

## Cincinnati Elections Commission

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### Advisory Opinion

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

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On January 26, 2021, the Cincinnati Elections Commission (“CEC”) modified Rule 18 of its Rules of Procedure and Rules for Administration and Enforcement (“Rules”) concerning the accounting requirements for conversion of existing campaign accounts into municipal campaign accounts. On the recommendation of legal counsel to the CEC, the rule change sought to harmonize Rule 18 with Cincinnati Municipal Code (“CMC”) Section 117-6. In so doing, however, the CEC inadvertently exacerbated an apparent Charter conflict between CMC 117-6(b) and Article XIII of the Cincinnati City Charter. In short, the January 26 rule change, if not corrected, would undermine the intent of both CMC 117 and Charter limitations and provisions.

It is essential that the CEC state clearly that campaigns acting based on the January 26 revision to Rule 18 to convert their campaign accounts have done nothing improper. This advisory opinion is being issued so the CEC may provide campaigns with updated guidance concerning conversion limits that can be relied upon as a matter of law. Any campaigns that have filed to convert their accounts prior to this guidance shall have a 30-day safe harbor during which they may update their filings to incorporate this advisory opinion and related guidance.

Simply put, this advisory opinion recognizes that there is ambiguity in the meaning of certain terms contained in CMC Section 117-6 that was inadvertently compounded by well-meaning but confusing changes to Rule 18. This opinion is an effort in response to ongoing inquiries from campaigns, including those that would be subject to Rule 18, to ensure that the guidance clearly tracks the requirements of Article XIII of the Cincinnati City Charter.

#### Background

Article XIII of the Charter places certain limits on contributions to campaigns for Mayor and City Council. CMC Section 117-6 specifically addresses contributions that were made to a non-City campaign, but which are later converted into a City campaign. Section 117-6 was first enacted in 2005 with the passage of Ordinance 125-2005.

The “whereas” clauses in Ordinance 125-2005 outline the reasons for its enactment. These reasons included the City’s “compelling interest in assuring the reliability and fairness of its election process,” “to limit contributions to all candidates running for City Council or Mayor, regardless of prior political positions held,” to clarify “the clear intent and effect of Article XIII. . .to apply contribution limits uniformly to all candidates,” and to explain that “a system that would allow different contributions limits for different candidates in the same election would clearly violate the Constitutional rights of numerous candidates, and particularly those candidates who have not held or campaigned for prior offices at the County, State, or Federal levels.” This portion of the Ordinance also indicates that enactment of Section 117-6 was in response to certain State of Ohio contribution limits being increased.

Contemporaneously with the passage of Ordinance 125-2005, the CEC adopted a rule to describe how candidates should provide an accounting for these converted campaign contributions. It stated in part that “Any funds not spent prior to the submission of a nominating petition for a city council or mayoral campaign must meet the contribution limits outlined in Article XIII, even if collected while campaigning for another office.”

Section 117-6 has not been substantively modified since it was enacted.<sup>1</sup> Recently, the CEC was asked a question about how Section 117-6 applies to a candidate who was last a candidate in a general election for a non-City office who had a balance of funds in the candidate’s account. In response, the CEC revised the rule regarding converted campaign accounts to use the same language in both Section 117-6 and the rule. Unfortunately, this revision to the rule has created more confusion about how Section 117-6 should be interpreted.

### Analysis

The meaning of Section 117-6 is a matter of statutory construction. “The main goal of statutory construction is to determine and give effect to the legislature’s intent.” *City of Cincinnati v. State*, First Dist. No. C110680, 2012-Ohio-3162, ¶ 8. “Courts must look first to the language of the statute itself to determine the legislative intent.” *Id.* at ¶ 9. “Words and phrases shall be read in context and construed according to the rules of grammar and common usage.” R.C. 1.42. “Courts must also evaluate the statute as a whole. They have a duty to give effect to all of the words used in the statute and may not delete words or insert words that are not used.” *City*, 2012-Ohio-3162 at ¶ 9 (internal citations omitted).

Section 117-6(b) provides

*Basic Prohibition.* Political contributions raised for a county, state or federal candidate campaign, which is then converted into a city council or mayoral campaign, or contributions raised for a city council campaign

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<sup>1</sup> Ordinance 370-2012 modified capitalization of some terms and made certain references consistent with other changes to Chapter 117.

which is converted to a mayoral campaign, must comply with the limits on contributions as established in Article XIII of the charter of the city of Cincinnati. The burden shall be on the candidate to show that funds raised have been in accordance with the city's contribution limits, and that contributions in excess of the city's contribution limits have been disposed of in accordance with this section and any rules promulgated by the Cincinnati Election Commission.

If a county, state or federal candidate campaign is converted to a city council or mayoral campaign, or if a city council campaign is converted to a mayoral campaign, the aggregate contribution of funds from each contributing individual or entity to the committee for the entire period since the end of the last general election period for the office under which the committee is, or has been, collecting contributions, up to the submission of a nominating petition for city council or mayor, plus any additional contributions made by the same contributing individual or entity after the campaign is converted to a city council or mayoral campaign, cannot exceed the limits established by Article XIII of the charter of Cincinnati.

Section 117-6 defines "conversion" as "the act of formally changing the designation of the office for which a candidate is running, by changing the designation of 'office sought' on the Designation of Treasurer Form (Form 30-D) of a candidate campaign committee." Section 117-6 also incorporates the definitions within R.C. 3517.01. A "contribution" includes anything of value. R.C. 3517.01(C)(5). A "campaign committee" means "a candidate<sup>2</sup> or a combination of two or more persons authorized by a candidate under section 3517.081 of the Revised Code to receive contributions and make expenditures." R.C. 3517.01(C)(1). Practically speaking, the latest date a candidate could convert her or his campaign committee is when the City's nominating petition is due because the nominating petition will include the "office sought" by a particular candidate.

Although certain terms are not defined in R.C. 3517.01, they are defined elsewhere within the elections chapter of the state code and so provide some guidance. "Aggregate contribution" means "the total of all contributions from a contributor during the [applicable period]." R.C. 3517.109.

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<sup>2</sup> A "candidate" includes "any person who, at any time before or after an election, receives contributions or makes expenditures or other use of contributions, has given consent for another to receive contributions or make expenditures or other use of contributions, or appoints a campaign treasurer, for the purpose of bringing about the person's nomination or election to public office." R.C. 3517.01(C)(3).

## Text of Section 117-6

A statutory analysis begins with the text of the applicable section. Section 117-6 starts by stating that “political contributions raised for a [non-City] campaign, which is then converted into a [City] campaign. . . must comply with the limits on contributions as established in Article XIII of the [Charter].” Section 117-6 goes on to describe a period during which the aggregate contributions are calculated. Therefore, the key question is when does this period start? To answer this question, the meaning of terms in the second paragraph of Section (b) is key. Reframing this paragraph illustrates which terms need further definition.

*Predicate action:* A [non-City campaign] is converted to a [City campaign].

*Limitation on contributions:* The limits established by Article XIII of the Charter of Cincinnati apply to the aggregate contribution of funds to the committee.

*Applicable timeframe:* For the entire period since the end of the last general election period for the office under which the committee is, or has been, collecting contributions up to the submission of a nominating petition for City office and after the campaign is converted to a City campaign.

While it is clear from the plain language of Section 117(b) that the Article XIII contribution limits apply to contributions to converted campaigns, the applicable beginning period is less clear. The determination depends on which office “general election period for the office” refers to – is it the office of Mayor or City Council or is it whatever office the candidate was previously seeking?

The last general election period could refer to the election date of the non-City campaign for which the committee was formerly receiving contributions. Or, the last general election period could refer to the previous City election period for the City office that the candidate is now seeking and receiving contributions. The section’s use of “is, or has been, collecting contributions” does not offer any clarity as it applies equally to either scenario. “A statute is ambiguous when its language is subject to more than one reasonable interpretation.” *Lang v. Director Ohio Department of Job and Family Services*, 134 Ohio St. 3d 296, 2012-Ohio-5366, ¶ 14. Because the text itself is subject to these different and reasonable interpretations, Section 117-6 is ambiguous. If a statute is ambiguous, courts can inquire into legislative intent, legislative history, public policy implications, and the consequences of an interpretation to interpret its meaning. *Jacobson v. Kaforev*, 149 Ohio St. 3d 398, 2016-Ohio-8434, ¶ 8.

## Reading Article XIII and Section 117-6 *in pari materia*

When interpreting a statute (regardless of clarity or ambiguity), one must read related statutory provisions *in pari materia*, construing them together and giving a

reasonable construction that provides the proper effect to each statute. *State ex rel. Cordray v. Midway Motor Sales, Inc.*, 122 Ohio St. 3d 234, 2009-Ohio-2610, 910 N.E.2d 432 (2009), ¶ 25. One must “remain careful . . . not to ‘pick out one sentence and disassociate it from the context.’” *Jacobson*, 149 Ohio St.3d 398, 2016-Ohio-8434, ¶ 9. This means that one must read Article XIII of the Charter and Section 117-6 of the Municipal Code—provisions that both address campaign contribution limits—together to understand both. Relatedly, should a charter provision and ordinance conflict, the charter provision prevails. *State ex rel. Pell v. Westlake*, 64 Ohio St. 2d 360, 360-61 (1980).

Article XIII, Section 1 of the Charter establishes the limits on total contributions that can be made to a candidate for Mayor or City Council. The language in Article XIII, Section 1 is unambiguous and unlimited: it applies to all donations made to candidates for City offices. In addition, it delineates the applicable period during which the contribution limits apply. Relevant to the Mayor’s race, the applicable period is the thirty-second day after the municipal general election of a mayor (December 9, 2017) through the next primary for the selection of candidates for mayor (May 4, 2021). Reading the clear requirements and periods of Article XIII together with the less clear period in Section 117-6 counsels that the phrase “general election period for the office” should be understood as relating to the City office because this is the relevant period for calculating campaign contribution limitations. Therefore, the contribution limits for converted campaigns would be measured dating back to the applicable City election.

Further, Article XIII contemplates that campaigns may have (and keep) unexpended contributions that carry forward to the next election cycle. Section 1(g)(2) provides that the contribution limits established in Section 1(a) – (c) do not apply to “an unexpended permissible contribution raised in one period and carried over to the next.” This language evidences that Article XIII anticipates donations could be carried over from one campaign to another, provided those donations were “permissible.” In the context of Article XIII, which focuses on contribution limits, “permissible” means complying with the limitations established by Article XIII. Contributions can be carried forward from one campaign period to the next as long as they complied with the limits of Article XIII at the time of the original donation. Again, reading this section of Article XIII together with Section 117-6 indicates that a converted campaign can carry over contributions—so long as they comply with the applicable contribution limits during the relevant period.

#### Text of Ordinance 125-2005

Additionally, the full text of Ordinance 125-2005 provides insight into the intent of Council at the time it enacted Section 117-6. Statutory interpretation should “focus on everything within ‘the four corners of the enactment’ in order to ‘determine the intent of the enacting body.’” *Jacobson*, 149 Ohio St. 3d 398, 2016-Ohio-8434, ¶ 9. This means that the “whereas” clauses of Ordinance 125-2005 provide critical understanding of Council’s intent. The “whereas” clauses make it plain that the

intent of Section 117-6 was to provide for an even application of campaign contribution limits for all campaigns, regardless of whether it once was a state, county, or federal campaign committee. The language of Ordinance 125-2005 is strong. In fact, it states that “a system that would allow different contribution limits for different candidates in the same election would clearly violate the Constitutional rights of numerous candidates, and particularly those candidates who have not held or campaigned for prior offices at the County, State, or Federal levels.” Ord. 125-2005.

This intent for the contribution limits to apply equally to all candidates instructs that Section 117-6 must be interpreted in a way that fulfills, not frustrates, that intent, particularly if Section 117-6 is ambiguous. Here, considering the consequences of an interpretation provides clarity. If the “general election period for the office” means the last non-City election, the intent of Ordinance 125-2005 would be frustrated. First, state, federal, and county election contribution limits far exceed the City contribution limits, and so permitting more of these contributions to convert without applying the City contribution limits provides previous candidates for state, county, and federal office with increased contributions as compared to City candidates. Second, City elections occur on odd-numbered years and other state, county, and federal elections occur on even-numbered years which means that the applicable period would fluctuate depending on the previous election date and when a candidate converts a campaign, rather than establishing a set date that applies to all City candidates in the same race. This timing issue is further complicated by the fact that some state and federal offices run every two years, while the mayoral election occurs every four years as contribution limits reset for each election cycle.

An example provides the inequity that this interpretation could create. Candidate X is a candidate for federal office during the 2022-2024 cycle who raises funds for that campaign according to the applicable federal contribution limits (which are more than double the City limits). Candidate X does not expend all of those legal contributions and runs again during the 2024-2026 cycle, both carrying over the unexpended funds and legally raising funds for the 2024-2026 cycle. However, in late 2024, Candidate X decides to convert the campaign (with its unexpended funds) to one for City mayor for the 2025 election.

Next, consider Candidate Y. Candidate Y is a candidate for mayor during the 2021-2025 election cycle who is raising funds according to the applicable City contribution limits.

If “general election period for the office” is interpreted to mean the most recent non-City election for converted campaigns, then Candidate X would only have to apply City contribution limits to contributions received after November 2024. This means that all of the unexpended contributions before November 2024 would not be subject to the City’s contribution limits. Contrastingly, Candidate Y would have the lower, City contribution limits for all contributions received from December 2021 through a May 2025 primary. This situation provides a nearly 3-year contribution limit disparity.

But if “general election period for the office” is interpreted to mean the most recent election for the City office the converted campaign is seeking, both Candidate X and Candidate Y would have the same City contribution limits apply for contributions received after December 2021 even though Candidate X had been receiving permissibly larger contributions for a different federal office.

Because interpreting “general election period for the office” to mean the City office results in less disparity between two candidates for the same City office, that interpretation is consistent with the stated intent of Ordinance 125-2005.

#### Contemporaneous understanding

Finally, when interpreting a statute, one can consider the contemporaneous understanding of the language used around the time of the statute’s adoption. *McQueen v. Dohoney*, 2013-Ohio-2424, ¶ 88 FN6 (DeWine, J. concurring in part and dissenting in part). In this instance, the CEC adopted a rule that provided additional guidance for how campaigns could account for the restrictions provided in Section 117-6. The previous rule stated “Any funds not spent prior to the submission of a nominating petition for a city council or mayoral campaign must meet the contribution limits outlined in Article XIII, even if collected while campaigning for another office.” That language supports the interpretation that any funds being used in a City campaign, even if originally collected for a non-City campaign, must adhere to the City’s campaign contribution limits. As this rule was adopted only a few months after Section 117-6’s enactment, it provides that the contemporaneous understanding of Section 117-6 was that the City contribution limits apply.

#### Conclusion & Guidance

Article XIII exists to apply consistent campaign contribution limits to all candidates for City office. Once a campaign committee converts from a non-City campaign to a City campaign, it must comply with those contribution limits dating back to the most recent election period for the City office the converted campaign is seeking because an alternative interpretation, though reasonable, undermines the intent of Section 117-6 and is inconsistent with the requirements of Article XIII.

In accounting for these contribution limits, the campaign committee bears the burden to demonstrate that funds raised for previous non-City campaigns which are converted into City campaigns complies with Article XIII’s limits dating back to the most recent election for the office the converted campaign is seeking. In doing so, a campaign may presume that funds raised first were those spent first by the campaign.

This advisory opinion is intended to resolve any confusion about how a campaign for City office accounts for converted contributions that may have been created by the CEC’s recent revision of Rule 18, and the CEC intends to revise Rule 18 to be consistent with this advisory opinion. Any campaign that relied on the January 2021 amendment to Rule 18 was acting properly based on that guidance. Now that

guidance is updated and clarified. All campaigns shall have 30 days from the date of the issuance of this advisory opinion to comply with this advisory opinion.

Persons may have made contributions and campaigns may have received contributions to a campaign after conversion in reliance on the January 26 rule change. If, consistent with this advisory opinion, such contribution is in excess of Charter limitations and was after conversion but prior to March 12th (the day following this advisory opinion), then the overcontribution must be disposed of in accordance with O.R.C. § 3517.109(C). Such overcontribution, once disposed of, shall not be in violation of the contribution limits in Article XIII.

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 me by calling the City of Cincinnati Law Department on behalf of the Cincinnati Elections Commission at (513) 352-3317.