



Ohio Elections Commission

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May 25, 2000

OHIO ELECTIONS COMMISSION

Advisory Opinion 2000ELC-03

SYLLABUS: It is not permissible for the Harmon for Congress Committee to lawfully produce and distribute campaign materials that describe the candidate as an "Independent Republican." Further, you are limited to using the term "Independent" without the additional identifier "Republican."

TO: Phillip L. Harmon

You have requested an advisory opinion on the following issues:

May the Harmon for Congress Committee lawfully produce campaign materials that describe [the candidate] as an "Independent Republican?" May I refer to myself in that way in public statements or am I limited to using the term "Independent?"

Ohio Revised Code §3517.21(B) states that a person cannot make a false statement in any campaign materials used during a campaign for nomination or election to public office. R. C. §3517.153(A) et seq., confers on the Ohio Elections Commissions the statutory authority to determine if and when a violation of R. C. §3517.21(B) has occurred. In order for the Commission to make a finding in such a case, the Commission must determine that the evidence shows by the legal standard of clear and convincing evidence that such a statement is false.

In the situation that is the basis of this advisory opinion request, you assert that you desire to identify yourself as an "Independent Republican." In order for the Commission to make a finding against you if such a matter were to be brought before the Commission, it would be required to determine that such a statement was made either knowing the information to be false or with reckless disregard for the truth.

You state in your letter to the Commission that you initially filed a Declaration of Candidacy to run in the primary election on the Republican ballot for nomination in the 12th Congressional district in the state of Ohio. Prior to the primary election, you timely withdrew from that contest and subsequently submitted a Nominating Petition and Statement of Candidacy to run as an independent candidate for the same Congressional seat. You have therefore chosen to run as an Independent in the upcoming November general election and not as a Republican.

R. C. §3517.21(B)(1) proscribes the use of any language in campaign materials that

knowingly and with intent to affect the outcome of such campaign ... (u)se the title of an office not currently held by a candidate in a manner that **implies** that the candidate does currently hold that office ... (Emphasis added)

While the question at issue here does not involve a candidate who is implying that he holds an office, the Commission relies on this section because it believes that the language you propose to use in your campaign materials is similar to the types of statements which R. C. §3517.21(B)(1) is intended to prohibit. With knowing intent, you would be using a phrase in your campaign materials which asserts a false implication. In our electoral system there are those who have a party affiliation, such as Republican, Democrat, or Natural Law, and those who are not affiliated with a party and appear on the ballot as Independent candidates. There is no such party affiliation as an Independent Republican and any implication that there is such would be improper.

The statement which you consider using implies that a candidate has received the endorsement, and the primary election vote, of the Republican party. It is this Commission's considered opinion that the use of the term "Republican" in such a context would be unacceptable. When your name appears on the ballot, it will not appear as "Independent Republican."

Further, this Commission also relies on the wording of R. C. §3517.01(A) in support of its decision. This section, which states the parameters for obtaining party status for any group of like-minded voters wishing to obtain such identification, contains the following phrase:

No such group of electors shall assume a name or designation that is similar, ... to that of an existing political party **as to confuse or mislead the voters at an election.** (Emphasis added.)

Any attempt by you to create confusion as to the identification of your party status would be akin to the potential confusion that a similar name to an existing political party would create. Therefore, this Commission believes that any use by you of the phrase "Independent Republican" would cause confusion, and potentially mislead the voters at an election and would be inappropriate.

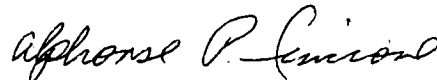
R. C. §3517.21(B)(10) states that a candidate cannot

knowingly and with intent to affect the outcome of (an election) ... post, publish, circulate, distribute, or otherwise disseminate a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the statement is designed to promote the election, nomination, or defeat of the candidate

It is the belief of this Commission that your use of the phrase "Independent Republican" as a title, or as a statement intended to identify yourself in the 12th Congressional District election, would be a false statement made either knowing the statement to be false or with reckless disregard that the statement was false, pursuant to R. C. §3517.155(D)(1) and R. C. §3517.21(B)(10). And while this particular circumstance involves the phrase "Independent Republican," this opinion is intended to apply regardless of the name of the party included in the phrase.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that it is not permissible for the Harmon for Congress Committee to lawfully produce and distribute campaign materials that describe the candidate as an "Independent Republican." Further, you are limited to using the term "Independent" without the additional identifier "Republican."

Sincerely,



Alphonse P. Cincione
Chairman