

May 16, 1996

Ohio Elections Commission
Advisory Opinion
96ELC-05

SYLLABUS: As currently established, financed, maintained or controlled, the political action committees (PACs) of the Ohio Home Builders Association (OHBA) and any PACs of all local home builders associations within the State of Ohio are “affiliated” PACs of the OHBA-PAC pursuant to §3517.102 of the Revised Code.

To: Vincent J. Squillace
Executive Vice President
Ohio Home Builders Association, Inc.

You have requested an advisory opinion on the following question:

Are the political action committee of the Ohio Home Builders Association, Inc. and the political action committees of local associations of home builders considered to be affiliated political action committees as described in §3517.102 of the Revised Code and OAC 111-1-02(H)?

By way of factual background you provided with your request the following material and relevant facts:

The OHBA is a statewide trade association which has a PAC. There are a number of local associations known variously by the region and the name “building industry association” or “builders association.” Many of these local associations also have PACs. People who join a local association must also join the OHBA and the National Home Builders Association. A portion of the annual dues paid to the local association goes to OHBA and a portion to the National Association. Some local association’s PACs make annual contributions to the OHBA PAC. Those contributions from local associations constitute 70% or more of the funds available for the OHBA. The remainder comes from funds contributed directly to the OHBA by individual members.

Membership on the OHBA Board of Directors is determined by the local associations. Based upon the size of the local association, it will be allocated a certain number of seats on the OHBA Board of Directors. The persons who fill those seats on the OHBA Board may be selected either by a vote of all of the

members of the local association, or by a vote of the directors of the local association, or by such other method as the local association may determine. There may be other ex-officio directors of the OHBA Board, including past Chairmen or Presidents of the OHBA.

The local associations have their own boards of directors, by-laws, and operate independently of each other and of the OHBA. The PACs are organized by the local associations, and each has its own leadership, directors, etc.

Each PAC makes its own determination as to which candidates or political parties will be the recipients of their funds.

As originally enacted in Amended Substitute Senate Bill Number 8 (SB8) of the 121st Ohio General Assembly, §3517.102 of the Revised Code establishes limits on contributions by PACs, as well as between PACs, unless in the latter instance those committees are “affiliated” with one another. Section 3 of SB8 makes those limits effective March 19, 1996. R.C. §3517.102(B)(2)(b) states:

...a political action committee is affiliated with another political action committee if they are both established, financed, maintained, or controlled by the same corporation, organization, labor organization, continuing association, or other person, including parent, subsidiary, division, or department of that corporation, organization, labor organization, continuing association, or other person.

The four criteria set forth are done so in the disjunctive rather than conjunctive form. As such, only one of the four, rather than all four criteria, need apply for two or more political action committees to be affiliated.

The OHBA PAC appears to be **financed** principally by its local associations which have contributed 70% or more of its funds. Although the OHBA PAC is presumably **established, maintained, and controlled** by the OHBA itself, the OHBA appears to in turn be established by virtue of all local association members being required to join it; maintained by the local associations from which a portion of their annual dues is paid to the OHBA; and, controlled by the local associations from which all OHBA Board Members are appointed through three alternate methods. While it is recognized that each PAC determines the disposition of their respective funds, the common interest among them obviously dictates that they not work and function at cross-purposes. The structure in place supporting the OHBA and its own PAC assures that this will not likely happen.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission and you are so advised that under §3517.102 of the Revised Code, the political action committee of the Ohio Home Builders Association and those of its local “building industry associations” or “builders associations” are affiliated with one another for purposes of contribution limitations set forth therein.

This Commission was created by and now acts under authority granted in §3517.152, which was recently enacted by Amended Substitute Senate Bill 9 (SB9), of the 121st Ohio General Assembly. Pursuant to §3517.153(D) this advisory opinion is now rendered. No authority, express or implied, has been granted this Commission to construe or otherwise interpret rules promulgated by the Secretary of State before January 1, 1996 and therefore it cannot render an advisory opinion upon OAC 111-1-02(H) as you request. However, Section 4(C)(2) of SB9 states that the Secretary of State “shall act as an advisor to the members of” this Commission with respect to adoption of rules and assumptions of duties from our predecessor Commission. We therefore can look to the Secretary of State’s existing rules promulgated upon the enactment of SB8 for such advice in the context of adopting rules.

This Commission has not yet considered the adoption of a rule pertaining to the subject and issue raised in your advisory opinion request. A review of OAC 111-1-02(H) finds nothing contrary to or inconsistent with the opinion rendered above. This opinion is necessarily limited to the facts stated above which, if any should materially change, such change could likewise change this Commission’s opinion. In no event shall this opinion be construed to adopt or negate OAC 111-02(H).

APPROVED:

Alphonse P. Cincione
Chairman