



Date: March 16, 2022

To: John Curp, Interim City Manager

Copies: Terry Rath, Vice Chair, Cincinnati Elections Commission
Constance Hill, Member, Cincinnati Elections Commission
Marcus Bethay, Member, Cincinnati Elections Commission

From: Seth Walsh, Chairperson, Cincinnati Elections Commission

Subject: Five-Month Post-Election Report

This comprehensive report is being filed with the City of Cincinnati by the Cincinnati Elections Commission (“CEC”) pursuant to Article XIII, Section 4(f)(3) of the Charter of the City of Cincinnati. Pursuant to Article XIII, the primary role of the CEC is to monitor and enforce the campaign contribution limits imposed on council and mayoral candidates by the Charter. According to the Charter and past practice, the CEC is composed of five Cincinnati volunteer residents who serve four-year terms.

The Charter requires that the CEC has a member affiliated with each political party currently represented by a member of Council while the remaining members are unaffiliated with any political party. Before the 2017 election, Council had members affiliated with the Democratic, Republican, and Charter parties, and a Charter-affiliated member served on the CEC until 2020. No current member of City Council is primarily affiliated with the Charter party, so the CEC currently consists of one member affiliated with each of the Democratic and Republican parties and three unaffiliated members. All members are appointed by the Mayor with the approval of Council, with recommendations from the political parties with regard to the party-affiliated positions. At this time only four people are serving on the CEC and the vacant position is meant to be unaffiliated with any party.

The City of Cincinnati Law Department provides legal and administrative support to the CEC. Law Department attorneys and staff attend each CEC meeting. During the 2021 election cycle, the Law Department representatives fielded multiple inquiries from Council campaigns, individuals, political action committees (“PACs”), and political parties regarding campaign contributions and assisted the CEC members in resolving any legal or procedural issues that arose during the campaign season.

I. FILING REQUIREMENTS

City of Cincinnati Mayoral and Council candidates are required by the Charter to file two campaign finance reports with the CEC on the same date as two state reports are required to be filed with the Hamilton County Board of Elections (“BOE”). Candidates also are required to file copies with the CEC of any report required by Ohio law.

The 2021 election was for both Mayor and Council, and accordingly Mayoral and Council candidates were required to file campaign finance reports itemizing their campaign contributions, their in-kind contributions, and their expenditures. The pre-election report was due on the last business day of July (July 30, 2021). The post-election report was due on the thirty-eighth day after the municipal general election (December 10, 2021). The majority of candidates fulfilled these requirements, and these reports were published on the City of Cincinnati’s online campaign finance portal. A few candidates did not fulfill these requirements, and each failure was considered separately by the CEC.

The CEC formally notified candidates of potential violations and conducted public hearings to determine if a violation had occurred and, separately, if a civil fine should be imposed. All candidates were offered the opportunity to respond to, and correct, potential violations. They could either submit information in writing or appear in-person to explain their situation or circumstances. Prior to the submission of this five-month report, all of the known violations had been resolved by the CEC, and the outcomes are documented in this report.

II. CEC RESOURCES FOR THE 2021 ELECTION YEAR

Beginning in 2004 and continuing through the 2021 election, the CEC had no direct annual budget but still was mandated to regulate campaign finance laws as required by Article XIII of the Charter. Resources required to fulfill these requirements were focused on three primary areas: database improvements, data entry staff to review and input all information filed by the candidates, and Law Department staff time dedicated to the CEC.

A. Database

The City of Cincinnati’s Enterprise Technology Solutions Department (“ETS”) developed a new CEC online database for this election cycle. Jacob Smith from ETS worked closely with Zach Southwood of the Law Department to develop the new database, and continued to work with Chris Liu, Ethics and Good Government Counselor to resolve issues.

As a result of these efforts, candidates could submit their campaign finance reports to the Law Department to be uploaded into the CEC's online database. For the first time, candidates could also, themselves, submit or edit their campaign finance reports using secure logins. Most candidates used the requisite Excel templates provided by the Law Department to expedite this process. Some candidates still submitted PDF or handwritten reports which the Law Department staff then had to enter into the online database. The public could view and search each candidate's contributions and expenditures once they were uploaded to the database.

B. Data Entry

The Law Department provided significant data entry services to the CEC for both the July 30 and December 10 filing deadlines. Law Department paralegals Jill Robb, Alicia Brinkman, Pauline Pickens, and Kellie Posinski quickly processed and entered all the campaign finance reports in addition to their other administrative duties for the Law Department.

As noted above, the majority of this data entry resulted candidates who did not use the requisite Excel templates. Some candidates combined multiple fields into single columns, so their reports could not be uploaded without adjustments, and some candidates submitted PDF or handwritten reports which then had to be transcribed into the online database. The pre-election campaign finance reports were primarily handled by one Law Department employee who was working with the ETS department to debug the new database and therefore took much longer to process and upload. The post-election campaign finance reports were primarily handled by the team of paralegals and were available to view online within three business days after the filing deadline.

C. Law Department

Prior to the enactment of Ordinance # 0413-2021 implementing the new Ethics and Good Government Counselor in the Administrative Code, Law Department attorneys Christine Zimmer, Zach Southwood, and Linda Smith acted as the City's representatives to the CEC. These attorneys served as legal counsel to the CEC and as the CEC Secretary, compiling all agendas, as well as maintaining the CEC's organization and fielding inquiries from candidates, PACs, and the public. In addition, Jill Robb, a paralegal in the Law Department, served as recording secretary for the CEC by compiling all minutes and also maintaining the records for the CEC.

Ordinance # 0413-2021 significantly revised the Law Department's support of the CEC. This legislation created the Ethics and Good Government office within the Law Department and, in part, tasked this new office with providing additional support to the CEC and its mission. The Ethics and Good Government office is staffed

by attorney Chris Liu, and paralegals Teninnah Ross and Laura Hayslip. This office also collaborates with the Office of Administrative Hearings, which conducts civil hearings regarding code enforcement violations, to provide additional paralegal staffing during high volume periods after the campaign finance report deadlines.

Throughout the 2021 election cycle, the Law Department staff spent a significant amount of time and resources addressing items related to the CEC. It is further anticipated the combined efforts of the incumbent and additional Law Department staffing will provide for more robust support of the CEC going forward.

III. CAMPAIGN FINANCE VIOLATIONS AND FINES

The CEC conducted hearings on thirteen potential campaign finance violations over the course of the 2021 election cycle. In each matter, the Law Department pointed out the potential violation and relayed any information to the CEC that was provided by the candidate. The CEC then voted on whether to conduct a formal hearing at the next meeting. Thereupon, the CEC examined the evidence and voted whether to find each candidate in violation of Article XIII. Thereafter, the CEC considered any known mitigating circumstances and voted on whether to impose a civil fine.

Mayoral candidate David Mann missed the May 11, 2021 deadline for filing the required mayoral post-primary report, and the report was filed on May 13, the same day the Law Department notified the campaign that the deadline had passed. The campaign submitted a check for \$400 to cover the potential fine for the late filing prior to the CEC holding a hearing. The CEC held a hearing on June 24, 2021, and the CEC imposed a \$400 fine, which the campaign paid prior to the hearing.

The Law Department conducted extensive outreach to all campaigns, including emails and phone calls, before the July and December required filings to remind the campaigns of the deadlines. Despite that outreach, there were eight candidates who failed to file their pre-election reports by July 30, 2021 and four candidates who failed to file their post-election reports by December 10, 2021.

The CEC voted to conduct hearings regarding the failure of eight candidates to file their pre-election campaign finance reports by July 30, 2021. Candidates Andrew Kennedy, Logan Simmering, and Stacey Smith were found not to be in violation because they made an effort to file on time and complied within 24 hours of being informed that the CEC did not receive their filings. Candidates Jalen Alford, Robert Harris, Nick Jabin, and Philip O'Neal were found to be in violation but were not fined because it was their first time running for City Council and they asserted they were not aware of the CEC's requirements. Candidate Brian Garry was found to be in violation and was fined \$800 for submitting his pre-election campaign finance reports eight days after the deadline.

The CEC also voted to conduct hearings regarding the failure of four candidates to file their post-election campaign finance reports by December 10, 2021. Candidates Jalen Alford, Nicholas Jabin, Logan Simmering and Te'Airea Powell were found to be in violation but were not fined because of mitigating circumstances that were discussed at the public hearing.

The CEC reiterated its desire to be consistent with all the candidates throughout this election cycle. The CEC accepted as a mitigating circumstance, for the purpose of whether to impose a fine, that first time candidates were less likely to know about the requirements of the CEC. The CEC also declined to hold a hearing in two instances where the candidates submitted their campaign finance reports after the deadline but were in contact with the Law Department prior to the deadline, and they communicated ongoing hardships that required more time to file their reports.

IV. ADVISORY OPINIONS

The CEC worked with the Law Department to approve and issue three advisory opinions leading up to the 2021 election. These advisory opinions addressed the conversion of campaign funds to a campaign for City office; how to report the conversion of campaign funds to a campaign for City office; and the reporting of independent expenditures by federal political action committees.

These advisory opinions clarified the following:

(1) Once a campaign committee converts from a non-City campaign to a City campaign, it must comply with the City's contribution limits dating back to the most recent election period for the City office for which the converted campaign is collecting contributions because an alternative interpretation undermines the intent of the Cincinnati Municipal Code provisions and is inconsistent with the requirements of the Charter.

(2) Campaigns that convert funds after March 2021 must be able to provide copies of cancelled checks with their conversion filing demonstrating that the disposal of excess contributions has been completed as of the date of the conversion of the campaign funds.

(3) Federal political action committees must adhere to the filing deadlines established by Article XIII, Section 2(c)(1) of the Charter, which is consistent with the existing practices.

All three of these advisory opinions are available on the CEC's website with the other CEC Advisory Opinions. Any follow up questions can be directed to the Ethics and Good Government office in the Law Department.

V. RECOMMENDATIONS

The CEC offers two recommendations for the next election cycle in 2023:

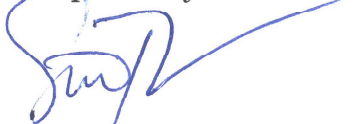
First, the CEC recommends that the CEC be fully staffed by the Mayor's Office appointing someone to the vacant CEC member position. There are only four current CEC members, and the CEC rules require three of them to be present to have a quorum and conduct any votes. A fifth member would help alleviate any concerns if one or more of the CEC members is unable to attend a meeting.

Second, the CEC recommends the Law Department facilitate additional outreach to the next group of candidates for Council for the 2023 election cycle. This outreach might include a tutorial or workshop regarding potential campaign finance violations and the CEC process and would encourage candidates to engage the CEC and use the preferred Excel templates. This outreach could reduce the number of potential violations and the amount of required data entry.

These improvements could greatly improve the efficiency of the CEC for the 2023 election. However, as the City of Cincinnati transitions from four-year Council terms to two-year Council terms, the CEC recommends that any changes are implemented in 2022 and prior to the commencement of the 2023 campaign cycle.

If you have any questions regarding the CEC five-month report, feel free to contact me at 513-661-0990.

Respectfully submitted,



Seth T. Walsh,
CEC Chair