



Ohio Elections Commission  
State Office Tower, 14th Floor  
Columbus, Ohio 43266-0418  
(614) 466-2585

October 2, 1987

ADVISORY OPINION NO. 87-13

**SYLLABUS:** Pursuant to Ohio Revised Code section 3517.13(O), campaign funds may be used to pay for gifts for employees of an officeholder (i.e., birthdays, weddings, and retirements), flowers given due to the illness or death of an employee or employee's family member, Christmas cards sent to an officeholder's staff and campaign contributors, Christmas parties for an officeholder's staff, and an officeholder's inauguration party, so long as such expenditures would not be made by a candidate or officeholder but-for the fact that he/she is a candidate or officeholder and such expenditures are reasonable in cost and form and relevant to the campaign or duties of the officeholder.

**TO:** Evelyn R. Lotz, Director, Wood County Board of Elections:

You have requested an opinion on the following question:

May campaign funds of a public officeholder be used to pay for:

1. Gifts for employees of the officeholder, such as for birthdays, weddings and retirements;
2. Flowers given due to the illness or death of an employee or employee's family member;
3. Christmas cards sent to the officeholder's staff and campaign contributors;
4. Christmas parties for the officeholder's staff; and
5. The officeholder's inauguration party?

Ohio Revised Code section 3517.13(O), subdivisions (1) and (2) provide that, "No beneficiary of a campaign fund [i.e. the candidate or officeholder for whose benefit the fund is established] shall convert or accept for personal or business use . . . anything of value from the beneficiary's campaign fund . . . except for any of the following:"

- (1) Legitimate and verifiable prior campaign expenses;
- (2) Legitimate, verifiable, ordinary and necessary prior expenses incurred by the beneficiary in connection with duties in the holding of public office.

Subdivisions (1) and (2) of R.C. 3517.13(O) set forth specific standards to be applied in determining whether an expenditure from campaign funds is permissible. The General Assembly included these standards to insure that an expenditure is in fact related to one of the categories set forth in R.C. 3517.13(O) and to prevent abuses.

The meaning of the terms "legitimate, verifiable, ordinary and necessary" has been interpreted by this commission in the past. See Advisory Opinion No. 87-4. Legitimate means "true" or "valid" in the sense that the expenditure is truly related to a campaign activity, a duty of a public office or one of the other categories set forth in R.C. 3517.13(O). This true or valid relationship is determined according to recognized principles or accepted standards as to whether the expenditure serves the stated purpose and whether

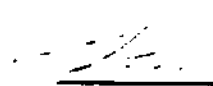
the stated purpose relates to one of the R.C. 3517.13(O) categories. Some expenditures are clearly related to being a candidate or the duties of an officeholder, for example, the costs of an inauguration party. However, other expenditures are not as easily classified because they could relate to personal and campaign purposes or the duties of a public officeholder. In such cases, the question of whether the expenditure is legitimately related to being a candidate or the duties of an officeholder should be analyzed by the candidate or officeholder with a "but-for" test, i.e., but for the fact that he/she is a candidate or officeholder, would he/she be making such an expenditure?

A candidate or officeholder, in applying the "but-for" test, must act in good faith. In many cases, the application of the test will determine for the candidate or officeholder that the expenditure may not be made from campaign funds, as when the officeholder would give a birthday gift to a particular employee regardless, because of friendship. However, a "but-for" test is not conclusive in deciding that campaign funds may be used because it is subjective. Therefore, the expenditure must also withstand an objective test of reasonableness and relevance. Sole reliance on a "but-for" test would render the statute's limitations meaningless because of the many types of expenses which a candidate or officeholder could conceivably claim that he/she would not be making if he/she was not a candidate or officeholder.

Wedding, birthday and retirement gifts, flowers, Christmas cards and Christmas parties for an officeholder's employees are relevant, i.e., they bear a rational relationship, to the duties of an officeholder. They foster good employer-employee relationships. Likewise, Christmas cards to campaign contributors create good will. Therefore, so long as such expenditures are reasonable in cost and form and pass the "but-for" test, they would be legitimate under the law.

Legitimacy is not the only standard prescribed by R.C. 3517.13(O). If made in connection with the duties of a public officeholder, the expenditures must also be ordinary and necessary, i.e. customary or usual and appropriate and helpful to accomplishing a particular end. See Advisory Opinion No. 87-4. Christmas cards, Christmas parties and birthday, wedding and retirement gifts, and flowers for a public officerholder's employees are ordinary and necessary in the context of the employer-employee relationship; i.e they are accepted and usual practices for a person holding a public office and are helpful in maintaining positive relationships with personnel.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that pursuant to Ohio Revised Code section 3517.13(O), campaign funds may be used to pay for gifts for employees of an officeholder (e.g., birthdays, weddings, and retirements), flowers given due to the illness or death of an officeholder's employee or employee's family member, Christmas cards sent to an officeholder's staff and campaign contributors, Christmas parties for an officeholder's staff, and an officeholder's inauguration party, so long as such expenditures would not be made by a candidate or officeholder but-for the fact that he/she is a candidate or officeholder and such expenditures are reasonable in cost and form and relevant to the campaign or duties of the officeholder.

  
Larry H. James, Chairman