

Finding said resolution proper as to form and legality, I have accordingly endorsed my approval thereon and return the same to you herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2116.

ELECTION LAW—CORRUPT PRACTICE SECTIONS—CONTRIBUTIONS OF CANDIDATE TO PARTY COMMITTEES NOT CONSIDERED IN DETERMINING PERSONAL EXPENSE LIMITATIONS—FILING STATEMENT OF SUCH CONTRIBUTIONS MANDATORY.

SYLLABUS:

1. *Contributions which a candidate may make to a party controlling committee, as defined in Section 4785-63, General Code, need not be considered in ascertaining the limitations upon the amounts candidates may spend, set forth in Section 4785-184, General Code.*

2. *In the event a candidate makes such contributions he must file the statement required by Section 4785-186, General Code.*

COLUMBUS, OHIO, July 21, 1930.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"The question has arisen on the decision of your office in Opinion No. 2006 of June 21, 1930, with reference to the interpretation of Section 4785-184 of the General Code as contained in the Department Reports of June 26, 1930, at page 165, the question being whether or not a judge of the Common Pleas Court, Probate or Insolvency Court, may expend the sum of five hundred dollars in addition to contributions to the political party, to which the candidate belongs, or should this amount so contributed by the candidate to the political party to which he belongs be included in this amount and whether in either event a report of this expenditure should be made by the candidate in filing the report, which he is required to do under the Corrupt Practices Act with the board of elections."

Section 4785-184, General Code, provides insofar as pertinent as follows:

"No money or other things of value shall be paid, expended, contributed, loaned or promised by, on behalf of, or in opposition to any candidate for nomination or election in order to secure or aid in securing his election or defeat, except for the following purposes:

a. For preparing, printing, and circulating nomination papers, or for payment of fees, except filing fees, in connection with the nomination or election of any candidate.

b. For traveling expenses and personal expenses incident thereto.

c. For postage, telephone, telegraph, radio, expressage or other public messenger service.

d. For printing, stationery, advertising, and the distribution of printed matter relative to any such candidate.

e. For rent, maintenance and furnishing of campaign headquarters, and places for public meetings.

f. For paying the salaries and wages of clerks, stenographers and other persons actually employed in the campaign.

g. For employing witnesses at the primaries and elections, and public speakers or musicians at public meetings.

h. For copying and classifying poll lists, for investigating and challenging the right to vote of any person on the registration or polling lists.

The total amount expended by a candidate for election to a public office shall not exceed the amount herein specified; * * * (e) a candidate for judge of Common Pleas, Probate or Insolvency Court, the sum of five hundred dollars; * * * The amount which may be spent by any candidate at or before any primary election may be equal to, but shall not exceed the amount which is permitted by law to be expended for the general election. Any candidate for a public office who shall expend for the purpose above mentioned an amount in excess of the amount herein specified shall be guilty of a corrupt practice."

Prior to January 1, 1930, the effective date of the foregoing section, its provisions were substantially contained in Sections 5175-26 and 5175-29, General Code. Both of these sections were repealed by the 88th General Assembly. A consideration of their provisions, however, is pertinent in passing upon the first question raised in your communication.

Section 5175-26 contained a list of purposes for which money or other valuable consideration may be paid, contributed or loaned under the Corrupt Practices Act as then in force and effect, which list has been substantially incorporated in Section 4785-184, supra, in items "a" to "h", both inclusive. Section 5175-29 provided in part as follows:

"The total amount expended by a candidate for a public office, voted for at an election, by the qualified electors of the state, or any political subdivision thereof, for any of the purposes specified in Section 26 of this act G. C. §§5175-1 et seq.), for contributions to political committees, as that term is defined in Section 1 of this act, or for any purpose tending in any way, directly or indirectly, to promote or aid in securing his nomination and election, shall not exceed the amount specified herein; * * * by a candidate for judge of Common Pleas, Probate or Insolvency Court, the sum of five hundred dollars; * * * Any candidate for a public office who shall expend for the purpose above mentioned an amount in excess of the amounts herein specified shall be guilty of a corrupt practice."

The foregoing section was under consideration in an opinion of this office rendered in 1912, appearing in Annual Report of the Attorney General for 1912, Vol. II, p. 1234. Although the section was amended in 1913, no change was made such as to affect the question of whether the amount which a candidate may contribute to a political committee was to be included within the limitations as to the maximum amount which a candidate may spend. This opinion held as set forth in the syllabus:

"A candidate for public office may pay assessments or make contributions to political committees, providing he keeps within the maximum amount allowed to be expended. If the contribution is specific, it cannot be for other than the purposes permitted by the corrupt practice act; if it is general, the committee must observe the same restrictions with regard to the purposes for which the money may be expended."

Within the same limitations, a candidate may contribute to a club or committee for the purpose of paying rent for halls, compensation of speakers, music and fireworks for public meetings and expenses of advertising same, and the usual incidental expenses."

In the body of the opinion, the then Attorney General said, as appearing on p. 1235 :

"Section 5175-29, General Code, provides inter alia that the total amount expended by a candidate, first, for any of the purposes specified in Section 26, second, *for contributions to political committees*, and, third, for any purpose tending in any way to promote or aid in securing his nomination or election, shall not exceed the amount specified herein."

It is obvious that prior to the enactment of Section 4785-184, supra, the limitations placed upon the amount which the various candidates for public office could spend included expenditures in the form of contributions to political committees. In your letter you refer to contributions to the political party to which the candidate belongs. Political parties are defined in Section 4785-61. They function through party controlling committees, which are defined and provided for in Section 4785-63, General Code. I shall, accordingly, confine this opinion to contributions to political committees such as are provided for in this last mentioned section.

Upon examination of Section 4785-184, supra, I find no such express provision as was heretofore contained in Section 5175-29, General Code, that contributions to political committees shall be included in ascertaining the limitations of expenditures which candidates may make. The section in effect provides that a candidate for the office of judge of the Common Pleas, Probate or Insolvency Court may not expend more than five hundred dollars in order to secure or aid in securing his nomination, and such candidate may not expend more than five hundred dollars in order to secure or aid in securing his election. The section further provides that such expenditure which is so limited as to amount, may be made only for the purposes set forth in items "a" to "h", both inclusive. Of course, it may be said that a contribution to the county central committee by a county candidate is an expenditure made in order to aid such candidate in securing his election and is, therefore, to be included in ascertaining the limitations as to expenditures set forth in this section. If such is the case, however, it must follow that no candidate may make any contribution to his party, since such contributions are not provided for in the itemized purposes for which expenditures may be made. I do not believe that such was the intention of the Legislature. I am inclined to the view that this Section 184 of the Election Laws has reference to the amount which may be expended, and the manner of the expenditure of a candidate in the furtherance of his own campaign, and that the section does not either prohibit or place any limitation upon the amount any person, whether he be a candidate or not, may contribute to his political party. I predicate this view upon the fact that the Legislature has not prohibited citizens other than candidates from contributing to political committees and if citizens other

than candidates may individually contribute to political committees, and if the Legislature had intended to deprive candidates of their rights in this respect as private citizens, I think it would have clearly so provided. The remaining matter to be determined then, is whether or not the Legislature has seen fit to permit or recognize contributions from persons, other than candidates, to political parties. This brings me to the matter involved in your second question—reports which must be made of the expenditures under consideration.

Section 4785-186, General Code, provides insofar as pertinent as follows:

“Every candidate and campaign committee, and every person, committee, association or group of persons incorporated or unincorporated who may have contributed, promised to contribute, received or expended, directly or indirectly, any money or things of value in connection with the nomination or election of any candidate at any election held in this state shall, within ten days after such election, file as hereinafter provided a full, true, and itemized statement subscribed and sworn to before an officer authorized to administer oaths, setting forth in detail, the moneys or things of value so contributed, promised, received or expended, and the names of the persons from whom received and to whom paid and the object or purpose for which expended; but individuals, other than candidates or committees, making only contributions, the receipt of which must be accounted for by others need not file such statement. * * * .”

It is clearly contemplated by the provisions of the foregoing sections that contributions may be made to committees in general regardless of whether or not they may be committees organized to advocate the candidacy of any particular candidate or statutory central committees of the political parties. I do not find any provision in the foregoing section or in the Election Law prohibiting candidates or any other persons from contributing to such committees. The foregoing section apparently distinguishes between contributions from individuals other than candidates and contributions from candidates in only one respect—that is in the provision “individuals, other than candidates or committees, making only contributions, the receipt of which must be accounted for by others, need not file such statement.” In other words, if a candidate or a committee makes a contribution to a political committee for instance, such candidate or committee must file the statement required by this section.

In view of the foregoing and in specific answer to your question, it is my opinion that:

1. Contributions which a candidate may make to a party controlling committee, as defined in Section 4785-63, General Code, need not be considered in ascertaining the limitations upon the amounts candidates may spend, set forth in Section 4785-184, General Code.

2. In the event a candidate makes such contributions, he must file the statement required by Section 4785-186, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.