Ohio Elections Commission
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June 28, 1996

Ohio Elections Commission
Advisory Opinion
96ELC-07

SYLLABUS: A refund of a contribution does not negate the fact that a contribution was made and is only recognized in conjunction with the newly adopted contribution limits under §3517.102 of the Revised Code. A loan is a contribution under R. C. §3517.05(B). If a person hosts a fundraising event, makes a payment for facility rental on behalf of the campaign committee, and is not reimbursed by the campaign committee within 90 days of the date of payment to the club by the host, it is an advance and a contribution within the meaning of §3517.05(B). In addition, the terms of §3517.13(I), (J), (K), (L), (M), or (N), which state the parameters in which the contract bar applies, are applicable in any situation in which an action fits within the meaning of the word contribution as defined in §3517.05(B).

To: Donald C. Brey
Chester, Willcox & Saxbe

You have requested an advisory opinion based on the circumstances in three different hypothetical fact patterns as outlined in your letter. The three separate fact patterns are summarized as follows:

1. Attorney Able hosts a fundraising event for a candidate at an Athletic Club for which Able is billed by the club for the $2000 cost of the event. The event takes place in year 2. Able pays the bill and is then subsequently reimbursed by the candidate's campaign committee in full within 30 days of the event. Is Able or the firm with which Able is associated precluded from receiving a contract by §3517.13(I), (J), (K), (L), (M), or (N) of the Revised Code in year 3?

2. Attorney Baker makes a loan of $2000 to the Campaign committee of a candidate in year 1. The full amount of the loan is repaid in year 2. Is Baker or the firm with which Baker is associated precluded from receiving a contract by §3517.13(I), (J), (K), (L), (M), or (N) of the Revised Code in year 3?

3. Attorney Charlie makes a contribution of $2000 to the Campaign committee of a candidate in year 1? In year 2 the campaign committee refunds the entire amount of the contribution to Charlie, who had no expectation that the refund was to have been made. Is Charlie or the firm with which Charlie is associated precluded from receiving a contract by §3517.13(I), (J), (K), (L), (M), or (N) of the Revised Code?

In §3517.01(B)(5), a contribution is defined as a

> "... **loan**, gift, deposit, **forgiveness of indebtedness**, **donation**, advance, payment, transfer of funds, or transfer of anything of value, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election." (emphasis added)

With all of the other changes to the campaign finance laws that were made in Amended Substitute Senate Bill 8 (SB8) and Amended Substitute House Bill 99 (HB99), no change was made in the language in this statute. The General Assembly also did not change any of the language in §3517.13(I), (J), (K), (L), (M), or (N), the other sections of the campaign finance laws which are at issue in these requests.

One of the changes that was made in SB8 was the inclusion of contribution limits in §3517.102. Included in these limits were allowances for the refund of contributions which exceeded the stated limits. The inclusion of such language was necessary to preclude an inadvertent violation of the law by the acceptance of a contribution which exceeded the contribution limits where a campaign committee was not immediately aware of the violation. Without such language, the campaign committee would violate the law (upon the mere receipt of a contribution which exceed the limit), without an opportunity to refund the excess amount and correct the situation. As was recognized by the Commission when Advisory Opinion 86-4 was issued, there is no previous statutory authority for a refund of a contribution to the contributor.

It is important to note that the inclusion of the refund language in the Revised Code was made at the same time as, and in those sections which deal with, the contribution limits. No additional language was added to the other areas of the law and in particular, §3517.01(B)(5). Since the General Assembly did not see fit to include a provision addressing the refund of a contribution in any other section of the law, it would be inappropriate to discuss the use of a refund when interpreting the areas of law which were not revised by SB8 or HB99.

These same issues were addressed in Advisory Opinion 86-4 of the Ohio Elections Commission. In that opinion, the Commission was asked to interpret the impact of the return of a contribution on the ability of a contributor to receive unbid contracts. The Commission stated that "(a) later refund of a contribution does not change the fact that a contribution was made and received." It was recognized that a subsequent refund did not "undo" a contribution to the campaign committee, and that the terms of R.C. §3517.01(B)(5) had been met.

Therefore this Commission reaffirms Advisory Opinion 86-4, that the refund of a contribution does not change the fact that a contribution was made.

In addressing the hypothetical situations outlined in this request, the Commission will speak to them in reverse order.

As previously discussed, the Commission recognizes that the reason for the inclusion of the refund language was to allow for the return of an amount that exceeds the contribution limits of §3517.102. Consequently, as outlined in hypothetical #3, the return of a contribution, even though that return was not anticipated, would not change the fact that a contribution was made. Therefore, the contract bar under §3517.13(I), (J), (K), (L), (M), or (N) would still be applicable in year 3.

In hypothetical #2, the loan made by Baker is obviously a contribution when it is made in year 1. To determine the status of the contribution in year 2, it is appropriate to look to the Ohio Administrative Code. In O.A.C. 111-1-03(B) the Secretary of State, interpreted §3517.01(B)(5). This rule clarifies that a loan is determined to be a contribution at the time made and to the extent that it remains outstanding. The rule goes on to state that a "loan, to the extent that it is repaid, is no longer a contribution." Based on this rule, a loan remains a contribution for as long as it remains unpaid in year 2. Upon repayment, the loan made by Baker is no longer a contribution. However, that does not change the fact that it remained a contribution for a portion of year 2. Based on the

two year bar on contract awards in §3517.13, the provisions of §3517.13(I), (J), (K), (L), (M), or (N) are still applicable to Baker in year 3.

Hypothetical #1 is more problematic. Able accommodated the campaign committee by paying the bill from his personal funds and then being promptly reimbursed. Many clubs and organizations require their members to personally pay their own bills in situations such as these. Additionally, most persons that host events such as these fully anticipate that reimbursement of this amount will be quickly received from the campaign committee, and simply pay this amount to accommodate the campaign committee and never intend this activity to become a contribution.

Alternatively, some persons who host such events find themselves waiting for reimbursement from the campaign committee but never receiving it, subsequently making an in-kind contribution of the cost of the use of the facilities for the fund-raiser. It is therefore necessary to limit the time in which such repayment must be made, in order to forestall such situations in which the hosting of the event may become a contribution. The Commission recognizes that as long as the campaign committee promptly reimburses the host of the event in the normal course of business, it is not considered a contribution. However, if the reimbursement by the campaign committee does not occur within 90 days from the date of the payment to the club by the host of the event, it must be considered a contribution by the host. In this second scenario, the circumstance where the advance by the host is never repaid, it must be considered a contribution and the provisions of §3517.13(I), (J), (K), (L), (M), or (N) are still applicable. In Able's situation, considering he was reimbursed within the stated time frame, it would not be considered a contribution and would not cause the provisions of §3517.13(I), (J), (K), (L), (M), or (N) to apply.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that the situations in hypothetical fact patterns #2 & #3 are contributions within the terms of §3517.01(B)(5) of the Revised Code and the terms of §3517.13(I), (J), (K), (L), (M), or (N) which state the parameters in which the contract bar applies, are all applicable in the years in question. However, the situation in hypothetical fact pattern #1 is not a contribution unless the campaign committee fails to repay the host within 90 days from the date of the payment to the club by the host of the event. If the campaign

committee does not meet this timetable for reimbursement, it becomes an in-kind contribution by the host of the event, and the provisions of §3517.13(I), (J), (K), (L), (M), or (N) are applicable to the host for the years in question.

APPROVED:

Alphonse P. Cincione

Alphonse P. Cincione
Chairman