

**COMMONWEALTH OF KENTUCKY
KENTUCKY REGISTRY OF ELECTION FINANCE
CASE NO. 2022-5450**

In re: Boone County Democratic Executive Committee

RESPONSE TO STAFF REPORT OF 8/9/22



Come the Respondents, Boone County Democratic Executive Committee, Shannon Fabert, Chairperson and Shawn Marler, Treasurer, by counsel, and for their RESPONSE to the Staff Report submitted by KREF on August 8, 2022, state as follows:

COUNTERSTATEMENT OF RELEVANT FACTS

The Boone County Democratic Executive Committee maintains strong oversight of its use of all Committee funds. Contributions and expenditures are reported. The Treasurer makes a regular report to the entire Committee for review. Compliance and transparency with all financial transactions is important to the Committee.

The Committee used the ITC funds in 2021 to buy space for its candidate support activities. While there was no general election in 2021, the candidates from the 2020 General Election may not have closed those General Election accounts. In addition, the candidates in that General Election were still seeking support and still working to educate the public on their platforms and activities. Information on those General Election candidates who were successful was shared with the public and their platforms and focus on issues was also shared. The booth was used for direct candidate support.

The regulations and bylaws of the Boone County Democratic Executive Committee do not permit candidate support in a primary election. Thus, any and all candidate support activities that the Committee engages in are solely and exclusively candidate support for a **general** election. The Committee could not and does not engage in candidate support in a primary. For this reason, the use of the funds was only for candidate support for the general election.

As outlined in the attached Affidavit of the individual acting as Treasurer at the time relevant to this matter, the use of the funds was believed compliant. That use was transparent and all supporting documents and descriptions were shared with the Committee and approved. Any error claimed by KREF would have been a good faith error, made after Committee discussion and after review of the applicable law and regulations. The Committee made all reasonable efforts to use the funds compliantly and will accept any future guidance provided by KREF for use.

DISCUSSION OF APPLICABLE LAW

KRS 121.230(1) provides guidelines for use of Income Tax Check-Off (“ITC”) funds by a political party for “support of the party’s candidates in a general election and for administrative costs of maintaining a political party’s headquarters.” The Boone County Democratic Executive Committee attempted to use the funds in a compliant manner, in accordance with law. The booth was purchased in order to provide candidate support in a public forum.

The general election was the most recent election prior to the booth purchase. The primary election had not yet opened up for filing or declarations of candidacy. The booth supported the candidates from the most recent election in their public education, advocacy, retirement of campaign debt and other allowable candidate activities. The booth has historically been used for candidate support and the public knows they can convene at the booth for

information on candidates in any general election. KRS 121.015(2) defines “election” as any election to fill vacancies, with each election (special, primary, general) being considered a separate election. The “election” related to the use of the booth was the general election.

KRS 121.015 (8) defines “candidate” as any person who has received contributions . . . with a view to bringing about his or her nomination or election. The candidate may, after election, keep the general election fund open until final reporting/accounting. This often means a candidate still has an account as a “candidate” after the election, even for a period of years. The candidates in the 2020 general election were still candidates. No election after that general election had taken place.

Should KREF determine that the use of the funds was not in accordance with law, which the Committee does not believe is the case, the Committee requests that KREF simply issue guidance and/or a request that the funds be returned to the ITC account. The Boone County Democratic Executive Committee does not believe that any good faith error for a minimal sum should support any financial fine or penalty against the Committee.

KRS 121.140(2) allows KREF to enter into a conciliation agreement with any person or entity brought before the body. In the present case, the Boone County Democratic Executive Committee believes that its actions were in accordance with the laws governing use of the funds. Even if KREF found that use to not have been strictly in accordance, the good faith of the Boone County Democratic Executive Committee should bar any fine or financial penalty for such use of the funds. At most, KREF should request that the Boone County Democratic Executive Committee repay the ITC funds to that account or bookkeeping entry and use funds from another source to pay for the fair booth. Proof of such bookkeeping entry could be made to KREF upon request.

CONCLUSION

For the foregoing reasons the Boone County Democratic Executive Committee requests that KREF find that no error in the use of the funds occurred, and correct the audit attached as Exhibit A to so reflect. In the alternative, the Committee asks that KREF find any error to have been a de minimis and good faith error, remedied by reimbursement of the ITC account. No fines or penalties or sanctions should result from such a good faith mistake.

Respectfully submitted,

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Attorney for Boone County Democratic Executive
Committee and Treasurer

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was this day served on counsel for the Kentucky Registry of Election Finance, 140 Walnut St., Frankfort KY 40601 this the 23rd day of August, 2022.

Anna Whites

Attorney for Boone Co. Dem.
Exec. Committee and Treasurer

Exhibit A

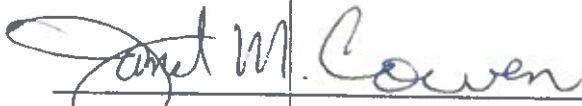
AFFIDAVIT

Comes the Affiant, Janet Cowen, former Treasurer for the Boone County Democratic Executive Committee (the "Committee"), and states as follows:

1. Affiant was the Treasurer for the Committee in 2021.
2. In 2021, the Committee had ITC (income tax check-off) funds in its bank account.
3. In August of 2021, the Committee had a booth at the Boone County Fair, as it has for many years now.
4. It is the Affiant's understanding the purpose of the booth is and always has been to support Democratic candidates, through supporting actual named candidates in general elections, through cultivating a volunteer and donor base to support such candidates, and through cultivating an interest in and dialogue concerning the issues likely to be advanced by Democratic candidates in future elections.
5. The Committee has had the same booth at the Fair for many years. The booth is in a prime location on the "main drag" of the fair and has far greater exposure than many other booth location. It is the Affiant's understanding that the Committee can retain this booth location only by continuing to rent it every year. Renting the booth in years in which there is no general election helps insure that the booth, with its high exposure, will be available to the Committee in general election years.
6. It is the Affiant's understanding that the Committee's bylaws prohibit support of candidates in Primary Election cycles.

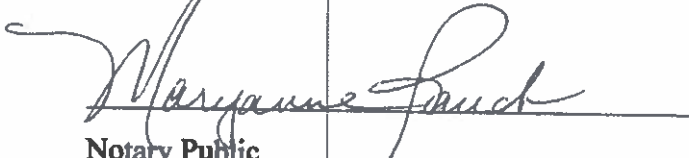
7. As the Committee's treasurer, the Affiant had spoken on occasion with KREF employees about the proper use of ITC funds and had been advised that the funds could be used for fair booth rental as long as this was for the support of candidates.
8. It was and is the Affiant's understanding that the rental of the fair booth in 2021 was for the support of candidates in the general election.
9. At the time of writing a check to cover the fair booth rental in 2021, the Committee's bank account contained more than sufficient non-ITC funds to cover the cost of the fair booth, and to the Affiant's knowledge, the account has continued to contain sufficient non-ITC funds to cover the cost of the 2021 fair booth expenses. If the Committee is asked to do so, it is Affiant's understanding that the Committee's treasury contains sufficient funds to restore the booth rental funds to its ITC balance.
10. All actions taken by the Affiant with regard to the expenditure of ITC funds were taken in good faith and for the express purpose of candidate support in general elections.

Further, Affiant sayeth naught.



Affiant

Signed and sworn before me this the 22 day of August, 2022, in the county of Boone, city of Florence, by Janet Cowen.



Notary Public



MARYANNE RAUCH
Notary Public, State at Large, Kentucky
Commission Expires 8/19/2024
ID KYNP13310