

**Special Meeting of the Cincinnati Elections Commission
Minutes of March 11, 2021**

CEC members present: Seth Walsh, Constance Hill, and Terry Rath

City representatives present: Christine Zimmer, Law; Zach Southwood, Law; and Linda Smith, Law

Old Business:

1. Approval of January 26, 2021 meeting minutes.

Mr. Rath moved for approval of the January 26, 2021 minutes, and Ms. Hill seconded. A vote was taken, and the January 26, 2021 minutes were approved unanimously.

New Business:

1. Nominate and vote on vice-chair.

Mr. Walsh nominated Mr. Rath for the position of vice-chair, and Ms. Hill seconded. A vote was taken, and Mr. Rath's appointment as vice-chair was unanimously approved.

2. Establish new regular meeting dates and times.

The second Thursday of every month at 4:00pm was selected as the regular meeting date and time.

3. Discussion of advisory opinion on campaign conversion

Ms. Zimmer began the discussion by providing background on the request for an advisory opinion from an attorney representing a candidate for either City Council or Mayor asking for clarification of CMC § 117-6 and CEC Rule 18. Ms. Zimmer explained that, based on the question presented, the Solicitor's Office reviewed CMC § 117-6 and CEC Rule 18 and determined that there were internal inconsistencies. The Solicitor's Office advised the CEC that the appropriate way to address the inconsistencies was to revise CEC Rule 18 to comport with CMC § 117-6. Upon revision of Rule 18, it was brought to the attention of the Solicitor's Office that the revision of Rule 18 created a conflict with Article XIII of the City Charter. Ms. Zimmer explained that the City Municipal Code and the Rules must comply with the Charter and therefore, any conflict between CMC § 117-6, Rule 18, and the Charter must be reconciled in favor of the Charter, which is the preeminent authority.

Ms. Zimmer recommended that the CEC issue an advisory opinion to clarify the correct approach for the conversion of campaign funds, ensure that the appropriate consideration and weight was given to the Charter contribution limits, and to keep the candidates in compliance with the Charter. The issuance of the an advisory opinion by the CEC also provides a "safe harbor" under the Charter for candidates, campaigns and contributors where anyone who reasonably relies upon an advisory opinion issued by the CEC cannot be accused of being in violation of Article XIII of the Charter. Ms. Zimmer further explained that the advisory opinion is not punitive and does not recommend any penalty because, anyone who relied upon the previous action of the CEC on January 26, 2021

is provided a 30-day period in which to come into compliance with the recommendations of the advisory opinion, if the opinion is adopted by the CEC. Any campaign which has already converted funds, will be doing exactly what they would have been required to do on January 26, 2021, and are being required to look back and do additional accounting in order to dispose of any excess funds from December 2017 forward. The advisory opinion affords protection to those candidates who have already converted their funds from any challenges regarding the conversion of their campaign funds.

Mr. Rath posed a question regarding funds which were raised prior to December 2017, to which Ms. Zimmer responded that, based on the language of the Charter and CMC § 117-6, the advisory opinion's analysis of the contribution limits does not capture funds raised prior to the last general municipal election due to the presumption that the first raised is the first spent. Mr. Rath raised an additional question with respect to what it means to dispose of the excess funds "accordingly." Ms. Zimmer responded that CMC § 117-6 and Rule 18 address the appropriate means for the disposal of excess funds in reference to O.R.C. § 3517.109.

Mr. Walsh raised a question regarding other campaigns who had requested information and whether those inquiries should be shared with, or forwarded to, the CEC. Ms. Zimmer responded that no written inquiries were received by the Solicitor's Office and that the phone inquiries received related to whether an advisory opinion by the CEC was forthcoming.

Mr. Walsh expressed concern regarding the timing of the advisory opinion and expressed the view that the CEC needs to issue opinions consistently and timely. Mr. Walsh, then inquired about the need for including the "safe harbor" protection in the CEC Rules. Ms. Zimmer advised that the safe harbor provision is addressed in the advisory opinion and Article XIII, Section 4(f)(1)(b) of the Charter. Mr. Walsh requested that the Solicitor's Office review the CEC Rules to determine where the safe harbor provision can be added.

Ms. Hill moved to approve the advisory opinion and Mr. Rath seconded. A vote was taken and the motion to approve the advisory opinion was unanimously passed.

4. Modification of Cincinnati Elections Commission Rules

Ms. Zimmer advised further revision to CEC Rule 18 was necessary to ensure its compliance with Article XIII and the recently approved advisory opinion. Ms. Zimmer explained that the revised language accounted for the future varying council and mayoral election cycles.

Mr. Rath moved to approve the revised Rule 18 and Ms. Hill seconded. A vote was taken and the motion unanimously passed.

Next meeting:

The next meeting is scheduled for April 8, 2021 at 4:00 p.m.

Meeting Adjourned:

The meeting was adjourned at 4:37p.m.