



**Ohio Elections Commission**

30 East Broad Street, 14th Floor  
Columbus, Ohio 43266-0418  
(614) 466-2585

September 16, 1991

ADVISORY OPINION NO. 91-3

**SYLLABUS:** The requirement in R.C. 3599.09 that the issue of a political communication must include their residence or business address cannot be met through the use of a post office box number.

The Ohio Elections Commission hereby issues sua sponte, an opinion on the following question:

May a post office box number be used on a disclaimer in lieu of a ". . . residence or business address . . ." as required by Ohio Revised Code section 3599.09(A)?

The pertinent part of this section reads: "No person shall (issue a political communication for general distribution) . . . unless there appears on such form of publication in a conspicuous place or is contained within such statement the name and residence or business address of the chairman, treasurer or secretary of the organization issuing the same, or the person who issues, makes or is responsible thereof." (emphasis added)

Black's Law Dictionary (5th Edition, West Publishing, 1979) defines "residence" as "Place where mail or other communications will reach a person . . . Generally a place of business or residence." This is a tautology and not very helpful. At the same time, it is true generally that the term "residence" has no fixed meaning for purposes of statutory construction, rather the term is to be defined according to the context in which it is used. See, generally 76. O. Jur. 3d 306.

In the context of election law, "residence" has been given a specific meaning. The term is defined in R.C. 3503.02 as "That place shall be considered the residence of a person in which his habitation is fixed and to which, whenever he is absent, he has the intention of returning." The Ohio Supreme Court has applied this definition in determining that a post office box is not sufficient to fulfill the residence requirement of a person attempting to register to vote (Kyser v. Board of Elections of Cuyahoga County [1973], 36 Ohio St. 2d 17). In Kyser, the court pointed out that a person can rent a post office box without being a resident of the community and "The state has a right to require that citizens wishing to be enrolled as voters be bona fide residents of the community." (Citing Carrington v. Rush [1964], 380 U.S. 89, 93). In an analogous manner, the commission itself has found that the address of a private mail service is not sufficient for the disclaimer requirements in place of a residential or business address, Ottolenghi v. Concerned Citizens of Worthington (89A-72).

The requirement that electors must be clearly established members of the community in which they intend to vote is predicated on the fact that, as a matter of public policy, voters should have a personal stake in the outcome of any election in which they participate. Similarly, for voters to assess the

validity of any campaign material, they must know what connection the persons issuing that material have with their community. This can only be done if the residence or business address is included rather than a post office box since as the court pointed out in Kyser, post office boxes can be rented by anyone without regard for where they reside or conduct business.

While the primary purpose of R.C. 3599.09 is to provide voters with information to aid them in assessing the weight to be given a particular political statement or opinion, a second purpose for requiring a residence or business address is to facilitate service of process. For example if required financial reports were not filed or were incomplete it might not be possible to contact the candidate or treasurer except by using the address provided. Likewise, if a referral or complaint is submitted to the Ohio Elections Commission, a correct address for the purpose of obtaining good service on the respondent must be available.

It is true that Civil Rule 4.1, which defines good service in civil actions commenced in Ohio, by inference, allows service to a post office box so long as such service is by certified mail. None the less, the effective implementation of R.C. 3599.09 and other sections of Title 35 requires a different perspective than that employed by the Civil Rule. The perspective of Civil Rule 4-1 is, so to speak, present tense; the emphasis is on insuring proper notice to all parties at the time the action commences. With R.C. 3599.09, the perspective is in the future; insuring notice at a later date when a post office box rental may be cancelled or expired. Consequently, R.C. 3599.09 does not contradict Civil Rule 4.1, it adds a further requirement to insure that, in a limited set of actions, the purposes of Civil Rule 4.1 will be met.

Even under the Civil Rules, the burden of proof is on the party attempting to establish service to ensure that the address they provide is reasonably calculated to result in timely service. This becomes more difficult with the use of post office boxes which can be visited rarely or cancelled. For example, in Akron-Canton Regional Airport v. Swinhart 406 N.E. 2d 811 (1980), it was held that service sent to a location which the defendant visited sporadically (here two or three times a month) was not reasonably calculated to reach the defendant and consequently did not meet the requirements of due process.

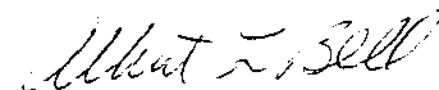
It follows then, that while the Civil Rules allows service to a post office box or other unstable address, if good service is not achieved, the responsibility will be on the party attempting service. This being the case it would be unreasonable to allow potential respondents to impose an unreliable address for service when more reliable alternatives are available and when potential complainants have fewer opportunities to ascertain an alternative address.

To recapitulate, there are three reasons for requiring that a post office box cannot be used in a disclaimer required by R.C. 3599.09. First, to assist the voters in evaluating the opinions expressed; and secondly, to insure that good service can be obtained upon the persons issuing the material in question at a later date if that should become necessary. Finally, the term "residence" itself has been defined for purposes of Title 35 at 3503.02, and that definition speaks to a physical place or location, not a post office box. Consequently, the statutory language itself, which this commission is called upon to enforce mandates this interpretation.

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

The requirement in R.C. 3599.09 that the issue of a political communication must include their residence or business address cannot be met through the use of a post office box number.

APPROVED:



Albert L. Bell, Chairman

1886E