

If an agent of the State affirmatively misleads a party as to the state of the law and that party proceeds to act on that misrepresentation and then is later prosecuted by the State, that party's Fifth and Fourteenth Amendment rights under the U.S. Constitution and his or her rights under art. 1, sec. 12 of the Indiana Constitution have been violated. *See Cox v. Louisiana*, 379 U.S. 559 (1965); *U.S. v. Pennsylvania Indus. Chem. Corp.*, 411 U.S. 655 (1973).

In this case, Kelty relied upon and followed instructions issued by the Indiana Election Commission in its Indiana Campaign Finance Manual, which is described as summarizing "all of the requirements of [article 9]" of the campaign finance laws, and those instructions printed by the Commission on the same campaign finance forms that are the subject of this indictment.

Specifically, on form CFA-4, instructions indicate only those debts owed by the committee and not the debts of the candidate are to be reported. The instruction for item 19 states:

Enter the total debts and loans *owed by the committee* as itemized on Schedule D. This includes debts such as accounts payable, credit card purchases *if made with a credit card issued in the name of the committee* and loans from a lending institution or another entity.

Similarly, in explaining how to fill in the space on form CFA-4 Schedule D, the Commission instructs in the area labeled "Creditor's or Lender's Name":

Enter the creditor's or lender's full name and mailing address. For the purpose of this reporting requirement, a Creditor or Lender may be an individual, business, lending institution, or another committee *who has advanced things of value to the committee* with the understanding that *the committee will pay back the debt* with or without interest. A debt may be evidenced by a promissory note, credit purchase, committee credit card account, or any other document showing an unpaid debt. For a credit card account *in the name of the committee*, list the name of the credit card issuer."

Kelty complied with those directions. His loans to the campaign committee were reported exactly as the Commission had directed. And these directions clearly contemplate that

it is entirely legal and proper for an individual to loan a committee money, including the candidate.

Kelty cannot now be criminally prosecuted for seeking out and following instructions issued by the State Election Commission, which itself is an authority established to instruct candidates, like Kelty, about how to comply with the same laws under which he is now being prosecuted.

3. The findings of the County Election Board bar a subsequent criminal prosecution for campaign finance violations.

The Indiana General Assembly has delegated administrative authority to interpret and enforce provisions of Indiana campaign finance laws over municipal elections to county election boards. *See* I.C. § 3-6-5 *et seq.* A county election board's powers include the power to "conduct all elections and administer the election laws within the county," I.C. § 3-6-5-14, and "if a county election board determines that there is substantial reason to believe an election law violation has occurred, it shall expeditiously make an investigation. If in the judgment of the board, after affording due notice and an opportunity for a hearing, a person has engaged or is about to engage in an act or practice that constitutes or will constitute a violation of a provision of this title or of a rule or order issued under this title, the board shall take the action it considers appropriate under the circumstances," I.C. § 3-6-5-31.

Prior to the grand jury investigation in this case, the Allen County Election Board was asked to interpret Indiana campaign finance laws as applied to Kelty and determine whether there had been violations of those laws. There was an administrative hearing in which evidence was presented and argument, on both sides, was offered. The State was represented by a member of the Board, Andrew Downs. The Board concluded, after that process, that Kelty did