



Ohio Elections Commission

21 West Broad Street, Suite 600
Columbus, Ohio 43215
614•466•3205

Alphonse Cincione
Chairman

Mary W. Sullivan
Vice-Chairperson

Fred Alberini

Dale W. Bayer

William M. Connelly

Robert Duncan

Norton Webster

Philip C. Richter
Executive Director

March 27, 1997

OHIO ELECTIONS COMMISSION

Advisory Opinion 97ELC-03

SYLLABUS: An expenditure to pay the filing fee required by R.C. §102.02(E)(2) is an appropriate expenditure from a campaign committee fund pursuant to Ohio Revised Code §3517.13(O)(2).

TO: Cheryl Subler
Research Associate
County Commissioners' Association of Ohio

You have requested an advisory opinion on the following question:

(W)hether county commissioners can use campaign funds or county general revenue fund moneys to pay the \$25 filing fee for the disclosure statement required by the Ohio Ethics Commission as provided in Ohio Revised Code Section 102.02?

Prior to the adoption of Amended Substitute House Bill 285 of the 120th General Assembly, those persons required to submit an ethics disclosure statement with the Ohio Ethics Commission were not required to pay a fee with their filing. With the enactment of this bill, a fee schedule was established for certain persons required to file their disclosure statement with the Ethics Commission.

This area of the law was established with the belief that the disclosure of financial information of this type was beneficial to protect the state and its citizens from any undue influence on its officeholders. The statute declares that the persons required to file these reports would be

...any class of public officials or employees under its jurisdiction ... whose positions involve a substantial and material exercise of administrative discretion in the formulation of public policy, expenditure of public funds, enforcement of laws and rules..., or the execution of other public trusts ...

The intent was to have sufficient information disclosed that the public would be confident that the office holder was acting in the interest of the public, and not with blatant self-interest.

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, ... 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 ...

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. Most recently, in advisory opinion 97ELC-02, this Commission reaffirmed that holding and also reaffirmed its support of the language in Advisory Opinion 92-3, which established the "but for" test. This doctrine holds that an expenditure is appropriate in a situation where the office holder would not be making the expenditure, but for the fact the person is holding that office. This Commission believes that this holding is appropriate and has equal application in this context.

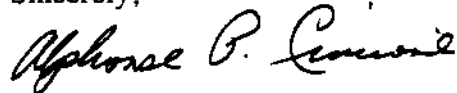
The situation that is the basis for this advisory opinion request involves a county commissioner, a public office holder as defined in R.C. §102.02(A), who is required to file a statement with the appropriate ethics commission. This statement includes specific financial information that is defined in that section. Included in the definition of a public office holder is "every person who is elected to or is a candidate for a ... county ... office ..." Title III of the Revised Code contains the statutes regarding the

funds to pay the filing fee required by R.C. §102.02(E)(2) would be an appropriate expense from a campaign fund.

The second branch of your request, relating to the use of county general revenue fund money for the payment of the ethics disclosure statement filing fee, is not within the scope of the advisory opinion authority of this Commission. Therefore it would be inappropriate for this Commission to opine on that aspect of your request. That question must be raised with the appropriate public official for the jurisdiction.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that an expenditure to pay the fee for filing an ethics form required by R.C. §102.02(E)(2) is an appropriate expenditure from a campaign committee fund pursuant to Ohio Revised Code §3517.13(O)(2).

Sincerely,



Alphonse P. Cincione
Chairman