



Ohio Elections Commission  
State Office Tower, 14th Floor  
Columbus, Ohio 43266-0418  
(614) 466-2585

January 22, 1990

ADVISORY OPINION NO. 90-1

**SYLLABUS:** An officeholder who makes a charitable contribution from his personal funds to a charity is not required to report such expenditure in compliance with Revised Code section 3517.10(A) when the charitable contribution is not made in whole or in part for the purpose of promoting a present or possible future candidacy, as determined by the conditions set forth in this opinion.

**TO:** Thomas E. Heydinger, Judge of the Huron County Juvenile Court

You have requested an opinion on the following question:

Must contributions from an officeholder's personal funds to a local hospital or the United Way be reported as a campaign expenditure, when the officeholder knows that the donation will be widely publicized or acknowledged in the recipient's literature or on a prominently displayed plaque?

Ohio Revised Code section 3517.10(A) provides in relevant part that:

Except as otherwise provided in this division, every campaign committee, political action committee, and political party which made or received a contribution or made an expenditure in connection with the nomination or election of any candidate or in connection with any ballot issue or question at any election held or to be held in this state shall file, on a form prescribed under this section, a full, true, and itemized statement, made under penalty of election falsification, setting forth in detail the contributions and expenditures.

In Advisory Opinion No. 89-4 this commission considered whether certain expenditures from the personal funds of officeholders, including the purchase of patron ads in publications published by charitable organizations, are considered to be campaign contributions. The commission stated that the test for whether a disbursement of funds is a reportable expenditure under Chapter 3517 is whether the purpose is "in whole or in part" to bring about the possible nomination or election to public office of an individual. For example, if the purpose of making the contribution is in whole or in part to build name recognition or gain publicity for a present or future candidacy, the contribution must be reported in compliance with Chapter 3517.

A contribution to a charitable organization is not reportable if it is not made in whole or in part to bring about the possible nomination or election of the contributor. There is a strong presumption that contributions to recognized charities are made for charitable purposes. Contributions to charitable organizations are often made solely for a variety of philanthropic and personal reasons having no connection with the possible nomination or election to public office of the contributor. The presumption may be rebutted, however, by a showing to the contrary as evidenced by objective criteria.

The objective factors to be considered include, but are not limited to, the following: whether the officeholder has control or significant input over the publicity resulting from the contribution, whether the title by which the officeholder is listed in the publicity is an honorific title and not the title to a specific office, whether the officeholder has a history of charitable giving to the same charity, which party initiated the contribution, and the timing of the contribution in relation to the election at which the officeholder will seek election. The test is one of assessing all relevant factors.

One factor to be considered is whether the office holder has control or significant input over the public acknowledgment of his or her contribution. With an advertisement the purchaser controls the content of the message published, the size of the message, and the frequency of publication. Although charities often publish a list of all contributors or place a plaque to acknowledge a significant contribution, the contributor's control or input is generally limited to giving permission for his or her name to be published.

The nature of the title by which the officeholder is listed in the publicity must also be assessed. The honorific title of "Judge", is customarily retained after the person leaves office. Moreover, the title "Judge" is generic and not the title to a specific office. The title "Judge of the Huron County Juvenile Court" is the title to a specific office, as is a reference, for example, to the office of Highland County Prosecutor.

The officeholder's history of charitable giving should also be considered. A history of charitable giving to the same charity, including prior to becoming an officeholder, lends credence to the claim that the contribution in question is solely for charitable purposes. You have stated that you do have a prior history of charitable giving.

Also to be considered is the party that initiated the contribution. You have stated that the charitable organizations approached you with the request for a contribution.

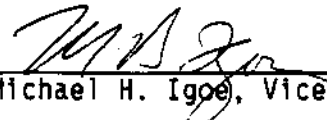
The timing of the contribution relevant to the possible reelection effort of the officeholder is also relevant. Although the proximity of the reelection campaign and the contribution may be closely timed, that in itself is not enough to defeat the presumption of a charitable purpose. You have stated that you must seek reelection in 1990. In this instance, the other objective criteria counterbalance the question of time.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that:

An officeholder who makes a charitable contribution from his personal funds to a charity is not required to report such expenditure in compliance with Revised Code section 3517.10(A) when the contribution is not made in whole or in part for the purpose of promoting a present or possible future candidacy, as determined by the conditions set forth in this opinion.

APPROVED:

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Michael H. Igoe, Vice Chairman