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[redacted]

RE: Request for advice concerning use of union-provided cell phones

Dear Mr. [redacted]

This letter responds to your June 5, 2020 letter to the Office of the Election Supervisor asking whether the Rules permit candidates and campaign operatives to use union-provided cell phones for campaign-related purposes. The short answer is that use of union-provided cell phones is subject to the rules governing use of union assets to support or oppose a candidacy.

The general rule prohibiting use of union equipment in campaigning is stated in Article VII, Sections 12(b) (union officers and employees retain the right to participate in campaign activities, but "such campaigning must not involve the expenditure of Union funds") and 12(c) ("Union … equipment …may not be used to assist in campaigning"). The rule is repeated in similar terms in Article XI, Section 1(b)(3) (no labor organization may contribute anything of value to influence the election of a candidate, and no candidate may accept such contribution, including equipment). Finally, Section 401(g) of the LMRDA, adopted by reference at Article XII of the Rules, bars use of "moneys received by a labor organization … to promote the candidacy of any person."

The Rules provide a specific exception to this general rule for union-owned or leased cars. Such cars may be used in campaign activities if: 1) the union generally permits officers and members to use the cars for personal activities, and 2) the costs and expenses incurred as a consequence of personal or campaign use are not paid from union funds. The Rules do not explicitly address union-provided cell phones or extend the limited car exception to them.

Use of union-provided cell phones for a campaign purpose was the subject of *Zuckerman,* 2016 ESD 324 (November 2, 2016). There, a local union principal officer sent a text message to all business agents, directing them to contact their stewards to turn out the vote for the Hoffa-Hall 2016 slate; many business agents complied with the directive and texted their stewards with that message. The text messages were sent and received on union-provided cell phones using union-paid mobile service plans. In addition, the campaign messages were sent on union-paid time using lists of stewards and their contact information that constituted union assets. After the protest was filed but before it was decided, the local union collected $10 in personal funds from each officer and business agent with a union-provided cell phone to compensate the union for the campaign use of the phones. On these facts, the Election Supervisor found multiple Rules violations, including campaigning on union time using union phones and union lists. Specific to your inquiry, the Election Supervisor found that the campaign use of the union cell phone was remedied by the per capita $10 reimbursement to the local union for conducting campaign activity using the mobile service plan.

Because policies governing personal use of union-provided cell phones vary among local unions (as your letter recognizes), whether the remedy adopted in *Zuckerman* is appropriate to phones provided by other local unions will depend on case-specific factors including local union policy, the nature of the mobile service plan, and the circumstances under which the phone is used. In addition to these factors, the decision your letter cites, *Corboy & Corbitt,* 2011 ESD 213 (April 15, 2011), may further narrow the question to the monthly service cost of the phone plan rather than the purchase or lease cost of the device, in a manner that is analogous to the distinction the Rules draw between the acquisition cost of union-provided cars and the expenses in operating them. In *Corboy & Corbitt*, the employer provided the devices to have a means of reaching its employees during working hours. The employees paid the monthly service plan costs, and employer policy permitted personal use of the phones except during working hours. On these facts, the Election Supervisor found the employees' campaign use of the devices did not violate the Rules, implicitly distinguishing between acquisition cost and cost of use.

OES does not plan to issue an advisory or other general guidance on this subject but instead will rely on the Rules provisions cited in this letter as well as the analysis provided in *Zuckerman* and *Corboy & Corbitt*.

I trust this responds to your question.

Sincerely,

Jeffrey Ellison