

Cincinnati Elections Commission

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Advisory Opinion

SUBJECT: Reporting Independent Expenditures by Federal PACs

The Cincinnati Elections Commission (“CEC”) is issuing this advisory opinion in response to a question received regarding whether a federal political action committee (“PAC”) that makes independent expenditures must adhere to the filing deadlines stated in Article XIII of the Charter of the City of Cincinnati (the “Charter”) or instead submit filings in accordance with the deadlines established by state law.

The Charter requires a person making an independent expenditure to file reports with the CEC. Article XIII, Section 2(c)(1) of the Charter establishes the deadlines for filing those reports:

Reporting of independent expenditures: 1) Within 10 days of making independent expenditures totaling more than \$1,000 in a period specified in section 1a, b, or c, the person making the expenditures shall file a report of the expenditures with the commission and the Hamilton County Board of Elections in the manner and form required by the commission. If a portion of the expenditures is made within 30 days of the election, the person shall file the report within 48 hours, and if made within 7 days of the election the person shall file the report within 24 hours.

Article XIII, Section 7 provides that as used in Article XIII, “person” has the same meaning as the definition of “person” in Ohio Revised Code Section 3517.01(C)(17)(a). The definition of “person” in Section 3517.01(C)(17)(a) includes a “political action committee” and also includes any “other organization or group of persons.” Based on this definition, federal PACs fall within the independent expenditure reporting requirements of Section 2(c)(1) of the Charter.

The Charter establishes the minimum standards for reporting contributions and expenditures in connection with municipal elections. Per Section 6 of Article XIII of the Charter, the CEC may adopt rules to administer and enforce the Charter, but it cannot issue rules inconsistent with Charter requirements. Pursuant to its

rulemaking authority, the CEC has adopted CEC Rule 27, “Federal PAC Filing Requirements,” which states:

When a federal Political Action Committee (“PAC”) is required by Article XIII of the Charter or Cincinnati Municipal Code Chapter 117 to file a report with the Commission concerning a mayoral or council election, the PAC shall be required to file with the Commission only those reports that the State of Ohio requires a federal PAC to file with the State and/or Hamilton County in relation to a municipal election in Cincinnati.

The CEC has received questions relating to the interpretation of the portion of CEC Rule 27 that states a “PAC shall be required to file ... only those reports that the State of Ohio requires....” This language can be confusing and contrary to the Charter if taken to mean that a PAC is only required to file contribution and expenditure reports *when* required by the state or county. This is not the intent of the rule, however, and any ambiguity concerning the interpretation of this language must be resolved consistently with the reporting deadlines established in Article XIII.

A careful reading of CEC Rule 27 together with the Charter supports the interpretation that the rule prescribes the information required to be filed with the CEC, and not the timing. The rule begins as follows: “*When* a federal Political Action Committee is required by Article XIII of the Charter ... to file a report with the Commission....” (Emphasis added.) The plain language of the rule acknowledges that a federal PAC is obligated to file reports with the commission *when* required by Article XIII. *When* a CEC filing requirement arises, the rule clarifies that the federal PAC need only provide a report that would otherwise comply with state or county requirements as to form and content. In other words, CEC Rule 27 prescribes the form and substance of the reports only and not their timing.

CEC Rules cannot circumvent or override the Charter. If there is a conflict between CEC rules and the Charter, then the Charter controls. The CEC is currently performing a comprehensive review of its Rules and will amend the Rules, including Rule 27 if necessary, to clarify any ambiguity and to remove language that potentially conflicts with the Charter.

In conclusion, federal PACs must adhere to the filing deadlines established by Article XIII, Section 2(c)(1) of the Charter. This interpretation is consistent with the existing practice for filings submitted to the CEC by federal PACs.

If you have any further questions, please contact the City of Cincinnati Law Department on behalf of the Cincinnati Elections Commission at (513) 352-3317.