



Ohio Elections Commission

21 West Broad Street, Suite 600
Columbus, Ohio 43215
614•466•3205

Alphonse Cincione
Chairman

Mary W. Sullivan
Vice-Chairperson

Fred Alberini

Dale W. Bayer

William M. Connelly

Robert Duncan

Norton Webster

Philip C. Richter
Executive Director

September 10, 1996

OHIO ELECTIONS COMMISSION

Advisory Opinion 96ELC-12

SYLLABUS:

Ohio Revised Code §3599.03 as amended by Amended Substitute Senate Bill 8 of the 121st General Assembly does not prohibit a political action committee formed pursuant to federal election law, which is incorporated for liability purposes only in accordance with 11 C.F.R. 114.12(a), from making contributions to state and local campaigns in Ohio.

TO: David J. Young
Special Counsel for
The Ohio Council of Retail Merchants

You have requested an advisory opinion on the following question:

Are the newly enacted changes to R.C. §3599.03(A) intended to prohibit nonprofit corporate federal PACs formed for liability purposes only from contributing to candidates in Ohio elections?

The question you present is understandably prompted by the passage of Amended Substitute Senate Bill Number 8 (SB 8) which, among other things, amended R.C. §3599.03(A) by adding the phrase "no nonprofit corporation" to its express provisions that prohibit direct contributions by such entities to candidates, their respective committees and certain other partisan election committees. Said amendment took effect August 23, 1995. Since federal law permits political action committees (PACs) organized pursuant to 11 C.F.R. 114.12(a) to incorporate "for liability purposes only," an apparent conflict has arisen.

To resolve this conflict we look primarily to the purpose and intent of the 121st General Assembly in amending these provisions. The Final Analysis of SB 8 published by the General Assembly's Legislative Service Commission (LSC), states that these amendments were intended to impose "on nonprofit corporations... campaign contribution restrictions similar to those imposed on


corporations..." LSC Final Analysis, P.1. It goes on to indicate that the extended prohibitions are the same as the existing prohibitions against using corporate assets (money or property) for political purposes. Id at p.7. Although some new reporting requirements were added (further discussed below), the prohibitions remain the same.

This Commission recently addressed a similar issue in 96ELC-03. In determining that professional associations (R.C. Ch. 1785), limited liability companies (R.C. Ch. 1705) and partnerships were not corporate entities for purposes of R.C. §3599.03, this Commission first reviewed the history of prohibiting direct corporate contributions in Ohio. It then studied the legislative intent of SB 8 before holding that said intent was not to impose these prohibitions on every conceivable form of incorporated entity. If the intent were to include any particular type of corporate entity other than those existing under the general incorporation statutes, the opportunity for the General Assembly to expressly include any or all such entities was available.

The same reasoning applies in this instance of an incorporated federal PAC. In fact, the subject of federal PACs received considerable attention in SB 8 as evidenced by its newly enacted requirement that such PACs report the names and addresses of Ohio residents who made contributions to it. Obviously the General Assembly was cognizant of and understood how federal PACs raise and spend campaign monies from and within Ohio. The essence of Ohio election law remains to identify, as thoroughly as possible, the true sources and uses of all campaign funds. Since federal PACs must continue to report the true sources of their contributions, it was apparently of little or no concern to the General Assembly that some of them were or eventually would be incorporated for liability purposes only under 11 C.F.R. 114.12(a). Further, the Commission finds no authority to support an argument to the contrary.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that R.C. §3599.03 does not prohibit a political action committee formed pursuant to federal election law which is incorporated for liability purposes only in accordance with 11 C.F.R. 114.12(a) from making contributions to state and local elections in Ohio.

APPROVED:


Alphonse P. Cincione
Chairman