



Ohio Elections Commission

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February 5, 1997

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OHIO ELECTIONS COMMISSION

Advisory Opinion 97ELC-02

SYLLABUS: A contribution from campaign funds to an attorney who is working on an appeal from the U.S. District Court for the Southern District of Ohio, Eastern Division, to the U. S. Supreme Court on the subject of legislative and congressional districting is a proper expenditure from a campaign committee fund pursuant to Ohio Revised Code §3517.13(O)(2).

TO: Joan Lawrence
State Representative
80th House District

You have requested an advisory opinion on the following question:

Can I contribute from my campaign funds to an attorney who is working on an appeal from the U.S. District Court for the Southern District of Ohio, Eastern Division, to the U. S. Supreme Court on the subject of legislative and congressional districting?

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 ... (emphasis added)

The Ohio Elections Commission has consistently used the same definitions for the terms "legitimate and verifiable, ordinary, and necessary," since they were originally defined in Advisory Opinion 87-4. In subsequent opinions, this Commission has consistently held that whether an expenditure is permissible is most often determined by whether an expenditure is legitimate and ordinary. An expenditure is legitimate if it conforms to recognized principles or accepted standards and is ordinary if it is customary and usual.

In Advisory Opinion 92-3, this Commission approved an expenditure from campaign funds by a member of city council for membership dues to a city chamber of commerce. In approving this expenditure the Commission addressed how the legitimacy of such an expenditure should be analyzed. The Commission stated that in such situations

... the question of whether the expenditure is legitimately related to being an officeholder should be analyzed in part by using a "but for" test and in part by using an objective test. Specifically, but for the fact the person is an officeholder, would he be making such an expenditure? In addition, is the expenditure reasonable and relevant? Ohio Elections Commission Adv. Op. 92-3.

In fulfilling the role of state representative, a member of the General Assembly is exposed to a variety of issues. Whether responding to the interests of the district's constituents, exploring a personal concern, or following through on a campaign promise, a state representative becomes involved in many types of issues. When a state representative takes a special interest in a particular, valid issue that may come before the General Assembly, a connection is made between the state representative and the state representative's duties and responsibilities as a public office holder. Moreover, in order to carry out the duties and responsibilities of that public office, it is sometimes necessary for a public officer to become involved in groups, whether partisan, bi-partisan or non-partisan or local or national, that have an interest in the particular issue and to support those groups in their efforts on that particular subject. R.C.3517.13(O)(2)

states that expenditures include, "without limitation, expenses incurred through participation in nonpartisan or bipartisan events ..." This expenditure fits well within the statutory definition.

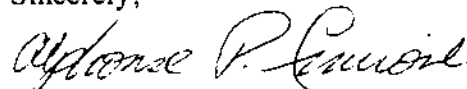
On an objective basis, your request letter outlined your long-standing interest in the issue of legislative redistricting and expounded on how you have introduced this concept as an amendment to the Ohio Constitution in each and every of your legislative terms. You have also expended a great deal of time and effort on this issue on a national basis with the organization which supports this issue, in an effort to directly effect the future of legislative districts in Ohio, and throughout the country. From your request letter, it is obvious that, but for your position as a state representative, you would not have such continuing involvement with this issue. This expenditure would be relevant and helpful to the fulfillment of your legislative priorities and fit within both the Commission's "but for" and objective tests.

The reasonableness of this expense is more problematic, yet is easily justified in this context. Such legal challenges as are at issue here are time consuming, rigorous, and expensive. An expenditure of campaign funds in the amount of \$1000 would be a substantial expense by your campaign committee, but would be a small portion of the total expenses in litigating this case. This amount is a reasonable show of support for this important issue in the country's legislative process.

This opinion is intended to be responsive to the request made by Representative Lawrence. The Commission is cognizant of the potential ramifications of approving this expenditure and the impact on other persons who may be similarly situated. However, this Commission believes that it is appropriate to respond on a case by case basis.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a contribution from campaign funds to an attorney who is working on an appeal from the U.S. District Court for the Southern District of Ohio, Eastern Division, to the U. S. Supreme Court on the subject of legislative and congressional districting is a proper expenditure from a campaign committee fund pursuant to Ohio Revised Code §3517.13(O)(2).

Sincerely,



Alphonse P. Cincione
Chairman