



Ohio Elections Commission

21 West Broad Street, Suite 600
Columbus, Ohio 43215
614•466•3205

January 27, 2000

OHIO ELECTIONS COMMISSION

Advisory Opinion 2000ELC-01

SYLLABUS: A national professional association, which is incorporated, but not sited in Ohio, may accept from a member on behalf of its Ohio affiliated association, a single check constituting multiple payments to the Federal and State associations, which check combines association dues payments with contributions to their related Political Action Committees (PACs). Further, the national professional association may then make a single disbursement to the Trustee of the Ohio association by subsequently disbursing funds for multiple Ohio state members in one negotiable instrument, again for multiple purposes (dues and PAC contributions). All of this will be in compliance with R.C. §3599.031 and Ohio Administrative Code §111-5-19. Finally, the term "members" as used in R.C. §3599.03 is intended to refer to persons affiliated with a labor union and has no corresponding use that can be attributed to anyone affiliated with a corporation for the purposes of R.C. §3599.03.

TO: Susan J. Kyte, Esq.

You have requested an advisory opinion on the following issues:

Can a national professional association, which is incorporated, but not sited in Ohio, accept on behalf of its Ohio affiliated association, a single check from a member constituting multiple payments to the Federal and State associations, which check combines association dues payments with contributions to their related Political Action Committees (PACs)?

If so, can the national professional association then make a single disbursement to the Ohio association by subsequently disbursing funds for multiple Ohio state members in one negotiable instrument, again for multiple purposes (dues and PAC contributions)?

Please define the term "members" as used in Ohio Revised Code §3599.03(A)?

In reviewing your request letter, it is apparent that the difference from the issue to which the Commission responded in Advisory Opinion 96ELC-13 on December 3, 1996, and the issue in this advisory opinion request, is that there is an additional layer of administrative responsibility and movement of moneys in this scenario. That being the case, the scenario as outlined within your request letter is similar enough to the previous situation that it is acceptable and appropriate as a means of properly complying with the provisions of R.C. §3599.031 and Ohio Administrative Code §111-5-19.

As was the case at the time the Commission issued its previous advisory opinion, the critical elements in approving this payment mechanism remain the same. First, there must be full disclosure of the identity of the actual donor of the PAC contribution in the PAC's campaign finance report. Second, the moneys must be handled by a separate and autonomous trustee or collecting agent that does not act as a director or officer of the association or the PAC that is the final destination for the contributions. The intricate scenario in the case before us fulfills each of these requirements.

You indicate in your request letter that throughout this process, the identity of the payor of the PAC contribution and the dues is strictly maintained. As long as this first critical element of the scenario is satisfied, the requirements of R.C. §3599.031 will be met. With this information, the Ohio PAC will be able to accurately include on its campaign finance report, when filed with the Secretary of State, all of the required information of its contributors: name and address; the amount of the contribution; and the date of the contribution.

In addition, as long as the Ohio PAC continues to accept the payments through the existing trustee arrangement, as approved in the Commission's prior Advisory Opinion letter, this method of receiving payments continues to meet with the intent of the statute as well as the intent of the administrative rule. The national association merely acts as an additional trustee, in effect, when it receives the funds and subsequently forwards those funds to the Ohio association's trustee.

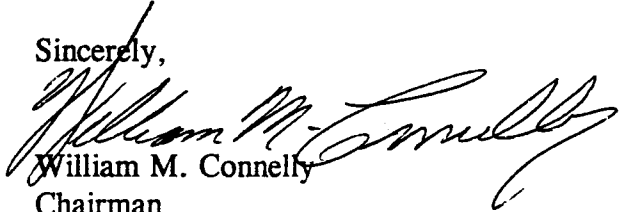
In response to the final question submitted as a part of this advisory opinion request, the answer can be deduced by reviewing the language in the previous version of R.C. §3599.03(A) prior to the changes which were included in Amended Substitute Senate Bill 8 (SB8) of the 121st General Assembly. Prior to the SB8 changes to R.C. §3599.03(A) in 1995, the term "members" was not included in this division. After the changes, the division was rewritten to impose the same limitations that had been placed on the use of corporate funds to labor union funds. In doing so, it became necessary to include certain phrasing which placed those reciprocal restrictions on labor unions and union "members". The term "members" was intended to identify those persons affiliated with labor unions. It has no corresponding use that can be attributed to anyone affiliated with a corporation for purposes of R.C. §3599.03(A).

Before concluding this advisory opinion, it is important to note the decision of the 10th District Court of Appeals in U.A.W., Local 1112 v. Philomena (Ohio App. 10 Dist. 1998) 121 Ohio App.3d 760, 700 N.E.2d 936. That decision overturned certain provisions in R.C. §3599.03 and §3599.031 as these sections applied to labor unions. As an outgrowth of that decision, some of the provisions applied to labor unions are no longer applicable, and the administrative rule, O.A.C. §111-5-19, may be unconstitutional and not applicable, as it relates to labor unions. Nevertheless, a decision as to the constitutionality or applicability of such a rule is not within the purview of this Commission. Therefore, the office of the Secretary of State may desire to review the efficacy of this rule and its current applicability, and determine whether further application of this rule is appropriate.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a national professional association, which is incorporated, but not sited in Ohio, may accept from a member on behalf of its Ohio affiliated association, a single check constituting multiple payments to the Federal and State associations, which check combines association dues payments with contributions to their related Political Action Committees (PACs). Further, the national professional association may then make a single disbursement to the Trustee of the Ohio association by subsequently disbursing funds for multiple Ohio state members in one negotiable instrument, again for multiple purposes (dues and PAC contributions). All of this will be in compliance with R.C. §3599.031 and O.A.C. §111-5-19.

Finally, the term "members" as used in R.C. §3599.03(A) is intended to refer to persons affiliated with a labor union and has no corresponding use that can be attributed to anyone affiliated with a corporation for the purposes of R.C. §3599.03(A).

Sincerely,



William M. Connelly
Chairman