



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

January 30, 1987

ADVISORY OPINION NO. 87-3

- Syllabus: 1. Campaign funds may be used to pay the expenses of purchasing or leasing and operating a car, but only to the extent that the car is used for the purposes set forth in Ohio Revised Code section 3517.13(O) or other purposes authorized by the Revised Code. As long as the car is used exclusively for purposes authorized by the Revised Code, the payment of car expenses may be by reimbursement to the beneficiary of the campaign fund or by direct payments to vendors. In lieu of reimbursement for actual expenses, or if the car is also used for purposes not authorized by the Revised Code, a beneficiary of a campaign fund may be reimbursed for authorized uses on a per mile basis at a rate not to exceed that permitted by the Internal Revenue Service at the time of the travel.
2. If an expense, previously paid or reimbursed from campaign funds, is later paid or reimbursed from another source, including a governmental entity, the amount previously paid or reimbursed must be refunded to the campaign fund.
 3. For purposes of reimbursing car expenses from campaign funds record keeping should include the date of travel, point of origin, destination, number of miles traveled, travel purpose and the odometer readings at the beginning and end of a reimbursement period.
 4. Car expenses for campaign travel may be shared by two campaign funds. However, car expenses for travel related to the performance of official duties may not be shared by two officeholders' campaign funds.

TO: The Honorable Vernon L. Sykes, State Representative:

You have requested an opinion on the following questions concerning the leasing or purchasing of a car for your campaign:

1. Can campaign funds be used to make monthly lease or loan payments and to pay for gasoline, insurance, and maintenance?
2. Should state mileage reimbursement checks be turned over to the campaign?
3. What record keeping and reporting requirements would be necessary?
4. Can my wife's city council campaign and my state representative campaign share the cost of a car?

Division (O) of R.C. 3517.13 provides 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 fund except as reimbursement for:

1. Legitimate and verifiable prior campaign expenses incurred by the beneficiary;
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 through participation in nonpartisan or bipartisan events where the participation of the holder of a public office would normally be expected;
3. Legitimate and verifiable, ordinary, and necessary prior expenses incurred by the beneficiary while: (A) engaged in activities in support of or opposition to a candidate other than the beneficiary, political party, or ballot issue; (B) raising funds for a political party, political action committee, campaign committee, or other candidate; (C) participating in the activities of a political party, political action committee, or campaign committee; or (D) attending a political party convention or other political meeting.

Division (R)(1) of R.C. 3517.13 provides that division (O) does not prohibit a campaign committee from making direct advance or post payments to vendors for goods and services for which reimbursement is permitted under that division. Division (R)(2) provides that when any expense that may be reimbursed under division (O) is part of other expenses that may not be paid or reimbursed, the separation of the two types of expenses for the purpose of allocating for payment or reimbursement those expenses that may be paid or reimbursed may be by any reasonable accounting method. Division (R)(3) provides that for purposes of the division (O), mileage allowance at a rate not greater than that allowed by the Internal Revenue Service at the time the travel occurs may be paid instead of reimbursement for actual travel expenses allowable.

The effect of R.C. 3517.13(O) is that campaign funds may only be used for the purposes specified in that division or as otherwise authorized in the Revised Code. It is clear that, pursuant to R.C. 3517.13(O), campaign funds may be used to purchase or lease a car and to pay for gasoline, insurance and maintenance on the car so long as the car is used for the purposes set forth in that division. These include use of the car in your own campaign and in the performance of your official duties as a state representative. As long as the car is used exclusively for the purposes specified in R.C. 3517.13(O) or other purposes authorized by the Revised Code and is not used for any other purpose, then payments from campaign funds may be either by reimbursement to you or by payment directly to the vendor. However, if the car is also used for purposes other than those for which reimbursement or payment from campaign funds is permitted, then payments from campaign funds may be by direct payment to a vendor only if the expense relates solely to a permitted use. It may be possible, for example, to tie a particular gasoline purchase to travel related solely to campaign activity. If, however, a lease or mortgage payment, or gasoline, insurance or maintenance payment encompasses travel for which payment from campaign funds is not permitted, then payment for the permissible portion

of the expense may be made from campaign funds only by reimbursement. This is because campaign funds may not be used to pay expenses not authorized by the Revised Code even if the campaign fund were to be subsequently reimbursed. R.C. 3517.13(O) prohibits loans or advances to the candidate from campaign funds even for a temporary period. It permits reimbursement only for prior expenses incurred by the beneficiary of the campaign fund, and provides that an expense is incurred whenever the beneficiary has either made or is obligated to make payment, as by the use of a credit card or other credit procedure or by the purchase of goods or services on account. Therefore, as a general rule, if the car is to be used both for the purposes specified in division (O) and for other purposes, payment from the campaign fund for authorized uses should be by reimbursement to the candidate.

It will be necessary to accurately record travel for any of the purposes for which reimbursement will be sought. The record keeping should include the date, the point of origin, the destination, the mileage, and the purpose. It is not necessary to keep records regarding uses of the car for which reimbursement will not be requested. The payment of mileage expenses may be computed using one of two methods:

1. The total number of miles for which reimbursement is permitted times a mileage allowance at a rate not greater than that allowed by the Internal Revenue Service at the time the travel occurs; or
2. A proportional amount of the actual expenses for the period, equal to the proportion of reimbursable miles to total miles driven during the period. A logical period would be the end of each month since loan and lease payments are usually made on a monthly basis. In addition to the record keeping requirements already noted, it will be necessary to record the actual reading on the odometer at the beginning of a record keeping period and at the end of a record keeping period under this method.

Division (P) of R.C. 3517.13 provides that no beneficiary of a campaign fund shall knowingly accept reimbursement for an expense under division (O) to the extent that the expense previously was reimbursed or paid from another source of funds. If an expense is reimbursed under division (O) and is later paid or reimbursed wholly or in part from another source of funds, the beneficiary shall repay the reimbursement from campaign funds to the extent that payment or reimbursement was received from the other source. Applying the language of this division, it would be a violation for an officeholder to accept reimbursement from campaign funds for expenses that have already been reimbursed by the state or a political subdivision for travel related to the performance of official duties. However, if reimbursement from the state or subdivision has not been received, the officeholder may be reimbursed from campaign funds. When the reimbursement from the state or subdivision is received, the officeholder must then refund to the campaign fund an amount equal to the reimbursement received from the state or subdivision for the expenses previously reimbursed by the campaign fund. This holds true as well when the car expenses were previously paid from campaign funds directly to vendors, rather than by reimbursement to the officeholder. The check from the state or subdivision may be simply endorsed over to the campaign fund or the

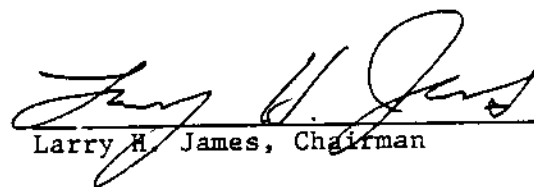
check may be deposited by the officeholder in his or her personal account and he or she may in turn write a check to the campaign fund. Any refund made to the campaign fund should be reported on the campaign committee's finance report on the Statement of Contributions as being from the officeholder and should explain that it is a refund of a prior reimbursement by the campaign fund and should cross-reference the earlier reimbursement. If the reimbursement from the state or subdivision is less than the amount previously reimbursed, for example, the IRS mileage rate may be higher than the state rate, then the officeholder is not required to refund the difference. Due to the requirement to refund all or part of the reimbursement from the campaign fund, it will be necessary to keep accurate travel records in order to separate travel related to official duties from travel related to campaigning or any of the other purposes for which reimbursement or payment from campaign funds may be made. Such record keeping is necessary even if the car is used only for purposes authorized by division (O).

The points discussed above apply equally where a car is used or the car expenses are shared by two campaigns for campaign related travel. The record keeping requirements are essentially the same, except that it is necessary to also record the name of the candidate to whom each use relates. The reporting requirements will vary depending upon how the expenses are handled. If all of the expenses are to be paid by one campaign fund, without any reimbursement from the other campaign fund, then the first campaign is making a in-kind contribution to the second campaign in an amount equal to the expenses related to the car's use in the second campaign. These expenses may be determined using a per mile rate, a proportion of actual expenses basis, or the fair market value at which a comparable car could be leased for the same period. The in-kind contribution must be reported by both campaigns. If one campaign fund pays all of the expenses and is then reimbursed by the other campaign fund, the first campaign fund would report on its campaign finance report expenditures, either directly to vendors or reimbursements to its own candidate, and would report on its Statement of Contributions receiving reimbursements from the second campaign fund for use of the car for campaign related travel. To the extent that a particular expense relates solely to the second campaign, that expense may be paid or reimbursed from the second campaign fund directly to a vendor or the campaign fund's own candidate.

Although it is permissible to use funds from one campaign fund to pay for campaign related travel of another candidate, a campaign fund may pay for expenses related to the performance of an officeholder's official duties only with respect to the beneficiary of that fund. R.C. 3517.13(Q) prohibits an officeholder from accepting anything of value from a campaign fund, other than his or her own, except for certain expenses not relevant here. The same division authorizes contributions from one campaign fund to another for campaign related activities. Even if the second campaign fund were to reimburse the first campaign fund for travel related to official duties, there would still be a violation. It seems unlikely that each campaign fund would be able to directly pay for its own share of expenses, because at least some expenses, such as loan payments, would have to be paid initially by one campaign fund.

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

1. Campaign funds may be used to pay the expenses of purchasing or leasing and operating a car, but only to the extent that the car is used for the purposes set forth in Ohio Revised Code section 3517.13(O) or other purposes authorized by the Revised Code. As long as the car is used exclusively for purposes authorized by the Revised Code, the payment of car expenses may be by reimbursement to the beneficiary of the campaign fund or by direct payments to vendors. In lieu of reimbursement for actual expenses, or if the car is also used for purposes not authorized by the Revised Code, a beneficiary of a campaign fund may be reimbursed for authorized uses on a per mile basis at a rate not to exceed that permitted by the Internal Revenue Service at the time of the travel.
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Larry H. James, Chairman

Member Harry J. Lehman recused himself from consideration of this opinion.