



Ohio Elections Commission

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Ohio Elections Commission

Advisory Opinion 96ELC-11

SYLLABUS: Persons who support or oppose a candidate or issue by the use of telemarketing are not subject to the disclaimer requirement of R.C. §3517.20.

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

You have requested an advisory opinion on the following question:

Are persons who support or oppose a candidate or issue by the use of telemarketing also subject to the disclaimer requirement? If so, what is the information that must be provided by the telephone solicitor?

The disclaimer requirement is intended to allow a person to evaluate the content of a political message based on the source of that message. The state has a compelling interest in protecting its electoral process from potential fraud, and to protect candidates from defamation by the use of unattributed, scurrilous publications. The former disclaimer statute, Ohio Revised Code §3599.09(A) was rewritten as R.C. §3517.20(A) in response to the Supreme Court's holding in the case of McIntyre v. Ohio Elec. Comm., 514 U.S. ___, 115 S.Ct. 1511, 131 L.Ed. 2d 426 (1995).

The disclaimer requirement in §3517.20(A) is intended to cover the written word and is not applicable to oral communication. To establish similar disclaimer requirements on oral political communications, the General Assembly enacted R.C. §3517.20(B). However, R.C. §3517.20(B) is specifically limited by the first line in that section by the phrase, "...over the broadcast facilities of any radio or television station within this state..."


The Commission recognizes that the use of telemarketing organizations by campaign committees and other political organizations is a growing trend and has the potential to greatly influence the outcome of elections in this state. This is particularly true in situations which use an automated message delivery which is the essential equivalent of a telephone commercial. This type of automated message delivery is especially suited to the potentially pernicious nature of a last

minute, unidentified, negative communication blitz which could have a damaging impact on the electoral process in this state.

Nevertheless, because R.C. §3517.20(A) is limited by its terms to written forms of political communication (whether in electronic or hardcopy format), and R.C. §3517.20(B) is limited by its terms to oral communications uttered over the broadcast facilities of a radio or television station, this Commission cannot establish a legal basis for the imposition of a disclaimer requirement on messages that are disseminated by a telemarketing organization. This Commission must permit the public policy concerns to be addressed by the General Assembly.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission, and you are so advised, that persons who support or oppose a candidate or issue by the use of telemarketing are not subject to the disclaimer requirement of R.C. §3517.20.

APPROVED:


Alphonse P. Cincione
Chairman