

June 10, 2004

OHIO ELECTIONS COMMISSION

Advisory Opinion 2004ELC-02

SYLLABUS: A county Alcohol, Drug Addiction and Mental Health Services Board qualifies as a charitable organization, for purposes of Ohio campaign finance law, pursuant to Ohio Revised Code §3517.08(G), as determined by the Ohio Elections Commission under the authority granted to the Commission, to receive contributions from a ballot issue committee.

TO: Charles E. Coulson
Lake County Prosecuting Attorney

You have requested an advisory opinion on the following issue:

Does a county ADAMHS [Alcohol, Drug Addiction, and Mental Health Services] Board qualify as a charitable organization pursuant to Ohio Revised Code §3517.08(G), in order for it to receive contributions from a ballot issue committee?

A campaign committee, political action committee, legislative campaign fund, political party, and political contributing entity are restricted to using their contributions for expenditures as defined in Ohio Revised Code §3517.01(B)(6). This definition limits an expenditure to two purposes, either for

influencing the results of an election or to make a charitable donation under division (G) of section 3517.08 of the Revised Code. [Emphasis added.]

The question at issue in this advisory opinion request concerns itself only with the latter portion of this definition.

The provisions in R.C. §3517.08(G) are as follows:

An expenditure for the purpose of a charitable donation may be made if it is made to an organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal

Revenue Code or is approved by advisory opinion of the Ohio elections commission as a legitimate charitable organization. [Emphasis added]

In the advisory opinion request letter, the Lake County Prosecutor admits that an ADAMHS Board does not qualify as a charitable organization under any of the listed provisions of Internal Revenue Code §501. In order for the ADAMHS Board to conform to the terms of R.C. §3517.08(G), this Commission must approve it as a legitimate charitable organization for campaign finance purposes. Heretofore, the Commission has not been asked to approve any organization as “a legitimate charitable organization” for purposes of Ohio campaign finance law.

In making the argument for approving the ADAMHS Board, the Prosecutor refers this Commission to sections in both the Internal Revenue Code and the Ohio Revised Code. At 26 U.S.C. §170(b), the Internal Revenue Code allows a taxpayer to deduct certain payments to governmental units as charitable contributions. The section defines a governmental unit as

(a) state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made for public purposes. 26 U.S.C. §170(c)(1).

R.C. §340 allows for the establishment of an ADAMHS Board “in any county or combination of counties ... to provide alcohol and drug addiction services and mental health services.” R.C. §340.01(B). This section of Ohio law enumerates all of the powers, duties and responsibilities granted to an ADAMHS Board in the state. Included in these powers is R.C. §340.03(A)(5) which grants to an ADAMHS Board the ability to “(r)ecruit and promote local financial support for mental health programs from private and public sources,” and R.C. §340.03(C) which provides that

A board of alcohol, drug addiction, and mental health services may receive by gift, grant, devise, or bequest any moneys, ... for the benefit of the purposes for which the board is established, and may hold and apply it according to the terms of the gift, grant, or bequest.

These provisions enumerate a governmental policy that advocate the type of contributions identified in the request. While the provisions of the Internal Revenue Code invite the payment of moneys as a charitable deduction to a local governmental unit [i.e. the ADAMHS Board], the provisions of R.C. §340 establish that a governmental unit may receive such donations. These are policies with which the Commission concurs and believes should be encouraged.

In this situation, the reason for a levy committee is to educate the voting public about the benefits of the ADAMHS Board and to encourage the voters to pass a tax levy in their jurisdiction which will subsidize these services. Once the election has taken place and the job of the levy committee is complete, the ADAMHS Board then carries out the intended services. At the conclusion of the election, if there is money left in the campaign committee account, the committee can do one of two things: 1. retain the funds and continue in operation until the next time that a levy is to be voted upon; or, 2. disburse the funds pursuant to statute and terminate the committee. A disbursement of the funds remaining in the campaign committee account to a governmental unit, such as the ADAMHS Board, is a proper use of campaign funds and the Commission hereby approves an ADAMHS Board as a legitimate charitable organization pursuant to R.C. §3517.08(G).

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a county Alcohol, Drug Addiction and Mental Health Services Board qualifies as a charitable organization, for purposes of Ohio campaign finance law, pursuant to Ohio Revised Code §3517.08(G), as determined by the Ohio Elections Commission under the authority granted to the Commission, to receive contributions from a ballot issue committee.

Sincerely,

William Booth
Chairman