

CINCINNATI - Did Senator John McCain of Arizona benefit unfairly from rules that automatically placed him on the ballot in Ohio once he qualified for public campaign financing?

The legal question, which also has political significance given Mr. McCain's reputation for crusading against the influence of money on elections, is being raised by Democratic Party officials ahead of the Ohio Republican primary next Tuesday now that the McCain campaign has decided to pull out of public financing.

The issue emerged Monday in a complaint that the Democratic National Committee filed with the Federal Election Commission questioning Mr. McCain's right to withdraw from the system and bypass the spending limits that come with it.

In a conference call Tuesday, McCain aides struck back.

'Legal, ethical and proper'

"Everything we did was legal, ethical and proper," said Jill Hazelbaker, a campaign spokeswoman.

Rick Davis, Mr. McCain's campaign manager, said that Democratic officials were using a "specious" dispute to distract attention from Senator Barack Obama's wavering on indications he gave last year that he would seek public financing in the general election if his Republican opponent did the same, an issue the McCain campaign has hammered Mr. Obama on recently.

With public financing for the primaries, candidates are eligible for millions of dollars in matching money from a taxpayer fund but must abide by strict spending caps until the party conventions. As a result, the dispute has the potential of dealing Mr. McCain a crippling blow in his ability to compete financially against his Democratic opponent.

Mr. McCain sought public financing when his campaign was struggling and on the verge of bankruptcy, but now he is the presumptive Republican nominee and money is coming in.

Democratic officials are hinging their arguments on two issues. The first is a \$4 million loan Mr. McCain secured last fall to keep his campaign afloat.

To pull out of the public financing system, a candidate cannot have used the matching money as collateral in securing the loan, but the Democratic National Committee said in its complaint that documents made clear that Mr. McCain did use it in applying for the line of credit.

Mr. McCain's campaign, however, produced a letter Monday from lawyers for the bank that provided the loan stating he had not used the promise of matching money as collateral.

Second, the officials object to the way Mr. McCain used his certification for federal matching money to get on the ballot in states like Ohio and Delaware. That certification allowed him to bypass the signature collection usually required to get on the ballot, and saved the campaign money — which should bar him from withdrawing from the system, the Democrats say.

Trevor Potter, a lawyer for Mr. McCain, said that the law in Ohio allowed campaigns to get on the ballot either by relying on the certification for public financing or collecting signatures, but that nothing prevented Mr. McCain from being able to withdraw from public financing.

Complicating matters, the Federal Election Commission, which normally has six commissioners, has four vacancies, rendering it unable to rule on disputes. Kenneth Gross, a lawyer in Washington who advises Democrats and Republicans on campaign finance, said it sounded as if Mr. McCain's campaign had been "tiptoeing through the legalese" and "may have avoided running afoul of the law."

Even if Mr. McCain winds up being wrong and the election commission is fully staffed, Mr. Gross said it was unlikely that it would force Mr. McCain to pay back all the money he had spent beyond the spending cap.

"The magnitude of it almost makes it impossible for the F.E.C. to do anything," he said.