

Ohio Elections Commission

MEMORANDUM

To: Members
Fr: Philip C. Richter, Esq.
Executive Director\Staff Attorney
Re: Expedited Hearings
Dt: April 7, 2022

When the Ohio Elections Commission was established as an independent agency in the state of Ohio as of January 1, 1996, new statutory provisions were enacted that governed the manner in which the Commission would operate. Ohio Revised Code §3517.153 thru §3517.157 established the statutory, procedural framework for the Commission. Subsequent to this enactment, the Commission established its administrative rules. Ohio Administrative Code §3517-1-01 et seq. contain the Commission's additional administrative procedures. These provisions outline the manner in which the Commission handles complaints and advisory opinion requests, from initial submission all the way through the final determination that the Commission will make in any particular case that is before it.

When the 'new' Commission was created under the updated statutory scheme, the General Assembly established an obligation on the Commission to expedite certain cases for consideration. This was primarily done because the former Commission never expedited any matter that came before it. The statutory provisions of R.C. §3517.154 and §3517.156 work together to establish this statutory framework for determining how cases should be handled, while the Commission's administrative rule, O.A.C. §3517-1-02(A)(3), expanded on these statutory provisions. R.C. §3517.154(A) lays out the basic language. It holds as follows

The full-time attorney for the Ohio elections commission shall review each complaint filed with the commission under section 3517.153 of the Revised Code, shall determine the nature of the complaint, and, unless division (A)(2)(a) of this section requires that the complaint receive an automatic expedited hearing, shall make a recommendation to the commission for its disposition, in accordance with this section. The attorney shall make the determination and the recommendation, if required, not later than one business day after the complaint is filed.

Please note that this section of Ohio law specifically identifies "division (A)(2)(a)" as requiring that the Commission conduct an 'automatic expedited hearing' on certain matters, and directs the 'attorney' for the Commission to make such a determination in one day. This is the only subdivision for which the statute identifies an obligation to have an 'automatic expedited hearing'.

Honestly, when I first assumed the role of Staff Attorney for the Commission, as each case was submitted to the Commission, I would make a formal written declaration on matters that were received pursuant to R.C. §3517.21(B) or §3517.22(B), Ohio's false statements statutes. As time went on, and as the written declaration became less important, I would make such an assessment within the statutory timeframe of one business day (R.C. §3517.154(A)), but do so without putting it in writing.

R.C. §3517.154(A)(2) is comprised of subdivisions (a), (b) and (c). Subdivision (a) is discussed above and includes the following language

If the attorney determines that the complaint sets forth **a violation of division (B) of section 3517.21 or division (B) of section 3517.22** of the Revised Code and that the complaint is filed during one of the periods of time specified in division (B)(1) of section 3517.156 of the Revised Code, **the complaint shall receive an automatic expedited hearing under section 3517.156** of the Revised Code. (Emphasis added.)

Subdivision (b) reads as follows

If the attorney determines that the complaint sets forth a failure to comply with or a violation of division (G), (I), (J), (O), (P), or (Q) of section 3517.13, division (A) of section 3517.21, or division (A) of section 3517.22 of the Revised Code and that the complaint is filed during one of the periods of time specified in division (B)(1) of section 3517.156 of the Revised Code, the attorney shall recommend to the commission that the complaint receive an expedited hearing under section 3517.156 of the Revised Code, and the complaint shall receive such a hearing.

To further explain the approach of the Commission in considering how to address complaints that are filed with it, in its administrative rules, a provision was adopted that expands on these statutes and gives further explanation on how the staff attorney will assess cases and make recommendation to the Commission on how it will address complaints. O.A.C. §3517-1-0(A)(3) reads as follows

Staff attorney to the commission shall reasonably review all complaints filed with the commission within one business day of receipt. Upon review, counsel shall make a determination as to the nature of the complaint. If counsel determines that a complaint is filed under division (b) of sections 3517.21 Or 3517.22 of the Revised Code, the complaint shall be immediately referred to a panel of the commission for probable cause determination. **For all other complaints filed with the commission, counsel shall make a timely recommendation to the commission as to the disposition of the complaint.** (Emphasis added.)

As I indicated in our conversation at the Commission meeting, in discussion with the original members of the Commission, and in accord with the statutes and rules, I was directed to comply with the various statutory provision and 'automatically' expedite 'false statement' cases, but that all other cases would go through the Commission's standard processes for how cases are to proceed through the system, and that no other cases should be expedited. This process would essentially be in concert with the last sentence in the first paragraph of O.A.C. §3517-1-02(A)(3) as emphasized above. Thus, through the years, 'false statement' cases were put through the Commission's expedited process, while all other matters were immediately scheduled for a Preliminary Review at the first reasonable date on the Commission's schedule.

Should you decide to change the approach for such cases that fit within the provisions of R.C. §3517.154(A)(2)(b), I will certainly do so. However, these requests are generally made with simple political advantage as the primary reason or basis for expediting a case. Generally, not out of a real concern for enforcement of the statutes at issue. A major part of the reason that the original Commission members decided to adopt this approach was to limit the use of the Commission as a simple political ploy during the primary or general election season. As well, the Commission members wanted to assure that the real reason a matter was being brought to the Commission was to assure compliance with the statutes and not simply for partisan political advantage.