

Cincinnati Elections Commission

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July 9, 2019

Advisory Opinion

TO: Micah Kamrass

FROM: Seth Walsh, Chair, Cincinnati Elections Commission

Copies to: Members, Cincinnati Elections Commission

SUBJECT: **Application of Change to LLC Contribution Rules Midcycle**

This advisory opinion is in response to your May 1, 2019 request asking whether contributions made to a City Council or Mayoral candidate by an LLC will be counted as contributions made by an individual if the contributions were made prior to the effective date of an amendment to the Charter which added definitions related to LLCs. That amendment, effective December 1, 2018, removed the distinction between LLC donors and individual donors and superseded an Advisory Opinion issued by the Cincinnati Election Commission (“the Commission”) in 2005 that permitted LLCs to make campaign contributions in their own names and separate from donations by the owners of the LLCs.

Article XIII, Section 1(f) of the Charter of the City of Cincinnati states that “a person may contribute not more than \$1,100 to any one candidate” for council or mayor. That same section of the Charter was amended at the election on November 6, 2018 to add the following clarification regarding donations by business entities and to add a definition of “partnership or other unincorporated business” in Section 7:

1. No partnership or other unincorporated business shall make a contribution or contributions solely in the name of the partnership or unincorporated business.
2. Any contribution made from the funds of a partnership or other unincorporated business shall allocate the contribution or a portion of the contribution to the person, owner, member, and/or partner making the contribution.
3. The contribution allocation shall be included in the \$1,100 individual contribution limit for that person, owner, member, and/or partner.

Because the effective date of the Charter amendment occurred in the middle of a campaign fundraising cycle, candidates may have accepted donations from LLCs in the name of the LLC before the Charter change, which raises the issue of whether any contributions made in the name of the LLC prior to the effective date of the Charter amendment must be attributed to a member or manager of the LLC or whether the contributions can be attributed to the LLC as an entity.

Ohio Revised Code Section 1.48 states that “[a] statute is presumed to be prospective in its operation unless expressly made retrospective.” Ohio courts have held that this provision applies to municipal ordinances as well as state statutes. *See State ex rel. Coyne v. Cingle*, 2003-Ohio-5383 (8th Dist. Ct. App. 2003), citing *Sentinel Police Assn. v. Cincinnati*, Hamilton App. No. C-940610, 1996 Ohio App. LEXIS 1512 (1st Dist. Ct. App. 1996). Neither the text of the Charter amendment itself nor the enacting amendment ordinance state that Section 1(f) applies retroactively, which means it is solely prospective in effect. Section 5 of the amendment ordinance that placed the Charter amendment on the November 6, 2018 election ballot states, “Article XIII, ‘Campaign Finance,’ Sections 1, 2, 4, and 7 shall become a part of the Charter of the City of Cincinnati effective on December 1, 2018 in place of such existing sections thereof, which shall be repealed.” The effective date of Article XIII, Sections 1(f) and 7 is December 1, 2018, and the prohibitions therein apply from December 1, 2018 onward, and do not apply to contributions made prior to December 1, 2018.

Therefore, regarding any contributions received prior to December 1, 2018, a contribution attributed to an LLC as an entity will be considered a contribution by the LLC rather than by any individual, in accordance with the prior Charter language and the Commission’s 2005 Advisory Opinion. Any contributions made on or after December 1, 2018 must comply with Article XIII, Section 1(f) as it now exists.

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.