

September 7, 2017

OHIO ELECTIONS COMMISSION

Advisory Opinion 2017ELC-01

SYLLABUS: An expenditure to pay the filing fee required by Supreme Court Rules for the Government of the Bar, Rule VI (Gov. Bar R.VI), is not an appropriate expenditure from a campaign committee fund pursuant to Ohio Revised Code §3517.13(O)(2).

TO: Robert G. Montgomery
Judge
Franklin County Probate Court

You have requested an advisory opinion on the following question:

Is it appropriate for a full-time elected Common Pleas Court Judge to pay the required biennium registrations fees, pursuant to Rule VI of the Ohio Supreme Court Rules, from their campaign account?

In Ohio Elections Commission Advisory Opinion 97ELC-03, the Commission allowed for the expenditure of campaign funds to pay for the fee that an office holder must pay to the Ohio Ethics Commission required by Ohio Revised Code §102.02(E)(2). In the opinion, the Commission essentially held that

“but for” the individual’s position as a county commissioner, or his or her candidacy, the filing of an ethics disclosure statement along with the requisite filing fee would not be required; thus, an expenditure of campaign funds to pay the filing fee required by R.C. §102.02(E)(2) would be an appropriate expense from a campaign fund.

As a part of the holding in 97ELC-03, there is included a reference to Commission advisory opinion 97ELC-02 which was adopted shortly before that opinion. 97ELC-02 reaffirmed the Commission’s reliance on the language in Commission advisory opinion 92-3 which established the “but for” test that the Commission continues to rely upon. This test 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 the holding in 97ELC-03 continues to be relevant and, further, has equal application in this context. Unlike the holding in that opinion, however, and unlike the Ethics Commission Fee, the fee required to be paid pursuant to Supreme Court Rules for the Government of the Bar, Rule VI (Gov. Bar R.VI), is a fee that all active attorneys in the state of Ohio must pay, and thus the 'but for' rule does not apply in this context and so the payment of the fee from a Judges campaign account would not be proper.

In order to hold the office of Judge, a person must be properly admitted to the bar in the state of Ohio and have active status. One of the obligations on any person who desires to be considered an active attorney in this state is to meet all of the requirements contained in Gov. Bar R.VI, including paying the required fee. No person can carry on the practice of law in this state without meeting these requirements. As the fee required for active status as a practicing attorney in Ohio is a fee that all attorneys, even judges, must pay, then the 'but for' test is inapplicable.

In your advisory opinion request letter, you state that as a Judge you

... are not permitted to practice law while serving as Probate Judge and would not derive any benefit from the registration fee being paid other than continued employment ...

While the Commission does not ignore any potential limitations placed upon sitting judges as stated in your opinion request, the Commission must also recognize that the statutory obligation of a Judge to also be an active attorney is correlative with the Gov. Bar R.VI requirement included by the Supreme Court that establishes the basic requirements for being an active attorney. Were you not in the judiciary, this fee would still be an obligation for you to pay to retain your active status before the bar in Ohio, and as you state, it is necessary for your 'continued employment' as a judge.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that an expenditure to pay the filing fee required by Supreme Court Rules for the Government of the Bar, Rule VI (Gov. Bar R.VI), is not an appropriate expenditure from a campaign committee fund pursuant to Ohio Revised Code §3517.13(O)(2).

Sincerely,

William L. Vasil
Chairman