



Ohio Elections Commission
State Office Tower, 14th Floor
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December 14, 1987

Advisory Opinion No. 87-15

- SYLLABUS:
1. A candidate may use campaign funds to pay for legal fees incurred in defending himself or herself against charges brought before the Ohio Elections Commission.
 2. A political action committee or political party may pay for the legal fees of a candidate incurred in defending against charges brought before the Ohio Elections Commission.

TO: The Honorable Jan Michael Long, 17th District, Ohio Senate

You have requested an opinion on the following questions:

1. May a candidate or officeholder use campaign funds to pay for legal fees incurred in defending himself or herself against charges brought before the Ohio Elections Commission?
2. May a political action committee or political party pay for the legal fees that a candidate or officeholder incurred in defending against charges brought before the Ohio Elections Commission?

Division (O) of R.C. 3517.13 provides in part that no beneficiary of a campaign fund, i.e. the candidate or officeholder for whose benefit the fund exists, shall convert or accept for personal or business use anything of value from the campaign except as reimbursement for "Legitimate and verifiable prior campaign fund expenses incurred by the beneficiary". Ohio Revised Code section 3517.13(R)(1) provides that campaign funds may be used to directly pay for any expenses that may be reimbursed under R.C. 3517.13(O).

"Legitimate" expenses are those that are truly or validly related to a purpose set forth in R.C. 3517.13(O). One such purpose is campaign activity. A charge that a campaign activity violates Ohio's unfair campaign practices law (R.C.3599.091) is grounded in the activity itself. Therefore, legal fees incurred in defending that activity are truly related to campaign activity (See Advisory Opinion Nos. 87-4 and 87-9) and such expense is a legitimate campaign expense. So long as the legal fees that were charged can be confirmed with a bill or other documentation detailing the costs for services rendered, such expense would also be a verifiable campaign expense. See Advisory Opinion No. 87-4.

The question presented in this opinion is quite different from the questions presented in two earlier commission opinions. In Advisory Opinion No. 87-10, this commission ruled that a candidate may not use campaign funds to pay a fine imposed directly upon him by the commission for violation of the

unfair campaign practices law. A fine is a penalty imposed by the commission based on campaign conduct. It is not a campaign expense.

In Advisory Opinion No. 87-9, this commission held that an officeholder may not use campaign funds to pay for legal representation to defend against criminal charges related to activities in office because the legal expenses were not related to the duties of the public office. The commission stated, "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." See Advisory Opinion No. 87-9. Thus, the commission's opinion rested on the fact that the alleged wrongful activity was not one of the duties of the office. An alleged unfair campaign practice, on the other hand, directly relates to campaign activity.

You have also asked whether a political action committee or political party may pay for the legal fees that a candidate incurred in defending against charges brought before the Ohio Elections Commission.

Division (Q) of R.C. 3517.13 provides in part that:

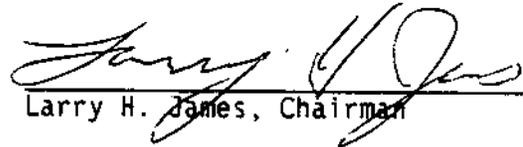
No candidate or public official or employee shall accept for personal or business use anything of value from a political party, political action committee, or campaign committee other than the candidate's or public official or employee's own campaign committee, and no person shall knowingly give to a candidate or public official or employee anything of value from a political party, political action committee, or such a campaign committee.

It is a violation of this division for a candidate or public official or employee to accept, or for any person to knowingly give to a candidate or public official or employee from a political party, political action committee, or campaign committee other than the candidate's or public official or employee's own campaign committee, anything of value for activities primarily related to the candidate's own campaign for election, except for contributions to the candidate's or public official or employee's campaign committee.

A political action committee or political party may pay for the legal fees that a candidate incurs in defending against charges before the Ohio Elections Commission because such payment is not for the candidate's personal or business use. Rather, it is connected to activities related to the candidate's campaign. Therefore, R.C.3517.13(Q) requires that the payment be treated as a contribution and be report as such by both the political action committee or political party and the candidate's campaign committee.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that:

1. A candidate may use campaign funds to pay for legal fees incurred in defending himself or herself against charges brought before the Ohio Elections Commission.
2. A political action committee or political party may pay for the legal fees of a candidate incurred in defending against charges brought before the Ohio Elections Commission.


Larry H. James, Chairman