



Ohio Elections Commission

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July 30, 1996

**Ohio Elections Commission
Advisory Opinion
96ELC-08**

SYLLABUS: An expenditure for legal fees to defend against criminal charges is an inappropriate use of campaign funds on behalf of the officeholder.

To: Sharon McClellan
Office of the Attorney General

You have requested an advisory opinion on the following question:

Can a former state elected office-holder, who has pleaded no contest, with a stipulation to facts constituting criminal offenses, and with a subsequent judicial finding of guilt to nine counts of solicitation in violation of §§124.57, 124.62, of the Ohio Revised Code, use monies from his campaign fund to pay his legal fees associated with and arising out of the representation on those criminal charges?

The Ohio Elections Commission has issued 6 separate opinions on the propriety of paying legal fees from campaign funds in consideration of the restrictions on the use of campaign funds contained in §3517.13(O) of the Ohio Revised Code. In five of those opinions, the Commission has focused on the legitimacy test as the critical element in determining whether such an expense is allowable on behalf of a candidate. This opinion will be no different.

In Ohio Elections Commission Advisory Opinion 87-9 (Op. 87-9), the Commission defined a "legitimate" expense as one which is 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. R.C. §3517.13(O)(2) requires that an expenditure be related to the duties of the public office. Therefore, a proper campaign expense must be related, according to recognized principles or accepted standards, to a duty of the public office.

Also in that opinion, the Commission stated that

(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.


In the situation before us, the officeholder in question entered a plea of no contest to nine counts of solicitation in violation of R.C. §124.57 and §124.62 and was found guilty of the charges by the court. R.C. §124.57 prohibits an officer of the state from directly or indirectly soliciting or receiving contributions for any candidate for public office. R.C. §124.62 prohibits a person from making certain employment decisions contrary to the language of any section of R.C. Chapter 124. An officeholder who carries on activities of this type and is convicted, loses the office.

The conduct of the officeholder, as determined by the court in this case is not, by any recognized principle or accepted standard, directly related to a duty of the public office. Moreover, public policy considerations require that an officeholder not only perform the duties of the office to the best of his or her ability, but also uphold the faith and trust that the public has vested in that officeholder. In order to both uphold the public's faith in its officeholders and to make a clear statement that the activities which are the basis for this request were not proper duties of the public office, this Commission cannot approve an expenditure for legal fees in defense of these charges.

In a recent case before the Commission, No. 96S-072, *In re Ferguson et al.*, the Commission found specific reason to distinguish its holding in that particular case from the holding in Op. 87-9. The Commission relied primarily on the fact that the underlying criminal case which created the expenditure at issue was summarily dismissed prior to going to trial. The Commission upheld the essential holding in Op. 87-9, that legal fees in defense of criminal charges are not proper campaign expenses. The Commission hereby distinguished its holding in Op. 87-9 under the belief that there may be limited circumstances in which the presumption of illegitimacy inherent in the statute and in the holding in Op. 87-9 may be specifically rebutted by clear and convincing evidence presented to the Commission on a case-by-case basis.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission, and you are so advised, that an expenditure for legal fees to defend against criminal charges is not an appropriate use of campaign funds on behalf of the officeholder.

APPROVED:


Alphonse P. Cincione
Chairman