



Ohio Elections Commission
21 West Broad Street, Suite 600
Columbus, Ohio 43215
(614) 466-3205

June 13, 1996

Ohio Elections Commission
Advisory Opinion
96ELC-06

SYLLABUS: Legal Expenses incurred by a member of the Ohio General Assembly in proceedings before the Joint Legislative Ethics Committee are allowable campaign fund expenses.

To: Charles R. Saxbe
Chester, Willcox & Saxbe
Attorneys for the Honorable Doug White, Member, Ohio House of Representatives

You have requested an advisory opinion on the following question:

May a beneficiary of a campaign fund who is a member of the Ohio General Assembly make expenditures from (his) said campaign fund in order to pay legal expenses arising out of a proceeding by the Joint Legislative Ethics Committee in connection with the beneficiary's duties as a legislator?

Section 3517.13(O)(2) of the Revised Code states that:

(O) No beneficiary of a campaign fund shall convert or accept for personal or business use, and no person shall knowingly give to a beneficiary of a campaign fund, for the beneficiary's personal or business use, anything of value from the beneficiary's campaign fund, including without limitations, payments to a beneficiary for services the beneficiary personally performs, except as reimbursement for any of the following:

(2) Legitimate and verifiable, ordinary, and necessary prior expenses incurred by the beneficiary in **connection with duties as the holder of a public office**, including,

without limitation, expenses incurred through participation in nonpartisan or bipartisan events if the participation of the holder of a public office would normally be expected;

For purposes of this division, an expense is incurred whenever a beneficiary has either made payment or is obligated to make payment, as by the use of a credit card or other credit procedure or by the use of goods or services received on account. (emphasis added)

You suggest that this particular section appears to permit an expenditure for legal services incurred in connection with the beneficiary's performance of duties as the holder of a public office. In this instance, the expenditure concerns a member of the Ohio General Assembly incurring legal expenses on his own behalf as a party to a matter being reviewed by that body's Joint Legislative Ethics Committee (JLEC).

Recently, this Commission allowed as a campaign fund expense, legal fees incurred by employees of a former county office holder for representation at depositions taken pursuant to a matter before the State Personnel Board of Review. That matter principally concerned the former office holder's successor and the successor's firing of certain personnel upon taking office. See Ohio Elections Commission (OEC) Case No. 94R-629, *In re Palmer C. McNeal, et. al.*, decided March 14, 1995. The Commission found these expenses to have been reasonably related to the former office holder's duties while in office and therefore were legitimate, verifiable, ordinary and necessary.

This Commission has also previously allowed as campaign fund expenses legal fees incurred in both the defense of a complaint before it, OEC Advisory Opinion 87-15, as well as those incurred in the prosecution of a complaint, OEC Advisory Opinion 90-4. However, the Commission has also ruled that legal expenses incurred by an office holder formally charged with criminal misconduct are not allowable campaign fund expenses, OEC Advisory Opinion 87-9. In the course of reviewing that matter and rendering its opinion, this Commission strictly construed Section 3517.13(O)(2):

In Advisory Opinion No. 87-3, this Commission stated that, "The effect of R.C. 3517.13(O) is that campaign funds may only be used for the purposes specified in that division or as otherwise authorized in the Revised Code." R.C. 3517.13(O) restricts the purposes for which campaign funds may be used to certain categories. The

words “legitimate, verifiable, ordinary, and necessary are words of limitation, further restricting the expenditures that may be made from campaign funds within those categories. These terms are not defined in the Revised Code, but their meaning has been previously considered by the Commission in advisory opinions 87-3 and 87-4.

“Legitimate” expenses are those that are truly or validly related to a purpose set forth in R.C. 3517.13(O). To be true or valid, an expense must conform to recognized principles or accepted standards. Thus, in the case of an expense under R.C. 3517.13(O)(2), the expense must be related, according to accepted standards, to a duty of the public office. See Advisory Opinion 87-4. Legal fees incurred by an officeholder in defending against **an investigation** or prosecution of criminal charges of tampering with records, theft in office, falsification and bribery are not legitimate expenses related to the duties of a public office.

A public officeholder must perform the duties of his or her office, as prescribed by law to the best of his or her ability. An officeholder’s duties do not include defending himself or herself against charges of criminal conduct. Therefore, any expenses incurred in such defense are **not legitimate expenses** related to the duties of the public office and may not be paid for from the officeholder’s campaign funds. OEC Op. 87-9 (emphasis added).

Although the Commission suggested in OEC Advisory Opinion 87-9 that legal expenses incurred by an office holder defending himself against “an investigation” were not “legitimate” within the meaning of R.C. §3517.13(O)(2), it omitted any reference to “an investigation” from its final holding, limiting its holding to a defense against “criminal charges.” The Commission also declined to address the question of whether such legal expenses were “verifiable, ordinary and necessary.” OEC Advisory Opinion 87-9.

In resolving the question now before this Commission, it is necessary to first draw an important distinction between OEC Ops. 87-15 and 87-9. The holding in OEC Op. 87-9 that legal fees incurred in defense of criminal charges of misconduct in office are not legitimate under R.C. §3517.13(O)(2) was

predicated upon sound public policy as well as clear statutory limitations. OEC Op. 87-15 on the other hand declares such legal fees as per se legitimate on the basis that proceedings before the OEC are campaign related, even where a violation may ultimately be found. The OEC previously held that any fines it imposed could not be paid from campaign funds, OEC Op. 87-10.

It should be noted here that the recent amendments to Revised Code section 3517.13(O)(2) by Amended Substitute Senate Bill 8, 121st General Assembly (SB8) does not affect the holding in OEC Op. 87-9. However, since this Commission expressed its opinion in that matter, much has changed, particularly for incumbent office holders facing accusations of misconduct either prior to, upon or after taking office. Today, members of the Ohio General Assembly and their contemporaries in statewide and local public offices are increasingly subjects of ethics complaints, both colorable and frivolous, during their terms of office. For better or worse, these circumstances now render legal expenses incurred therein as verifiable, ordinary and necessary.

The remaining issue of whether legal expenses incurred during an investigation of ethical misconduct are "legitimate" must also be resolved in view of these same circumstance. In any review and interpretation of Ohio election laws, this Commission strives to be clear, consistent and fair. We must now recognize that allegations of ethical misconduct against incumbent officeholders are prevalent and further, that a significant number of those allegations ultimately prove to be without merit. We also recognize that considerable legal expenses can be incurred by an officeholder so accused for which the officeholder becomes personally liable.

The JLEC was created by merging the legislative ethics committees of the House of Representatives and the Senate. The JLEC retained the basic investigative authority and jurisdiction of those committees over members of and candidates for the General Assembly. It sits in judgment of its members, employees and candidates and makes determinations as to their compliance with or violations of ethical standards governing their conduct.

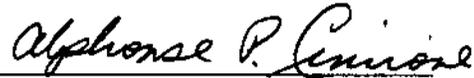
This is a matter of first impression in Ohio. However, our contemporaries in the State of New Jersey recently construed N.J.S.A. 19:44A-11.2a(6) and N.J.A.C. 19:25-6.7(a) to allow such campaign fund expenses.

The New Jersey Commission recognized that members of its state legislature can be called upon to demonstrate compliance with an internal ethics code. It noted that if a member failed to mount a "complete and competent" defense when so called upon, that failure could lead to an unjust result not indicative of

the member's fitness to hold office. Because we find these authorities sufficiently similar to R.C. §3517.13(O)(2), we find Advisory Opinion No. 13-1995 of the New Jersey Elections Law Enforcement Commission to be persuasive here.

Accordingly, it is the opinion of the Ohio Elections Commission and you are so advised that a member of the General Assembly may pay legal expenses incurred in proceedings before the Joint Legislative Ethics Committee from a campaign fund of which that member is a beneficiary.

APPROVED:



Alphonse P. Cincione
Alphonse P. Cincione
Chairman