



Ohio Elections Commission

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Columbus, Ohio 43266-0418

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October 25, 1994

ADVISORY OPINION NO. 94-2

SYLLABUS: Ohio law does not allow a ballot issue political action committee (PAC) to distribute funds in its possession to an IRC Sec. 501(c)(6) non-profit corporation because the distribution would not be an "expenditure" as that term is defined in R.C. 3517.01(B)(6) and would, therefore, be an improper distribution of the PAC's funds.

TO: Eric. L. Burkland, Treasurer, Ohioans for Responsible Health Information.

You have requested an opinion on the following:

In anticipation of terminating its existence, may Ohioans for Responsible Health Information, a ballot issue PAC, distribute funds primarily derived from corporate donors to a 501(c)(6) non-profit corporation?

R.C. 3517.10(A)(3) details the conditions under which a PAC may terminate. That section provides in part:

If a . . . political action committee has no balance on hand and no outstanding obligations and desires to terminate itself, it shall file a statement to that effect . . . after filing a statement of contributions and a final statement of expenditures, if contributions have been received or expenditures made since the period reflected in its last previously filed statement.

In order to terminate, therefore, Ohioans for Responsible Health Information (OHRI) must have a zero balance. In your request, you indicated that OHRI currently has a surplus of funds and wishes to distribute those funds to the Ohio Consumer Information and Safety Council (OCISC), a 501(c)(6) non-profit corporation, in order to achieve a zero balance. Ohio's campaign finance laws do not allow such a transfer.

While the restrictions on the use of corporate funds are well established,¹ Ohio's campaign finance laws are somewhat vague as to the restrictions on a ballot issue PAC's use of its funds. The definition of "Political action committee," found in R.C. 3517.01(B)(7), states:

"Political action committee" means a combination of two or more persons the primary or incidental purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election, and that is neither a political party nor a campaign committee.

This definition neither authorizes nor prohibits the receipt of contributions or the expenditure of funds by a PAC. In contrast, R.C. 3517.01(B)(1) defines "Campaign committee" as:

(A) candidate or a combination of two or more persons authorized by a candidate under section 3517.081 of the Revised Code to receive contributions and make expenditures.

This definition expressly grants campaign committees the authority to "receive contributions and make expenditures."

This dichotomy creates an ambiguity in Ohio's election laws. While Ohio's election laws clearly contemplate PACs playing a role in the political process, the lack of authorization to receive contributions or expend funds would effectively prevent PACs from playing such a role. In order to solve this ambiguity, it is necessary to analyze Ohio's

¹R.C. 3599.03 provides:

(A) (N)o corporation engaged in business in this state shall, directly or indirectly, pay, use, offer, advise, consent, or agree to pay or use the corporation's money or property for or in aid of or opposition to a political party, a candidate for election or nomination to public office, a political action committee, or any organization that supports or opposes any such candidate, or for any partisan political purpose. . . .

(C) A corporation engaged in business in this state may use its funds or property for or in aid of or opposition to a proposed or certified ballot issue.

The fact that a ballot issue PAC holds funds donated by a corporation does not eliminate the fact that those funds were derived from a corporation. Therefore, all of the limitations listed in 3599.03(A) would apply to ORHI's use of funds donated to it by corporations engaged in business in the state of Ohio.

campaign finance laws and determine whether PACs, like campaign committees, are authorized to "receive contributions and make expenditures."

The only way in which PACs can participate in the political process is if they have authority to collect and distribute money. In order to accomplish this goal it is necessary to infer that the General Assembly intended to give them the same authority as campaign committees to accept contributions and make expenditures. Accordingly, one must read into the definition of a PAC the same authority to "receive contributions and make expenditures" language which lies within the definition of a campaign committee.

Just as that language gives PACs the same authority as campaign committees to "receive contributions and make expenditures," it also imposes upon PACs the same limitations. A PAC, like a campaign committee, is only authorized to make "expenditures." A PAC, therefore, cannot distribute any of its funds if the outlay does not qualify as an "expenditure."

Limiting PACs to making "expenditures" satisfies another key goal of Ohio's election laws. R.C. 3517 is designed to, among other things, allow for the monitoring of political spending and the prevention of abuses of the political process through the outlay of money. This includes the ability to monitor the flow of money to and from PACs. R.C. 3517.10 and R.C. 3517.11 require a PAC to periodically file with the secretary of state or Ohio's boards of election a list of contributions and expenditures. If a PAC could distribute funds in a manner other than as expenditures, the reporting requirements of R.C. 3517.10 and 3517.11 would not apply. Thus a PAC could distribute funds in any manner it wished and avoid the oversight of the applicable Ohio election officials. Therefore, in order for the secretary of state and Ohio's boards of election to keep track of the outlays of funds by PACs, all distributions of funds by a PAC must be an "expenditure" as that term is used in R.C. 3517.01(B)(6).²

ORHI, like any other PAC, is bound by the above limitations. Accordingly, ORHI can only distribute its remaining funds to OCISC if this distribution would be an "expenditure." An "expenditure" is defined in R.C. 3517.01(B)(6) as:

(T)he disbursement or use of a contribution for the purpose of influencing the results of an election or of making a charitable donation under division (G) of section 3517.08 of the Revised Code.

Consequently, ORHI can only distribute its remaining funds to OCISC if this distribution is

²It should also be noted that the distribution may be a payment allowed by R.C. 3517.08. R.C. 3517.08 is titled "Matters not considered contribution or expenditure" and allows for the payment of administrative expenses by candidates, campaign committees and political action committees.

intended to either influence an election or is a "charitable donation" as that term is defined in R.C. 3517.08(G)³.

An analysis of R.C. 3517.01(B)(6) and R.C. 3517.08(G) reveal that a distribution of funds to OCISC is not an "expenditure." This is because OCISC is not currently working to influence the result of an election, it is not an organization described in 501(c)(3), (4), (8), (10) or (19) of the IRC, and no advisory opinion of the Ohio election commission defines the OCISC as a legitimate charitable organization. Therefore, any distribution of funds from ORHI to OCISC would be a violation of Ohio's election laws.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that Ohio law does not allow Ohioans for Responsible Health Information to transfer its excess funds to the Ohio Consumer and Safety Council in anticipation of terminating ORHI's existence.

Alphonse P. Quinn
Acting Chairman
Vice Chairman
10/25/94

³R.C. 3517.08(G) defines a "charitable donation" as an expenditure:

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), (sic) 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code or is approved by advisory opinion of the Ohio election commission as a legitimate charitable organization.