

## **Staff Memorandum 2017-02**

### **Expenditures for or by Campaign Consultants and Other Third Parties.**

**Ethics Rules 2.104, 2.105, and 2.106 require regular reporting of contributions and expenditures by political action committees, political party committees, and candidate committees. Part of those reporting requirements state, “Expenditures made to compensate political consultants and similar consultants shall be reported by identifying the type of services provided to the campaign by the consultants. Expenditures made by political consultants and other third parties on behalf of the committee shall be reported as if the expenditures were made by the committee.” This memorandum further explains these requirements.**

This provision provides three distinct requirements that will be addressed separately, as follows:

1. Expenditures for consulting services;
2. Expenditures made on behalf of a committee by a consultant; and
3. Expenditures made on behalf of a committee by a third party that is not the consultant.

### **Consulting Services**

Ethics Rules 2.104 (political party committees), 2.105 (political action committees), and 2.106 (candidate committees) require expenditures made to compensate political consultants and similar consultants to be “reported by identifying the type of services provided to the campaign by the consultants.” To comply with this provision, campaigns should provide adequate detail to inform the public of the purpose of the consulting services. Reporting consulting services as simply “consulting” is insufficient to meet the disclosure requirements. Such a description provides little or no information available to the public on the type of service being provided by the consultant to the committee.

The term “consulting” is too broad to provide sufficient information to inform the public on the actual service provided to a committee. Consulting services should be described with sufficient information to inform the public about the services provided by the consultant to the committee. For example, some consultants may offer consulting for website design or advertising messaging. Such activities should be reported as “website design consulting,” “advertising consulting,” or similar descriptions. Often, consultants provide advice concerning use of social media, which should be reported as “social media consulting.” Similarly, consulting on how to conduct a campaign, including helpful strategies in conducting a successful campaign, should be reported as “strategic consulting.” Committees will also use consultants to assist with the best methods to raise funds for the campaign and such services should be reported as “fundraising consulting.” In general, consultants provide a variety of services to committees, and committees

should provide sufficient information to disclose the types of consulting services that are paid for using committee funds.

### **Expenditures Made on Behalf of a Committee by a Consultant**

Ethics Rules 2.104, 2.105, and 2.106 state, “Expenditures made by political consultants and other third parties on behalf of the committee shall be reported as if the expenditures were made by the committee.” This ensures proper transparency of use of campaign contributions for legitimate campaign committee purposes, including the ability for the public to identify the type of good or service being provided and who provided the goods or services. Taken to the extreme, without such a provision a committee could shield from disclosure every campaign expenditure for goods or services by running the purchase through a third party.

To comply with this provision, if a consultant or other third party is wholly passing on the costs of an expenditure for goods or services to a committee, then the expenditure should be reported as if it were made directly by the committee to the vendor rather than an expenditure to a consultant.

Example 1: “John Candidate for Governor 2018” is buying campaign signs for \$2,500 from “ABC SIGNS, Inc.”, a company which will design and print the signs. However, Joe Consultant actually purchases the signs using his own funds and invoices the committee. The committee writes a check to Joe Consultant for \$2,500. The committee should report the purchase as a \$2,500 committee expenditure to “ABC SIGNS, Inc.” and not to “Joe Consultant.”

It is even more difficult when the situation involves a consultant who provides his or her own services and incorporates services from another vendor.

Example 2: Suppose in Example 1 that John Consultant, instead of purchasing the signs from ABC SIGNS, Inc., used his own computer, equipment, and expertise to design graphics for the signs and develop the message for the signs. John Consultant then takes the design to ZZ SIGNS, Inc. for printing at a cost of \$1,500. John Consultant invoices the committee for \$2,500. The committee would report an expenditure to John Consultant for \$1,000 for “campaign sign design” for the cost of design and an expenditure of \$1,500 to ZZ Signs, Inc. for the costs of printing services.

Example 3: Suppose, however, that John Consultant had his own commercial sign printers and simply bought blank materials from ZZ SIGNS, Inc. for his own use. John Consultant did the design and printing in-house and invoiced the committee \$2,500. In this instance, it would be appropriate for the committee to report a single expenditure of \$2,500 to John Consultant for “campaign sign design and production.”

To the extent possible, it is best practice to itemize the services provided. The threshold question is this: Is the consultant doing anything necessary for the service other than just acting as the mechanism for payment? If the answer is “no,” then the committee should report the ultimate recipient of the expenditure, not the consultant that paid for the goods or services and then billed the committee. If the answer is “yes,” then the committee should include the costs of services provided by the consultant as well as any third parties utilized to the extent possible. However, when the consultant is producing a product without the use of outsourcing the expense to a third-party vendor, the committee may report the expenditure to the consultant as the vendor with an adequate description of the services provided. Utilizing a vendor for supplies to produce a product in-house does not require the itemization of the supplies purchased.

### **Expenditures made on Behalf of the Committee by a Third Party**

Ethics Rules 2.95 requires “all expenditures made by a committee shall be made on a check or debit card to be signed by the candidate, Treasurer or Deputy Treasurer of a candidate committee and by the Treasurer or Deputy Treasurer of a political action committee.” However, Ethics Rules 2.104, 2.105, and 2.106 state, “Expenditures made by political consultants and other third parties on behalf of the committee shall be reported as if the expenditures were made by the committee.”

The Rules contemplate there will be situations that arise where a third party, other than the Treasurer, candidate or consultant, is making an expenditure on behalf of the committee with the expectation committee funds will ultimately be used for the purchase. This is an unusual circumstance and committees should make every effort to ensure purchases are made directly to vendors using committee funds. However, in the event a third-party purchase occurs, the committee must ensure it has procedures in place for third-party purchases, such as what can be purchased, purchasing limits, mechanism for reimbursement, and proper record keeping.

Example 1: John Smith for Governor 2018 is participating in a canvassing day where campaign staff coordinates groups of volunteers for a day of door knocking and handing out campaign materials. There are 15 groups located throughout the state of Oklahoma. The committee has a process in place for reimbursement of expenditures made by individuals other than the candidate, Treasurer, Deputy Treasurer and consultant. The committee requires pre-approval of expenditures by the Treasurer or candidate and requires receipts and a reimbursement form be provided within 7 days or no later than the last day in a reporting period to ensure the expenditures are reported timely.

Sally Smith is one of the staff members coordinating volunteers. Sally uses personal funds to purchase lunch for \$325 from Sandwich Village and bottled water for \$75 for the volunteers from Local Convenience Store. These purchases are pre-approved by the Treasurer. Sally Smith provides the receipts to the campaign committee and a reimbursement form used by the campaign within the timeframe set by the campaign for

reimbursement. Sally Smith is reimbursed for these expenditures through a check written on the campaign account and signed by the Treasurer. The committee will report an expenditure of \$325 to Sandwich Village and a \$75 expenditure to Local Convenience Store. As part of the committee records, the committee must maintain the records supporting the reimbursement, such as the pre-approval of the purchases by the Treasurer, the receipts provided by Sally and the reimbursement form and a copy of the check used to reimburse Sally Smith.

### **Conclusion**

The Ethics Rules require expenditures for committees to be made using campaign funds through checks or debit cards signed by a candidate (if a candidate committee), Treasurer or Deputy Treasurer. The Ethics Rules also require expenditures to be reported to the Commission with sufficient information to identify the ultimate recipient of campaign funds. However, the Rules recognize there are instances where a candidate, consultant or other third party may make expenditures on behalf of the committee and provides specific mechanisms on how to account for those expenditures.

- For consulting service expenditures, the Ethics Rules require a description of the consulting service that is sufficient to identify the type of service the committee received.
- For expenditures made by a consultant on behalf of the committee, the Ethics Rules require the committee to identify the vendor of the services or goods provided to the committee and a description of the services or goods provided by that vendor.
- For expenditures made by a consultant on behalf of the committee, which include services by the consultant as well as goods or services provided by others, the committee should itemize those expenditures to the extent practicable.
- For expenditures made by a third party who is not a candidate, Treasurer, Deputy Treasurer or consultant, the committee should report the ultimate vendor of the good or service provided and not the third-party purchaser. However, the committee must have adequate safeguards in place for reimbursements to third parties to ensure the committee has the information and records necessary to substantiate the purchase and timely report the expenditure. Purchases by third parties do not relieve the Treasurer, Deputy Treasurer or candidate (for a candidate committee) of their legal responsibilities to maintain records and file timely and accurate reports.