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October 14, 2021

Mike Taylor, President
Ohio Association of Professional Fire Fighters
140 E. Town St., Suite 1225
Columbus, OH 43215

William E. Quinn, Secretary/Treasurer
Ohio Association of Professional Fire Fighters
140 E. Town St., Suite 1225
Columbus, OH 43215

Re: Opinion Letter Regarding Use of Local Funds in Political Campaigns

Dear President Taylor and Secretary/Treasurer Quinn:

We have been asked for a legal opinion as to whether labor unions, such as IAFF locals, can use their general fund revenue, which would include dues paid by their members, to support candidates running for political office. The short answer to this question is yes. they can, but there are restrictions and procedures that must be followed in connection with the contributions and disbursements made to or on behalf of political candidates.

First, let me outline some of the relevant statutory provisions. Ohio Revised Code §3517.01(C) sets forth the definitions for labor organizations and political contributing entities:

(18) "Labor organization" means a labor union; an employee organization; a federation of labor unions, groups, locals, or other employee organizations; an auxiliary of a labor union, employee organization, or federation of labor unions, groups, locals, or other employee organizations; or any other bona fide organization in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment.

(25) "Political contributing entity" means *any entity, including a corporation or labor organization, that may lawfully make contributions and expenditures* and that is not an individual or a political



action committee, continuing association, campaign committee, political party, legislative campaign fund, designated state campaign committee, or state candidate fund. For purposes of this division, "lawfully" means not prohibited by any section of the Revised Code, or authorized by a final judgment of a court of competent jurisdiction. (Emphasis added)

Another Ohio statute actually prohibits unions from using dues money for political purposes. Ohio Revised Code §3599.03(A)(1) states in part that "no labor organization, directly or indirectly, shall pay or use, or offer, advise, consent, or agree to pay or use ... the labor organization's money, including dues, initiation fees, or other assessments paid by members, or property, for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee including a political action committee of the corporation or labor organization, a legislative campaign fund, or any organization that supports or opposes any such candidate, or for any partisan political purpose"

However, this statute, to the extent it prohibited labor unions from using their money, including dues, fees, or assessments paid by members, was declared unconstitutional in *UAW v. Philomena* (1998), 121 Ohio App.3d. 760. While still on the books, the statute's restrictions on expenditures by labor organizations are no longer in effect and are not being enforced. Labor organizations can lawfully make expenditures to or on behalf of political candidates.

Since labor organizations may lawfully make political contributions and expenditures, unions that do so qualify as a political contributing entity (PCE) pursuant to the definition quoted above. As such, they are subject to the campaign expenditure laws regarding political contributing entities. There are numerous provisions establishing the requirements for PCE's. Examples include the following:

Ohio Revised Code §3517.10(D)(1): A political contributing entity shall appoint a treasurer and shall file, on a form prescribed by the Secretary of State, a designation of that appointment, including the full name and address of the treasurer.

Ohio Revised Code §3517.10(D)(2): "The treasurer appointed under division (D)(1) of this section shall keep a strict account of all contributions, from whom received and the purpose for which they were disbursed."

Ohio Revised Code §3517.10(A): Political contributing entities that made or received a contribution or made an expenditure in connection with the nomination or election of any candidate or in connection with any ballot issue shall file a form prescribed by the Secretary of State setting forth in detail the contributions and expenditures of the entity. Generally these forms must be filed no later than (1) the twelfth day before the election; (2) the thirty-eighth day after the election; (3) the last business day of January of every year; and (4) the last business day of July of every year. However, these filing requirements and deadlines may not always apply or may vary depending on the timing and the amount of the expenditures.

Contributions to the PCE must be disclosed, although the PCE may report as an aggregate the contributions from membership dues.

Unions that use dues monies for expenditures may either establish a separate account or make expenditures directly from the union's general fund. Although a separate account is not required, reporting contributions and expenditures would seem to be easier if a separate account were established.

These are just examples and certainly not a complete list of the requirements for PCE's and the forms that must be filed.

The bottom line is that unions may use union dues and other revenue to make contributions to or expenditures on behalf of political candidates. I do offer a word of caution about this. Ohio Revised Code §124.57(A) states the following:

No officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state shall directly or indirectly, orally or by letter, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political party or for any candidate for public office; nor shall any person solicit directly or indirectly, orally or by letter, or be in any manner concerned in soliciting, any such assessment, contribution, or payment from any officer or employee in the classified service of the state, the several counties, cities, or city school districts of the state, or the civil service townships of the state; nor shall any officer or employee in the classified service of the state, the several counties, cities, and city school districts of the state, or the civil service townships of the state be an officer in any political organization or take part in politics other than to vote as the officer or employee pleases and to express freely political opinions.

Employees of cities and civil service townships are subject to this law, and care should be taken so they do not run afoul of it. In fact, any public employee should be careful when it comes to political activity. For instance, IAFF members should not appear in uniform, and department vehicles should not be depicted, in political ads. Members should not be identified as an employee of their department. Actions should always be taken by union officials in their union capacities. And press releases, endorsements, etc., should not be made under the name of the individual employee even if the employee is a union officer (just use the Local's number, or use a retired member or other non-employee for such a purpose).

I hope this opinion helps. Please contact me if you have any questions about this matter.

Sincerely,



Henry A. Arnett
General Counsel, OAPFF