

August 7, 2009

Arthur Goldberg, Esq.
Counsel
United States Department of Justice
Civil Division
Federal Programs Branch
Room 7316
20 Massachusetts Ave., NW
Washington, D.C. 20001

Re: Ohio Elections Commission Case No. 2009E-003

Dear Mr. Goldberg:

For your information, on Tuesday August 4, 2009 at 4:04 p.m., the Commission received a Request to Issue Subpoena for the Deposition of Sibel Edmonds for the deponent to appear on Saturday August 8, 2009 at 10:30 a.m. Pursuant to Ohio Revised Code §3517.153(B), the Commission has the authority to issue subpoenas in matters pending before it. The applicable sentence in this section reads as follows

The commission or a member of the commission may administer oaths, and the commission may issue subpoenas to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and reports.

Even though the deponent and the location of the deposition in this situation are not "in the state" of Ohio, it is standard operating procedure for Commission Staff to issue a subpoena when the parties submit a request to the Commission, unless the staff attorney to the Commission makes a determination that such issuance would be "overly burdensome or requested solely for the purpose of harassment or delay". This is true even if the party to whom the subpoena is issued is outside of the state. This is done as an accommodation to the parties or a witness with the understanding that an issuance to a party outside of the State of Ohio is otherwise unenforceable by the Commission, an administrative agency in the state of Ohio.

In this situation, the Commission has no desire to involve itself in any controversy that attempts to extend the authority of a Commission subpoena beyond the statutory allowance granted the Commission under the terms of R.C. §3517.153(B). On behalf of the Commission, I was both unadvised and unaware of any limitations to which the deponent is subject. While in the past I have taken vigorous action to enforce a Commission subpoena, and should a situation arise am prepared to do so in the future, I acknowledge that the Commission's ability to take action to enforce one of its subpoena

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and any authority to compel the appearance of or testimony by a person receiving a Commission subpoena can only occur within the boundaries of the state of Ohio. In light of your letter and these circumstances, I am not prepared to take any action available to the Commission under R.C. §3517.153(B) to compel the enforcement of the Commission's subpoena to Sibel Edmonds on behalf of the Commission.

Please feel free to contact me if you have any additional questions or concerns.

Sincerely,

Philip C. Richter
Executive Director

cc: Vesper Mei, Esq., Senior Counsel, U.S. Department of Justice
Christopher P. Finney, Esq. & Joshua B. Bollinger, Esq., Counsel for Respondent, David Krikorian
Donald C. Brey, Esq., Counsel for Complainant, Jeanne Schmidt
Steven Kohn, Esq., Counsel for Deponent, Sibel Edmonds