



Ohio Elections Commission

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July 23, 2015

Ohio Elections Commission Advisory Opinion 2015ELC-01

SYLLABUS: The provisions of R.C. §3599.03 prohibit the participation of a corporation established under R.C. §1701 & §1702, in this mutual advertisement scheme as such participation would be considered a direct contribution to a candidate's campaign committee. Further, the Commission holds that other entities that can make lawful contributions under Ohio's campaign finance laws can participate in this mutual advertisement scheme, but that any such participation will be considered a contribution, either direct or in-kind, to the candidate's campaign committee and must be reflected on the appropriate campaign finance report to be filed by the campaign committee.

To: James Aeppli, Treasurer
Committee to Retain Rick Stauffer

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

Is it proper for a candidate or a candidate's campaign committee to produce a political publication, as defined in Ohio Revised Code §3517.20(A)(1)(a), that includes some form of mutual advertising for the benefit of a local business along with the candidate's or campaign committee's pertinent political information?

Regardless of the fact, as stated in the advisory opinion request letter, that your expectation is that "(t)he campaign will in no way receive any financial compensation from the ice cream stands or their patrons", the candidate and the campaign committee will receive a substantial benefit from the ice cream stands' involvement in this mutual advertisement. This substantial benefit conforms with the phrase 'anything of value' that is included in the definition of a contribution as defined in R.C. §3517.01(B)(5). Whether it is as a result of any potential offset of costs for the production of the campaign materials, or the beneficial offer to the persons who receive the discount, the perceived goodwill of both the ice cream stands and their customers, or the mere inclusion of any

logo of an ice cream stand, the campaign committee receives some benefit, or 'anything of value'. Thus, this mutual advertisement is a contribution under Ohio election law and must be reflected in the campaign committee's campaign finance report, at least as an in-kind contribution.

Whether such a contribution should be prohibited, however, is dependent on the type of business entity with which the campaign would partner on this mutual advertisement. First and foremost is whether the ice cream stands are corporate entities and subject to the provisions of R.C. §3599.03. In Advisory Opinion 96ELC-03 the Commission held that the prohibitions contained in R.C. §3599.03 are only applicable to Ohio corporations established under R.C. §1701. And §1702. Even though the Commission limited the application of R.C. §3599.03 when it issued Advisory Opinion 2010ELC-02 in response to the United States Supreme Court's decision in the case of *Citizens United v. FEC*, 130 S.Ct. 876 (2010), the Commission maintained those prohibitions as applicable to a corporation when "any direct contribution to a candidate campaign committee or a political party" is made.

In Advisory Opinion 97ELC-05, the Ohio Elections Commission held that "(t)he use of a logo on an endorsement letter is considered a corporate contribution in violation of R.C. §3599.03." In that opinion the Commission specifically stated that

(t)he prohibitions in R.C. §3599.03, ... are against the use of any of the corporation's property. The property of a corporation encompasses not only its cash on hand, but also its products, its physical property such as plant and equipment, and, in the case at issue in this opinion request, its intellectual property and goodwill such as service marks, trademarks and logos.

Similar to that circumstance, this advisory opinion request states that the campaign committee intends to "feature the names and logos of local ice cream stands who support our candidate—along with whatever discount said ice cream stands would like to offer ..." The request continues and indicates that "(t)he spirit of this card will be mutual advertisement for the candidate and local businesses." The relationship created by this mutual advertisement is a "direct corporate involvement in an individual candidate campaign" and thus prohibited by the provisions of R.C. §3599.03 for any of the participants that are corporations under Ohio law and created pursuant to R.C. §1701. or §1702.

However, the type of entity with which the campaign would partner is not specifically identified in your request letter and so the Commission must respect other possible relationships that may not invoke the provisions of R.C. §3599.03.

If the entity involved in this mutual advertisement is not a corporate entity then the campaign materials and the subsequent benefit to the candidate and the campaign committee are not prohibited by Ohio election law. This mutual advertisement, though, would still be a contribution and must be properly reflected in the campaign committee's campaign finance report as an in-kind contribution attributable to an individual or organization that can make a lawful contribution under Ohio's campaign finance laws. Also, be aware that the entity making the contribution may have filing responsibilities, but that issue is not currently before the Commission for consideration.

The owners of the ice cream stands that participate in this endeavor are doing so for valid business reasons. They will have estimated a value for their participation. This value must be reflected by the campaign committee. While determining the value of this in-kind contribution may be difficult, the campaign committee must use its best efforts to properly establish this value and has the responsibility to include the value of this contribution in its campaign finance report.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the provisions of R.C. §3599.03 prohibit the participation of a corporation established under R.C. §1701. & §1702 in this mutual advertisement scheme as such participation would be considered a direct contribution to a candidate's campaign committee. Further, the Commission holds that other entities that can make lawful contributions under Ohio's campaign finance laws can participate in this mutual advertisement scheme, but that any such participation will be considered a contribution, either direct or in-kind, to the candidate's campaign committee and must be reflected on the appropriate campaign finance report to be filed by the campaign committee.

Sincerely,



Helen Balcolm
Chair