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MAYOR



LEANNE DAVIS
EXECUTIVE DIRECTOR

CITY OF PITTSBURGH
ETHICS HEARING BOARD
CITY-COUNTY BUILDING

OPINION OF THE BOARD

February 1, 2025

To the Requester:

Confidential

Via electronic mail

RE: 25-A-001 Confidential Opinion, Contribution Limits of Independent Expenditures

Dear Requester:

Issue: You ask if the rules enforced by the Ethics Hearing Board (“Ethics Board” or “Board”) permit your remaining campaign funds to be used for a mailer in support of a candidate if that cost exceeds contribution limits, and if so, how this campaign activity should be disclosed.

Short Answer: So long as there is no coordinated activity, then sending the mailers would be an independent expenditure. Independent expenditures are not campaign contributions, thus no financial limits apply, though additional disclosure is needed.

Caution: There are many ways in which mailers have historically created ethics violations. Please contact our staff to learn if additional protective advice could be helpful.

Statement of Facts:

Advice is issued based on the facts submitted, with no independent investigation as to facts presented or potentially omitted. City of Pittsburgh Code of Ordinances (“Code”) § 197.13. It is the burden of each requesting party to truthfully disclose all material facts relevant to the inquiry.

The facts as given are:

- You work for the City of Pittsburgh (“City”) as [elected office].
- You wish to support a particular candidate for City elective office (“Candidate”) by sending out a letter or a card in the mail (“mailer”) to encourage people to vote for Candidate.
- You have money left over from your election campaign and intend to use these funds for the mailer.
- You ask what contribution limits and disclosure requirements are applicable to sending out such a mailer.

Legal Analysis

Relevant Law:

In the Board’s jurisdiction, there are rules on political activity, campaign finance contributions and independent expenditures. Home Rule Charter § 705; [Code § 197.04\(e\)](#); [Code Chapter 198](#). We also regulate use of office, improper influence, and conflicts of interest. [65 Pa.C.S. §§ 1103\(a-c\), and 1102](#); Code § 197.03(a), Code §197.04, and Home Rule Charter § 706. Several terms within these laws have important statutory definitions. Relevant laws and definitions are listed at the end of this letter.

Campaign Finance Overview:

Candidates for City elected office are subject to contribution limits aligned with the Federal Elections Commission “FEC.” [Code § 198.02](#). Coordinated expenditures are considered contributions to the candidate and subject to these limitations. [Code §§ 198.01 and 198.02](#). Independent expenditures are not considered contributions and thus not subject to a candidate’s contribution limitations. *Id.* Contributions are capped, not expenditures. [Buckley v. Valeo](#), 424 U.S. 1, 96 S.Ct. 612, (1976). Finally, additional contribution limits exist for City employees and some professional service contractors. [Code § 197.04\(e\)](#); [24-A-030 Confidential Opinion, Contribution Limits of Professional Service Contractors](#).

Contributions:

Contribution limits vary by type of contributor and type of recipient. 11 C.F.R. § 109.21. The current limit for an individual contributor is \$3,500¹ and the limit for a committee is the amount listed for a "PAC-Multicandidate" which is \$5,000. Code § 198.02(2).

Campaign activity that is considered a contribution can exist in many forms. Contributions can include a payment or expenditure made to a third party for goods, facilities or

¹ City employees are subject to additional contribution limits to their current employer, the incumbent candidate. Your contribution would not be limited in this way because no elected branch is subservient to another. The Mayor is not the employer of Council or the Controller, and vice versa.

services that are used or received by the campaign. 25 P.S. § 3241. Accordingly, in some cases, a mailer is an “in-kind” contribution. Id.

A distinguishing aspect of what makes something a contribution is whether value is “incurred or received by a candidate.” Code § 198.01. Expressly included in the definition of contribution is activity that is “coordinated.” Id.

Coordinated Versus Independent Communications:

Our Code provides that coordinated expenditures are activities “made in cooperation, consultation, or in concert with, or at the direction of a candidate, candidate committee, or agent thereof.” Id. Conversely, non-coordinated expenditures are considered to be independent.

Independent expenditures are “made for the purpose of influencing an election, without cooperation or consultation with any Candidate or any Political Committee authorized by that Candidate, and which is not made in concert with, or at the request or suggestion of, any Candidate or Political Committee or agent thereof.” Code § 198.02.

Determining Coordination:

The “request or suggestion” criteria mirrors the FEC’s regulations for determining coordination. 11 C.F.R. § 109.21. Coordination exists when the candidate, political committee, or agent thereof, assents to a suggestion made by the party paying for the communication, but agreement or formal collaboration is not required. Id. Coordination can occur by material involvement or substantial discussion relating generally to the creation, production, or distribution of the communication or to the campaign’s plans, projects, activities, or needs – excluded from this list are responses to inquiries about legislative or policy issues. Id. Finally, coordination can occur if, along with other criteria, there is involvement of a common vendor or certain former political employees/contractors.

More information, including how to make the required prominent disclaimer, can be found at 25 P.S. § 3241 and <https://www.fec.gov/help-candidates-and-committees/making-independent-expenditures/>.

Board Findings:

It is our duty as a regulatory body to interpret and administer the laws within our jurisdiction. Code § 197.09(k). We therefore adopt for our administration of contribution limits the discussed FEC guidance in how to determine whether a contribution is “coordinated.” Code § 198.01, et seq.; 11 C.F.R. § 109.21.

There are no facts provided relating to the existence or nonexistence of the factors as detailed above regarding any request, suggestion, assent, agreement, collaboration, material involvement, substantial discussion, or shared vendor/former staff. Our advice is limited to the facts given, without assumption or investigation, and we would therefore conclude that the expense is not “coordinated” with the candidate, a committee, or an agent thereof. As noted elsewhere in this letter, the protection our advice serves is limited to the specific facts disclosed.

If any of these details emerge, we would be happy to reconsider this advice within 30 days from the date of issuance or, if received after 30 days, to issue a new advisory opinion.

Accordingly, we find that given the facts presented, the described activity is an independent expenditure required to be disclosed and does not impact the associated candidate's contribution limits.

Procedure for Filing:

Independent expenditures must be reported when a person or committee spends at least \$100 "to encourage or defeat an election outcome." [City Code § 198.06 \(4\)](#).

During the Board's early reporting period, a campaign finance disclosure is required to be filed with our office by the first Monday following the month the activity occurred, with a grace period of up to seven days after the reporting period ends to complete the paperwork. Code § 198.06. For example, the deadline for January activity is February 3, with potential extension to February 7, 2025. The correct form to use depends on whether the activity is made by you as an individual (the Independent Expenditure form) or by your candidate committee (the Campaign Finance Report). If you do not use a notary, an additional form is required, called the unsworn declaration. Please complete the required forms and file by email to leanne.davis@pittsburghpa.gov. Copies of the forms, filing instructions, and FAQs, are available on our website at <https://pittsburghpa.gov/ehb>.

Finally, you likely need to disclose this campaign finance activity with the Allegheny County Bureau of Elections ("County"), both the independent expenditure itself, as well as the money coming out of your candidate or candidate committee account. Please contact the County for any questions on these requirements.

Additional Notes

State Ethics Act Conflicts of Interest, Use of Office, Influence, Political Activity:

We now address related laws not to assert a violation could or would occur, but merely to assist with a more complete response, and to highlight topics for your consideration. These restrictions apply to both officials and employees, with minimal exception for de minimis (insignificant amounts) or dual-purpose activity.

Use of public office, or information derived therefrom, for political purposes can create a conflict of interest violation. [Freind](#), Order 800; [Smythe](#), Order 1121; [Rakowsky](#), Order 943; [Eck](#), Order 787, [Ferlo](#), Opinion 97-005.

Political activity, or "[a]n activity directed toward the success or failure of a political party, candidate, political campaign, or partisan political group" cannot be done on City time, City property, or with any City resources. [24-A-022 Confidential Opinion, Use of City Property Off-Duty](#); [24-A-023 Confidential Opinion, Political Dress While On-Duty](#); [Philadelphia BOE Regulation 8: Political Activity](#).

Finally, it is unlawful to offer or give a campaign donation or anything else of value with the understanding it will influence a public servant or candidate for office. 65 Pa.C.S. § 1103(b) and (c).

Reliance: This advice is based on the facts summarized in this opinion letter. Code §§ 197.13 and 197.16(a). Please contact our staff if these facts are inaccurate or incomplete – or if the facts change in the future. Advice can be appealed or amended. Code § 197.13. Requests for reconsideration must be in writing, describe the error in fact or law, and be received within thirty days from the date of this letter.

The Ethics Hearing Board works from the City’s Code of Conduct, which adopts the State Ethics Act, along with portions of the City Code and Home Rule Charter. Code § 197.01. The State Ethics Commission is the authority on the Ethics Act. If the State Ethics Commission provides a more restrictive view than this writing, the State’s position will govern. [65 Pa.C.S. §§ 1107, and 1109](#). In complement, the Board and its staff adopt or exceed State Ethics Commission interpretations of the Act. [65 Pa.C.S. § 1111](#). Legal issues are multi-faceted, and you may have rights or obligations beyond the ethics laws within the EHB’s jurisdiction.

Conclusion: Unless there has been “coordination” with the candidate, committee or an agent, it is permitted to send the described mailer, so long as there is no unlawful influence, use of your office, information derived through your office, staff, equipment, or other City resources. There are no contribution limits associated with this activity as it is described as an independent expenditure, without any coordinated activity. The described activity is political activity which may not be conducted on or with any City property or during working hours. Disclosures are required. An independent expenditure filing is due with this office by the Monday following the month of the activity if it occurs within the Board’s early-reporting window. Note there are other County requirements, including but not limited to: a prominent disclaimer on the mailer, a duplicative filing of the independent expenditure report as well as a filing disclosing the expenditure from your residual campaign account.

Thank you for contacting our office regarding this inquiry, please contact our staff with any questions.

Sincerely,



Maryann Herman, Chair

Relevant Governmental Ethics Provisions:

Code § 198.02 - CONTRIBUTION LIMITATIONS.

(1.) No person, except the candidate, shall make political contributions to a candidate or candidate committee per covered election for the office that the committee has been established to seek, that exceeds the limitations that are in effect and published by the Federal Election Commission as of the first day of that same calendar year. In instances where the donation limits increase in the middle of an election cycle, a candidate or candidate committee may seek donations equal to the difference between the total contribution made by a person to their candidate committee during that election cycle and the newly adopted campaign finance limits. Political contribution limits for donations made by a person to a candidate committee shall be the same as the federal contribution limit for "individuals" who make contributions to "candidate committees."

(2) No political committee or candidate committee shall make political contributions to a candidate or candidate committee per covered election that exceeds the limitations that are in effect and published by the Federal Election Commission as of the first day of that same calendar year. Political contribution limits for donations made by a political committee to a candidate committee shall be the same as the federal contribution limit for "PAC-Multicandidate" that makes contributions to "candidate committees."

Code § 198.01, Definitions. POLITICAL CONTRIBUTION

Money, gifts, forgiveness of debts, loans, or things having a monetary value incurred or received by a candidate for City elected office or a political committee to which they are legally associated for use in advocating or influencing the election of the candidate for City elected office. For the purposes of this Chapter, political contribution shall include all coordinated expenditures.

Code § 198.01, Definitions. COORDINATED EXPENDITURE

Any expenditure made by any person (other than a candidate or candidate committee) in support of a candidate's campaign that is made in cooperation, consultation, or in concert with, or at the direction of a candidate, candidate committee, or agent thereof.

Code § 198.01, Definitions. INDEPENDENT EXPENDITURE

An expenditure made for the purpose of influencing an election, without cooperation or consultation with any Candidate or any Political Committee authorized by that Candidate, and which is not made in concert with, or at the request or suggestion of, any Candidate or Political Committee or agent thereof.

Code § 197.04 - USE OF AUTHORITY AND PUBLIC PROPERTY.

(c) No public official or City employee shall use or permit the use of his or her official title, insignia or position in connection with any private business from which the public official or City employee receives compensation.

(d) No public official or City employee shall use or allow to be used any City facilities, property, staff or information obtained in the course of his or her employment for personal use other than would be generally available to the public at large.

(e) No City employee shall contribute in excess of one hundred dollars (\$100.00) during any consecutive four-year period to any political campaign of his or her employer or to any political campaign of his or her employing authority; provided, however, that with respect to Directors of Departments, the Mayor's Executive Secretary Officer and the Chief Administrative Officer such amount shall be two hundred dollars (\$200.00) for any four-year period.

For purposes of this section, "employer" means the following:

- (1) The Mayor is employer of the Executive Branch;
- (2) The City Controller is employer of the City Controller's Office; and
- (3) Members of Council are employers of their personal staffs, the City Clerk and all City Clerk employees.

For purposes of this section, "employing authority" means any City employee who supervises, oversees or directs the work of another City employee.

State Ethics Act § 1103 (a) Conflict of interest.

No public official or public employee shall engage in conduct that constitutes a conflict of interest.

State Ethics Act § 1102 (a) "Conflict" or "conflict of interest."

Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

Code § 197.03 (a) - CONFLICT OF INTEREST.

No public official or public employee shall exert influence with respect to property or a business with which he or a member of his or her direct family is associated.

Home Rule Charter § 706:

No elected official, officer or employee shall in any manner receive benefit from the profits or emoluments of any contract, job work or service for the City, or accept any service or thing of value directly or indirectly upon more favorable terms than those granted to the public generally, from any person, firm or corporation having dealings with the City. No elected official, officer, or employee shall solicit or receive any compensation, gratuity or other thing for any act done in the course of public work. This section shall be broadly construed and strictly enforced. Any violation of this section shall cause the offending official, officer, or employee to forfeit office or employment.

Home Rule Charter § 705. - POLITICAL ACTIVITY OF EMPLOYEES - GIFTS.

Employees of the City are prohibited from engaging in political activity during working hours and at all times in city offices. City employees may not hold an elected public office wherein they would receive an annual salary, unless a leave of absence is taken without pay. Certain described classes of city employees and officers may be required, by ordinance, to take a leave of absence without pay while a candidate for elected public office. City employees shall not be permitted to accept any gift or thing of value in connection with their employment other than their salary, nor be compelled to contribute to any fund other than that required by law. No solicitation shall be made of a city employee for any purpose during working hours. Nothing contained in this section shall affect the right of city employees to support a political party, to vote as they choose, to hold party office or to express publicly and privately their opinions on political subjects and to attend political meetings.

State Ethics Act § 1103 (b) and (c) Improper Influence

(b) Seeking improper influence.--No person shall offer or give to a public official, public employee or nominee or candidate for public office or a member of his immediate family or a business with which he is associated, anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment based on the offeror's or donor's understanding that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.

(c) Accepting improper influence.--No public official, public employee or nominee or candidate for public office shall solicit or accept anything of monetary value, including a gift, loan, political contribution, reward or promise of future employment, based on any understanding of that public official, public employee or nominee that the vote, official action or judgment of the public official or public employee or nominee or candidate for public office would be influenced thereby.