

FOLLOW THE LAW

A Report on the Compliance of Ward Councilpersons to Akron's New Campaign Finance Law

Northeast Ohio American Friends Service Committee
513 West Exchange Street
Akron, Ohio 44302
Phone: 330-253-7151
Fax: 330-996-4664
Email: AFSCole@aol.com
Web: www.afsc.net

[This report is also available on the Internet at
<http://www.afsc.net/ejcampaignfinance.html>]

INTRODUCTION

Citizens have a right to directly create and amend laws.

The City of Akron Charter and the Ohio Constitution both contain provisions permitting citizens to create, amend and repeal laws beyond the reach of city councils, mayors, state legislatures and governors. Article II § 1f of the Ohio Constitution, for example, specifically guarantees that "the initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action..."

The City's legal duty to its citizens derives from its inception as a chartered municipality. Municipal powers are granted by Article XVIII of the Ohio Constitution. Pursuant to Article XVIII, known as the "Home Rule Amendment," the people of a municipality may, by their Charter, reserve to themselves the power to vote on any actions of a city council. *Buckeye Community Hope Found. v. Cuyahoga Falls (1998), 81 Ohio St.3d 559, 569.*

These rights have been recognized by the U.S. Supreme Court. As it emphasized in its *Eastlake* decision:

All power derives from the people, who can delegate it to representative instruments which they create. See, e.g., *The Federalist No. 39* (J. Madison). In establishing legislative bodies, the people can reserve to themselves power to deal directly with matters which might otherwise be assigned to the legislature. The reservation of such power is the basis for the town meeting, a tradition which continues to this day in some States as both a practical and symbolic part of our democratic processes. The referendum, similarly, is a means for direct political participation, allowing the people the final decision, amounting to a veto power, over enactments of representative bodies. The practice is designed to "give citizens a voice on questions of public policy.

City of Eastlake v. Forest City Enterprises, Inc.
(1976) 426 U.S. 668, at 672-673

These "direct democracy" provisions were first placed in local and state charters and constitutions across the country during the early 1900's by citizen-led movements in direct response to widespread public corruption and to the growing influence of

business corporations on elected officials and public policy.

The citizen initiative is one specific example of direct democracy. Citizens develop specific legal language on an issue, gather qualified signatures in sufficient numbers, gain ballot access, then directly vote at the ballot. If passed, the initiative becomes law.

Laws created by ballot initiatives are no less "legal" than any laws created and/or passed by city councils, mayors, state legislatures, and governors. Public officials are sworn to uphold all the laws of their political jurisdictions, regardless of whether the laws were passed by their peers or directly by citizens via the ballot.

Those directed to enforce the law (from law departments, to police departments, to administrative agencies) have a duty to do so, regardless of how the law came into effect. Violators of citizen-initiated laws are no less guilty of breaking the law that if they violated or broke legislatively created laws. Juries and courts make no distinction between citizen-initiated laws and legislatively initiated laws when rendering legal judgments.

Citizen-initiated laws are legitimate and legal. They and are in many instances more reflective of the popular will of citizens than laws created by legislatures and executives.

Citizen-enacted campaign finance reform law upheld by court is clear-cut.

In 1998, citizens of the City of Akron placed on the ballot an initiative on campaign finance reform. The proposed reforms called for several measures proponents felt would reduce the perceived and actual corrosive influence of big money in Akron politics.

The centerpieces of the reforms consisted of enhanced disclosure requirements (i.e. more detailed information of contributions and contributors to candidates running for local office) and the creation of limits on individuals who and entities (i.e. PACS, political parties, etc.) which contribute to political candidates.

Nearly 100 citizens circulated petitions to place the measure on the ballot. Dollars and Democracy, a joint effort of the American Friends Service Committee of Northeast Ohio, a Quaker-related social action organization, and the Catholic Commission, a Catholic social action organization, coordinated the campaign.

Both groups are based in Akron.

Despite persistent charges by Akron political elites and most media commentators that the reforms were unconstitutional, the initiative passed overwhelmingly by citizens with over 60% support. Akron political elites quickly challenged the new law in federal court. Challengers included several incumbent politicians, political contributors and the City of Akron Law Department, on direction by the Mayor, in spite of the chartered responsibility of the Law Department to defend all Akron laws. Defense of the citizen-enacted law in the courts was left to several citizens and Yes on Issue 11, the grassroots coalition that had organized for its passage once the initiative reached the ballot.

A Federal Judge quickly ruled in favor of the political elites that the entire law was unconstitutional. The citizen defenders, focusing their defense on the law's key provisions, appealed the decision to the US Federal Sixth Circuit Court of Appeals.

In late 2002, the Court of Appeals overturned the decision of the Federal Judge and declared the provisions of the law as constitutional. The political elites, which again included the City of Akron Law Department, appealed the Sixth Circuit decision to the US Supreme Court. The High Court decided in January 2003 not to hear the case, thus affirming the Sixth Circuit decision that the law was constitutional.

Akron City Council enacted enabling legislation for the new law in July 2003. The municipal races for Mayor and 10 Ward Council seats in November 2003 were the first elections in which the new laws applied. At-large and Ward council elections in November 2005 will be the second election.

AKRON'S CAMPAIGN FINANCE LAW

The campaign finance law passed by voters in 1998 and upheld by the Federal Court includes the following provisions:

LIMITS ON CASH CONTRIBUTIONS

No candidate for Mayor or City Council shall accept, as a campaign contribution, more than \$25 in cash (i.e. hard currency) from any person within any fundraising season. No person shall contribute cash in excess of said amount.

LIMITS ON NONCASH MONETARY AND IN-KIND CONTRIBUTIONS AND LOANS

No candidate for Mayor or At-Large Council shall accept or solicit, as

a noncash monetary (i.e. checks, money orders, credit cards) or in-kind campaign contribution or loans, more than \$300 from any person, campaign committee, political party, or political action committee.

No candidate for a Council Ward position shall accept or solicit, as a noncash monetary or in-kind campaign contribution or loan, more than \$100 from any person, campaign committee, political party, or political action committee.

No person, political action committee, political party or political campaign shall contribute funds or in-kind contributions in excess of said amounts. Contributions from the candidate and labor of volunteers are exempt from these provisions.

DISCLOSURE

(a) Home Address: All persons who make any financial contribution or loan to any campaign for municipal office shall be listed by home address on the candidate's Financial Report filed with the Summit County Board of Elections.

(b) Employer Identification: The candidate for any municipal office shall identify all persons who contribute \$50 or more by primary employer. If this information is not on file with the Summit County Board of Elections, the contribution shall be returned to the contributor within thirty (30) days after the filing of the candidate's Financial Report.

(c) Friday Report: All candidates for Mayor or City Council shall submit a Campaign Finance Report to the Clerk of City Council by noon on Friday prior to the Primary Election and General Election. This report shall identify all campaign contributions and expenditures made as of said Friday and this report shall be available for public viewing by the Clerk of City Council at the Akron Municipal Building within an hour after the filing deadline.

COMPLIANCE OF MAYORAL CANDIDATES IN 2003 TO THE LAW

In October 2003, the Northeast Ohio American Friends Service Committee (AFSC) published a report, *Political Fundraising under Reform: An Analysis of the 2003 Campaign Finance Reports for Akron Mayoral Candidates*. The report documented the violations of the new campaign finance laws by candidates for Mayor of the City of Akron in that year.

(2003 Report at <http://www.afsc.net/ejcampaignfinance.html>)

Incumbent Don Plusquellic raised more than \$40,000 in illegal contributions from over 150 individual contributors and 8 entities who gave more than the \$300 contribution limit.

Challenger Bryan Williams raised just \$300 in illegal contributions from two individuals who contributed more than \$300.

Initially, Plusquellic failed to identify the primary employer of 658 of 682 (96%) individual contributors. Williams failed to identify 35 of 160 (22%) individual contributors. Amended reports provided primary employers of most contributors.

COMPLIANCE OF CURRENT CITY COUNCILPERSONS TO THE LAW

There have been numerous violations of the law by current Ward Councilpersons since the law took effect in January, 2003.

This report documents campaign finance reform law violations of Akron ward officeholders (all of whom are up for re-election in 2005) for the 2002-2003 election cycle. The election cycle is the period beginning one day following a general election to the general election day of the next election.

The report is an analysis of all campaign finance reports submitted by candidates during the 2002-2003 campaign election cycle to both the Summit County Board of Elections and Clerk of Akron City Council (i.e. "First Friday" reports).

Councilperson compliance of the law was mixed depending on the provision and candidate.

On the positive side, all candidates disclosed on time the required extra report (i.e. First Friday) to the Clerk of Akron City Council prior to both the primary and general election in 2003. All candidates, as well, abided by the \$25 cash contribution limit per contributor.

On the negative side, there were widespread violations of the law's provision requiring disclosure of the primary employer of individual contributors of \$50 or higher (see Tables 1 and 2). Compliance ranged from the high end of 100% (Moneypenny, Finley and Shealey) and 95% (Greene) to the low end of 0% (Albanese), 12% (Freeman), and 16% (Sommerville) (Table 2).

This provision is important in monitoring any block or bundling of contributions from any one employer, corporation, union or non-profit. It provides voters vital information in knowing whether contributors from any one corporation or other entity may be trying to influence candidates through their political contributions.

In addition, six of the nine ward councilpersons examined violated the law's provision limiting contributions to \$100 from any single source (Tables 1 and 2). At the high end, Dan Horrigan received a total of \$2050 over the contribution limits while at the bottom end; Joe Finley received \$35 over the limits. Jim Shealey, Terry Albanese, and Mike Freeman fully complied with the law.

This provision is important in preventing huge sums of contributions being donated from any single individual or contribution entity and, thereby, reducing the influence that that individual or entity may have in the shaping of public policy.

The remaining provision of the law, disclosure of the home address of contributors, was difficult to monitor. Several glaring violations, however, were noticed. Work addresses were listed for Pat D'Andrea and Frank LaRose, among others, in the Horrigan reports; and A. Thomarios and William Zavarello, among others in the Keith report.

ENFORCING THE LAW

The City of Akron Law Department has done little to enforce the law since it came into effect.

One of the legal duties of the City of Akron law department is to enforce all city laws. Their duty is not to judge but to enforce laws. Clear and blatant violations by the Mayoral candidates, especially Mayor Don Plusquellic documented from the 2003 AFSC report still not been investigated, corrected, nor prosecuted by the Law Department.

The pattern appears to be the same with violations to the law by Ward and At-large Councilpersons. There is no documentation showing that any council candidate returned funds beyond the legal limit in the 2002-3 election cycle to contributors.

CONCLUSIONS / RECOMMENDATIONS

It is not only the right but also the duty of citizens to hold public officials and administrators responsible for breaking the law, especially laws created by citizens.

Neither public office-holders, administrators, nor the media have focused on violations of the campaign finance law, demanding that Mayoral and Ward candidates comply with its provisions or face legal consequences.

Several steps need to be immediately implemented to ensure the will of the people in 1998 is realized:

1. The Akron Law Department must seriously investigate all violations of the law since its passage.
2. The Akron Law Department should inform all candidates running for public office about the campaign finance law and supply them all appropriate forms and information to ensure compliance with the law's provisions.
3. Candidates who violated the law in 2003 should immediately amend their 2002-2003 campaign reports to add and/or correct information on contributor home addresses and primary employer listings.
4. Candidates who violated the law in 2003 should immediately return contributions in excess of the legal limits.
5. Citizens must be ready to once again act to defend the law, this time to enforce its provisions.

The citizens of the City of Akron demanded campaign finance reform in 1998. It's now time in 2005 to make sure that for the first time all candidates follow the law.