



Ohio Elections Commission

30 East Broad Street, 14th Floor

Columbus, Ohio 43266-0418

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March 27, 1996

Ohio Elections Commission

Advisory Opinion

96ELC-03

- SYLLABUS:**
1. A corporation for purposes of §3599.03 of the Ohio Revised Code is a corporation as defined in §1701.01 et. seq. or a nonprofit corporation as defined in §1702.01 et. seq., but does not include professional associations under §1785.01 et. seq., limited liability companies under §1705.01 et. seq., or partnerships as defined in §1775 through §1783 of the Revised Code. These entities are either partnerships or unincorporated business under 3517.10(I).
 2. No prosecution for a violation of a Revised Code section under the jurisdiction of the Ohio Elections Commission, including §3599.03 and §3599.031, shall commence until a complaint has been filed with the Commission and all proceedings before the Commission have been completed.

To: John Bender
Chief Counsel
Office of Secretary of State, Bob Taft

You have requested an advisory opinion on the following two questions:

1. Are legal professional associations and other professional organizations (ie. engineers, accountants, etc.) as well as limited liability companies and partnerships included in the definition of a corporation for purposes of the limitation on the use of funds by a corporation or labor organization as delineated in R.C. 3599.03?
2. As of August 24, 1995, the commission assumed jurisdiction over violations of R.C. 3599.03. Prior to this date such violations were exclusively within the jurisdiction of the county prosecutor. May the Secretary of State or a county board of elections refer violations of R.C. 3599.03 occurring prior to August 24, 1995 to the OEC for disposition?

The questions will be answered in order.

The precursor to Revised Code §3599.03 was first enacted in 1908. With the

enactment of Amended House Bill No. 719 by the 77th General Assembly, the state of Ohio recognized the potential dangers of corporate involvement in the partisan electoral process by or on behalf of a candidate by declaring that the bill was intended "(t)o prevent the corruption of elections and political parties by corporations."

Until the passage of Amended Substitute Senate Bill 8 (SB8) in the 121st general assembly, various general assemblies have renumbered the provision in the General Code, carried it forward as a part of the Revised Code, altered some of the wording of the statute, given corporations the ability to establish political action committees, and even given corporations the limited ability to make gifts for very restricted reasons to state or county party organizations. However, when these various amendments were enacted, the legislatures never altered the essence of the original statute or expanded the definition of a corporation.

During this period of time, the legislature created various types of business structures and organizations, including the ones referenced in your question. In 1961, the 104th general assembly enacted Amended Senate Bill No. 550 which created §1785 of the Revised Code. This section established professional associations in Ohio, and allowed licensed, certificated or otherwise authorized individuals to conduct similar professional services as a mutual association. It also allowed individuals some of the benefits of a corporate type of structure, giving professionals greater latitude in the formation and control of the organization. But it also imposed additional filing requirements and restrictions which are not associated with a §1701 corporation, specifically requiring an annual filing with the Secretary of State listing the shareholders in the association. In addition, §1785.08 specifically states that in instances where the language in §1785 conflicts with §1701, the provisions of §1785 shall take precedence. The essence of this statute was to create a separate type of entity for professionals, different from a §1701 corporation, but resembling a partnership with certain benefits enjoyed by corporate entities.

In July, 1994, the legislature created the Limited Liability Company (LLC). The LLC is an enterprise which resembles a corporation and offers some of the benefits of a corporate type of existence, but is treated differently from a corporation organized under §1701. The LLC is identified under a separate section of the Revised Code, §1705 and also requires a different type of filing than does a corporation organized under §1701.

When discussed in concert with each other, §1705 and §1785 are relatively recent enactments compared to §3599.03. In any one of the amendments made by the legislatures in 1980, 1987, and 1989, the entities allowed in §1785 could have been specifically included as a corporation as defined in §3599.03, but the section was not incorporated. Additionally, with the vast rewrite of the campaign finance laws encompassed in SB8, either or both §1705 or §1785 could have been specifically included under the broad umbrella of the provisions of §3599.03; but neither section

was so included.

Alternatively, the general assembly did specifically include in SB8 nonprofit corporations organized under §1702 and labor organizations as a part of §3599.03. Previously, it was generally recognized that these types of organizations were not subject to the provisions of §3599.03. With the inclusion of these types of organizations, the legislature indicated that it had thoughtfully reviewed the prior §3599.03 and determined that it was necessary to expand this statute to include these organizations, subjecting them to the restrictive provisions of this section and limiting their ability to participate in the partisan electoral process on behalf of a candidate.

Another key element in this consideration is that §3599.03 is a criminal statute and as such must be strictly construed against the state. In reviewing the provisions of §3599.03, any interpretation must be narrow in scope. If the legislature had intended to include LLCs or professional associations within the section, it could have done so. It was aware of their existence, yet made no mention of LLCs or professional associations when amending this section.

It is the opinion of this Commission, therefore, that professional associations under §1785.01 et. seq., limited liability companies under §1705.01 et. seq., or partnerships as defined in §1775 through §1783 of the Revised Code are not corporations for purposes of §3599.03 as amended by Am. Sub. S.B. 8 of the 121st General Assembly. Instead, for purposes of Am Sub. S.B. 8 and newly enacted §3517.102 which places limitations on campaign "contributions", a "professional association" established under §1785.01, et. seq., and a limited liability company established under §1705.01 et. seq. shall, from the date of this advisory opinion's adoption, be considered an "unincorporated business" as that term is described in newly enacted §3517.10(I). Partnerships established under §1775 through §1783 shall likewise be considered partnerships thereunder.

The Commission is cognizant of the August 23, 1995 effective date of amended §3599.03. Given the likelihood of confusion due to the existence of more than one reasonable interpretation of this section and the difficulty in resolving it, the Commission shall find no violation against any such entities for having acted contrary to this opinion prior to the date of its adoption.

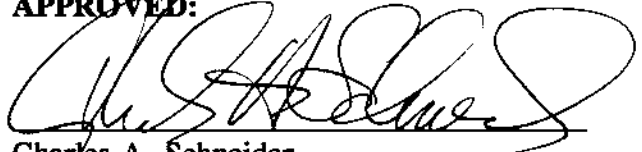
As to the second question, as enacted in Amended Substitute Senate Bill 9 (SB9), the jurisdiction of the reconstituted Ohio Elections Commission (OEC) was expanded to include §3599.03. As a part of SB9, the legislature included the following provision as §3517.153(C):

No prosecution shall commence for a violation of a provision in sections 3517.08 to 3517.13, 3517.17, 3517.18, 3517.20 to 3517.22, 3599.03, or 3599.031 of the Revised Code unless a

complaint has been filed with the commission under this section and all proceedings of the commission or a panel of the commission, as appropriate, under sections 3517.154 to 3517.157 of the revised code are completed.

The language in this section is not discretionary. It states that no prosecution of a violation under one of these sections shall commence until a complaint has been filed with the Commission and that "all proceedings of the commission ... are completed." Regardless of when the violation occurred, with the passage of SB9 the legislature imbued the OEC with initial jurisdiction of certain sections, including §3599.03 and §3599.031. Therefore, no prosecution for a violation of a Revised Code section under the jurisdiction of the Ohio Elections Commission, including §3599.03 and §3599.031, shall commence until a complaint has been filed with the Commission and all proceedings before the Commission have been completed.

APPROVED:

A handwritten signature in black ink, appearing to read 'Charles A. Schneider', written over a horizontal line.

Charles A. Schneider
Chairman