



Ohio Elections Commission

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April 19, 2018

OHIO ELECTIONS COMMISSION

Advisory Opinion

2018ELC-02

SYLLABUS: Pursuant to the terms of Ohio Revised Code §3517.13(O)(2), the holder of a public office is permitted to use funds from his or her campaign committee to pay legal fees in connection with the legal defense in a civil action and the related criminal investigation all as a result of certain improper activities taken by third parties which are related to the public office holder's proper decision to terminate an employee's public employment.

TO: Derek S. Clinger, Esq.

You have requested an advisory opinion on the following question:

Is an elected public official, who was subjected to attempts by third parties to intimidate and extort the public official into making official decisions with respect to public employment and who is named as a defendant in a civil lawsuit in connection with his or her decision to terminate an employee's public employment, permitted to use funds from his or her campaign committee to pay legal fees to his or her legal counsel in connection with the ensuing criminal investigation into the third parties' (sic) actions and legal defense in the civil action?

This Commission has issued a series of advisory opinions concerning the use of a candidate campaign committee's funds to pay for legal fees. Some advisory opinions have approved of the usage (87-15, 88-01, 90-04, 96ELC-06 & 2000ELC-05), while other opinions have forbidden the use (87-09, 96ELC-08, 99ELC-08 & 2006ELC-01). Consistent across all of those opinions has been the Commission's interpretation and application of Ohio Revised Code §3517.13(O), in particular, R.C. §3517.13(O)(2).

Going back as far as advisory opinions 87-4, 87-9 and 87-15, and continuing through all of the other advisory opinions concerning the subject of legal fees, the Commission established the parameters for determining whether an expenditure of campaign funds meets the terms of R.C. §3517.13(O)(2) and are "legitimate and verifiable ordinary and necessary" as incorporated in that statute.

While a verifiable expenditure of campaign funds is easily established by the production of an invoice or cancelled check, the terms “legitimate,” “ordinary” and “necessary” are the terms which truly must be established to determine the propriety of an expenditure. Still relevant over 30 years later, in Commission advisory opinion 87-4, the Commission defined each term as follows:

Legitimate – conforming to recognized principles or accepted rules and standards;
Ordinary – usual; normal; taking its place according to customary occurrences; and
Necessary – appropriate and helpful.

In the current situation, the advisory opinion request letter explains that the “elected public official,” while performing his “duties as the holder of a public office,” was at one point subject to intimidation and extortion after terminating an employee. Additionally, he notified law enforcement authorities of these events and may be subject to offer testimony or additional information for the benefit of a criminal investigation. Thereafter, he was named as a defendant in a civil lawsuit surrounding these events.

Considering all of these circumstances, the following is apparent in this analysis:

1. The need for legal counsel stemming from his proper act of terminating an employee as a holder of a public office that resulted in the stated events, do conform to a recognized principle and an accepted standard, and is thus legitimate;
2. The need for legal counsel would also appear to be usual or normal when a person is faced with defending a civil lawsuit that results from the stated circumstances while conducting his customary duties, and is thus ordinary; and
3. The need for legal counsel would certainly be appropriate and helpful in defending your proper actions as the holder of a public office, and is thus necessary.

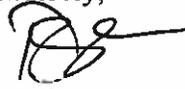
Having established that the circumstances in this advisory opinion request have met the three critical elements to assure compliance with the terms of R.C. §3517.13(O)(2), it is hereby confirmed that the use of campaign funds for acquiring legal services in this scenario is permitted.

It must be stated, however, that should there be a determination that the facts are not as presented in this scenario, the Commission’s opinions in 2006ELC-01, 96ELC-08 and 87-9 would still apply.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that pursuant to the terms of R.C. §3517.13(O)(2), the holder of a public office is permitted to use funds from his or her campaign committee to pay legal fees in connection with the legal defense in a civil action and the related criminal

investigation all as a result of certain improper activities taken by third parties, all of which are related to the public office holder's proper decision to terminate an employee's public employment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Degee Wilhelm', with a long horizontal flourish extending to the right.

Degee Wilhelm
Chair