reportable as contributions and expenditures to the extent required by Ohio Revised Code section 3517.10.

APPROVED:



Michael H. Igoe, Vice Chairman