

## Cincinnati Elections Commission

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April 8, 2021

### Advisory Opinion

#### **SUBJECT: Reporting Conversion of Campaign Funds to Campaign for City Office**

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On March 11, 2021, the Cincinnati Elections Commission (“CEC”) issued an Advisory Opinion (“March Advisory Opinion”) regarding how the contribution limits provided in Article XIII of the City of Cincinnati Charter apply to campaign funds raised for a non-City office that are then converted to a City office campaign. In addition to establishing that the contribution limits in Article XIII apply to contributions made from 32 days after the last mayoral general election, the advisory opinion also provided a 30-day safe harbor for those campaigns that had converted funds prior to the March Advisory Opinion to revise their campaign conversion filings to incorporate the March Advisory Opinion and related guidance. The last day to submit revised conversion filings (“Revised Conversion Report”) within the 30-day safe harbor period is April 10, 2021.

Since the issuance of the March Advisory Opinion, the CEC has received several questions about the implementation of the guidance in that opinion, including the proper way to account for the contributions from December 2017 until the funds were converted for the 2021 election, what must be filed as part of the Revised Conversion Report, when reports have to be filed to address the converted funds, and when a candidate must dispose of any excess contributions in the converted funds. This opinion is an effort to respond to these ongoing inquiries from campaigns and provide guidance upon which campaigns can rely.

#### *1. Reports Required to be Filed*

Campaigns converting funds from a non-City campaign to a City campaign must file a conversion report at the time the candidate’s nominating petitions are filed (the “Conversion Date”). A campaign that filed its conversion report prior to the issuance of the March Advisory Opinion must file a Revised Conversion Report by April 10, 2021 to comply with the March Advisory Opinion and updated CEC Rule 18. The requirement to revise the conversion report under the March Advisory Opinion and amended Rule 18 applies only to contributions received by the campaign prior to the Conversion Date.

The requirement for a Revised Conversion Report does not affect the reporting requirements for contributions received by the campaign *after* the Conversion Date. In the Revised Conversion Report, each campaign must identify contributions that (1) were converted; (2) are in excess of City contribution limits; and (3) were contributed prior the Conversion Date. The Revised Conversion Report must also account for disposal of any excess funds included in the Revised Conversion Report (see Section 3, below). Excess contributions made after the Conversion Date and prior to this advisory opinion are to be reported in the next generally applicable City reporting period, as further described below.

Independently of the Revised Conversion Report, all campaigns must file their next City reports according to the reporting deadlines in Article XIII. Winning mayoral primary candidates must file a post-primary report on May 11, 2021 (the seventh day after the primary), and Council candidates and unsuccessful mayoral candidates must file a report on July 30, 2021 (the last business day of July). The next City reporting period applicable to converted campaigns will begin with the Conversion Date and include any contributions made thereafter. Each campaign will include in its future City reports all converted contributions, excess contributions taking account of converted campaign funds, and disposal of any such excess as applicable.

## *2. Calculation of Excess Funds*

According to Rule 18.B of the CEC's Rules, the accounting for disposal of excess funds from a converted campaign shall reflect that the funds first received were the funds first spent by the campaign (a FIFO accounting process). Accordingly, the CEC will look at the most recent contributions first to determine if any of the contributions converted to a City campaign exceed the contribution limits. Campaigns converting funds should follow the FIFO procedure in identifying and determining which funds are being converted to the City campaign and whether the contributions comprising those funds comply with the campaign contribution limits.

## *3. Deadline for Disposal of Excess Funds*

The March Advisory Opinion provides that campaigns that converted campaign funds prior to the issuance of the March Advisory Opinion have until April 10, 2021 to file a Revised Conversion Report. As part of the Revised Conversion Report, campaigns must dispose of excess contributions in the manner provided by ORC 3517.109(C) by April 10 and report that disposal. Candidates for City offices use the Ohio Secretary of State's Form 31-B, "Statement of Expenditures," to report their expenditures, which include the disposal of excess contributions. The directions for Form 31-B provide that "[t]he date listed for each expense should be the date that a check or other payment instrument is mailed, handed over, or transmitted." The CEC recognizes that the April 10 deadline may not allow sufficient time for refund or donation checks issued by campaigns to be cashed by the payees. Therefore, in keeping with the instructions on Form 31-B and the general rule that acts are deemed to have been completed upon mailing or personal delivery, campaigns that converted campaign funds before the March Advisory Opinion was issued shall have complied

with that opinion's disposal requirements if they have mailed, handed over, or transmitted the refund or donation checks by April 10. The campaigns must include verification of the disposal by providing a copy of the dated check or the check number with the Revised Conversion Report and may be required to provide any other verification document the CEC finds reliable.

The CEC recognizes that allowing disposal of excess contributions by mailing in accordance with the directions for Form 31-B does not guarantee that excess contributions will be removed from the campaign's bank account. If any refund or donation checks are not cashed before the next City campaign finance filing is due, the campaign must dispose of the excess contributions in another manner prescribed by ORC 3517.109(C) and be able to provide copies of cancelled checks showing the disposal of the excess contribution with that next campaign finance filing.

This rule applies only to those campaigns that converted funds before the March Advisory Opinion was issued. Campaigns that convert funds after the March Advisory Opinion 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.

#### *4. Reliance on Advisory Opinion*

This advisory opinion answers questions about how a campaign for City office accounts for converted contributions as well as questions about the March Advisory Opinion. Pursuant to Article XIII, Section 4(f)(1)(b), a person who reasonably relies on this advisory opinion is not liable for a violation of Article XIII of the Charter.

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.