



# Ohio Elections Commission

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

March 13, 1998

Mary W. Sullivan  
Chairman

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Vice-Chairman

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Norton Webster

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## OHIO ELECTIONS COMMISSION

### Advisory Opinion 98ELC-03

**SYLLABUS:** A loan to a candidate's campaign committee or for other partisan political purposes, made in the ordinary course of business by a corporation which is a lending institution as defined in this opinion and in Ohio Administrative Code §111-1-03(H), shall not be considered a contribution in contravention of Ohio Revised Code §3599.03.

TO: John F. Bender  
Chief Elections Counsel  
Office of Secretary of State, Bob Taft

After clarification, you are requesting an advisory opinion on the following question:

Are loans by corporation contributions pursuant to R.C. §3517.01(B)(5) and subject to the restrictions of R.C. §3599.03?

Ohio Revised Code §3599.03 limits the activities of a corporation (or any other entity covered by the provision of R.C. §3599.03) in the political arena. While a corporation may actively participate in a ballot issue election, a corporation cannot

directly or indirectly ... pay or use ... the corporation's money or property, ... for or in aid of or opposition to a political party, a candidate ... or any organization that supports or opposes any such candidate, or for any partisan political purpose ... R.C. §3599.03.

The definition of the term "contribution" as contained in R.C. §3517.01(B)(5) includes the term "loan". In a rule promulgated by the Secretary of State, however, certain loans are not considered contributions if they meet specific criteria. Ohio Administrative Code §111-1-03(H) states in pertinent part that:

a loan of money by a state bank, a federally chartered depository institution (including a national bank), or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, The Federal

Savings and Loan Insurance Corporation, or The National Credit Union Administration is not a contribution ... if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business.

This rule, which interprets the definition in R.C. §3517.01(B)(5) and the prohibitions in R.C. §3599.03, amplifies and defines the scope of R.C. §3599.03 by recognizing the common practice of obtaining loans from corporate lending institutions, such as a bank, by a campaign committee. The rule closely tracks the federal rule on this issue, 11 Code of Federal Regulations §100.7(b)(11).

The Secretary of State is given the power to promulgate rules for the administration and enforcement of Ohio's campaign finance laws in R.C. §3517.23. The Secretary promulgated O.A.C. §111-1-03(H) pursuant to this section to define those institutions that may make loans for partisan political purposes, from those which may be otherwise prohibited from doing so by the broad terms and conditions of R.C. §3599.03. O.A.C. §111-1-03(H) is a validly promulgated rule of the Secretary of State pursuant to the powers provided to the Secretary in the revised code. The Secretary has acted within his authority in promulgating this rule. The Commission believes that it is bound by the terms of the rule and must defer to it.

It is not for this Commission to comment on the propriety of such a rule when it is properly adopted within the powers granted to the Secretary by the revised code. The rule states that certain financial institutions can make loans which might otherwise be in violation of the provisions of R.C. §3599.03. Therefore, since the Secretary of State has adopted a rule interpreting R.C. §3599.03, it is not appropriate for the Commission to expand on or further interpret the parameters of the statute in the context of the request for an advisory opinion.

However, it is appropriate for the Commission to comment on and suggest appropriate legislative changes to the General Assembly regarding the continued efficacy and vitality of campaign finance statutes, given the Commission's statutory authority in R.C. §3517.153(D). The Commission believes that the provisions in R.C. §3599.03 may be overbroad and vague relative to today's campaign environment. The General Assembly must be prepared to amend R.C. §3599.03 to reflect the modern political campaign, as well as the holding of the United States Supreme Court in the case of *F.E.C. v. Massachusetts Citizens for Life, Inc.* (1986), 479 U.S. 238 ("MCFL"). As currently written, the provisions of R.C. §3599.03 do not provide for the MCFL exception recognized by the Supreme Court which allows certain kinds of not-for-profit corporations to engage in partisan political activities. R.C. §3599.03 is already under attack regarding this exception in the case of *Community Advocate, Inc.*

v. Ohio Elections Commission (1998) Case No. 97-2698, currently pending before the Ohio Supreme Court. The Commission stands ready to assist the General Assembly in updating R.C. §3599.03 to comply with this holding.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a loan to a candidate's campaign committee or for other partisan political purposes, made in the ordinary course of business by a corporation which is a lending institution as defined in this opinion and in O.A.C. §111-1-03(H), shall not be considered a contribution in contravention of R.C. §3599.03.

Sincerely,

A handwritten signature in cursive script, reading "Mary W. Sullivan". The signature is written in dark ink and is positioned above the printed name and title.

Mary W. Sullivan  
Chairman