



Ohio Elections Commission

21 West Broad Street, Suite 600

Columbus, Ohio 43215

614•466•3205

www.state.oh.us/elc

January 26, 2012

Ohio Elections Commission

Advisory Opinion

2012ELC-01

SYLLABUS: It is permissible for a candidate for federal office to continue to use the phrase “re-elect” in the name of his existing campaign committee that is registered with the Federal Elections Commission (FEC) in light of the provisions in Ohio Revised Code §3517.21(B)(1), when that person has been previously elected at a primary, general, or special election to the office for which he or she is a candidate.

To: Donald J. McTigue, Esq.
Counsel

You have requested an advisory opinion on a question concerning Ohio campaign activities law. The question posed to the Commission is as follows:

Is it permissible for a candidate for federal office to continue to use the phrase “re-elect” in the name of his existing campaign committee that is registered with the Federal Elections Commission (FEC) in light of the provisions in Ohio Revised Code §3517.21(B)(1) that otherwise restrict the use of that phrase in campaign materials?

This Commission has issued three separate advisory opinions concerning the use of the term “re-elect” in specific circumstances for candidates in the state of Ohio. The first opinion, 99ELC-05, was issued in response to a question posed after the Ward Council seats had been re-numbered in the city of Avon Lake. Essentially, the opinion of the Commission restricted the use of the term “re-elect” in a situation when a reference was made to a specific ward number, but allowed a more general use of the term when simply used in reference to the term ‘council’.

Commission advisory opinions, 2002ELC-01 and 2002ELC-02, were issued in response to similar questions after Ohio’s State Representative and State Senate Districts had been redrawn and state the permissible use of the term “re-elect” by candidates for the office of State Representative and/or State Senator. Similar to the opinion of the Commission in the Avon Lake request, the essential advice offered by the Commission in 2002ELC-01 allows for a generalized use of the phrase “re-elect” when a candidate is running for re-election as a State Representative or State Senator but does not use a specific district number in campaign materials. 2002ELC-02 goes on to restrict a candidate’s use of the term “re-elect” if it is done in concert with a specific district for that

representative or senator. If a candidate wishes to use the term "re-elect" in reference to a specific House or Senate district, the opinion states that it can only be used when the boundaries of the specific district in question are exactly the same.

In the situation present in this advisory opinion request, the office in question is a federal office, United States Representative. Similar to the situation involving Statehouse candidates, districts are changed every ten years. Unlike candidates for Ohio office which maintains a consistent number of representative and senate districts, there is a realistic likelihood that the number of district will change and either increase or, as is the case this year, decrease in number due to population changes across the country. In such situations where there are more or fewer districts, no candidate would ever be able to use the term "re-elect" when done together with a specific Congressional district number.

As it relates to the use of the term "re-elect" in this situation, where the phrase is part of the candidate's campaign committee name, the Commission believes that the use is proper for two separate reasons. First, consistent with the previous opinions of the Commission concerning the phrase "re-elect", the use outlined in this circumstance appears to employ the term "re-elect" in a generalized manner that does not refer to a specific congressional district. As stated in the previous opinions of the Commission, the term "re-elect" is proscribed when "the candidate has never been elected at a primary, general, or special election **to the office for which he or she is a candidate.**" (Emphasis added). Here, the candidate is using the phrase while not identifying a specific district number and thus is using the term in a manner consistent with the Commission's previous opinions.

The use of the term is also proper for the reason referenced in your advisory opinion request letter. Since the committee in question is a federal campaign committee and is subject to federal law concerning the establishment of a campaign committee and any naming constraints outlined in federal law, these same federal laws would pre-empt the imposition of any Ohio statutes in such situations. While it is well established that there is no federal pre-emption of Ohio's false statement laws in Congressional campaigns, in this circumstance the application of Ohio's false statement law would conflict with the provisions that allow a candidate to establish a campaign committee with the FEC. Thus, those provisions would prevail over any potentially conflicting provision of Ohio law when the person is a candidate for federal office and so a candidate for federal office can establish and name a committee, or continue to use an existing campaign committee name and not be subject to the provisions of R.C. §3517.21(B). As the candidate in this situation has been using the phrase "re-elect" in his committee name for a number of years due to the candidate's lengthy service in Congress, the continuation of the use of the term is proper.

As with other opinions issued by the Commission interpreting Ohio's false statement law, this advisory opinion is intended to speak only to the situation present in this advisory opinion request. The terms of this opinion should not be extended beyond the application to candidates similarly situated in federal Congressional elections in this state.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that it is permissible for a candidate for federal office to continue to use the phrase "re-elect" in the name of his existing campaign committee that is registered with the FEC in light of the provisions in Ohio Revised Code §3517.21(B)(1) that otherwise restrict the use of that phrase when that person has been previously elected at a primary, general, or special election to the office for which he or she is a candidate.

Sincerely,



Bryan Felmet
Chair