



Ohio Elections Commission

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OHIO ELECTIONS COMMISSION

Advisory Opinion 99ELC-02

SYLLABUS: The laws of the State of Ohio do not preclude an Ohio corporation from contributing money from its general treasury funds to a nonfederal candidate seeking office in another state in which such contributions are legally permissible.

TO: Janet L. Powell
Baker, Donelson, Bearman & Caldwell

You have requested an advisory opinion on the following questions:

Do the laws of the State of Ohio preclude an Ohio corporation from contributing money from its general treasury funds to a nonfederal candidate seeking office in another state in which such contributions are legally permissible?

The elections laws in Ohio which govern campaign finance activities and the campaign activity of corporations, are criminal law statutes. As evidence of this, the Commission's ultimate sanction is to refer matters to a local county prosecutor with the expectation that the prosecutor will seek criminal charges against the party that was found by the Commission to have committed a violation.

Ohio Revised Code §2901.11 defines the jurisdiction of Ohio's criminal laws. R.C. §2901.11(A)(2) states that

(a) person is subject to criminal prosecution and punishment in this state if ... (w)hile in this state, he conspires or attempts to commit, or is guilty of complicity in the commission of an offense in another jurisdiction, which

offense is an offense under both the laws of this state and such other jurisdiction. (Emphasis added)

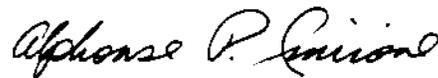
While this section is not specifically set forth in Ohio election laws, it is appropriate and necessary for the Commission to consider and interpret this section in rendering opinions on the applicability of elections statutes that carry a criminal penalty. By the terms of this section, a person is subject to criminal prosecution in Ohio when the act committed is an offense in both the state of Ohio as well as the other state in which the act will or may occur.

In the situation at issue in this advisory opinion, an Ohio corporation, which is prohibited from making contributions to individual candidate campaigns in Ohio, seeks to make a contribution "to a nonfederal candidate seeking office in another state in which such contributions are legally permissible."

While Ohio made a policy decision near the turn of the century to limit the political activity of corporations (the current R.C. §3599.03), not all states have deemed such a prohibition necessary. If another state has determined that such contributions cannot be restricted, the provisions of R.C. §2901.11(A)(2) would apply since R.C. §3599.03 is a criminal law. R.C. §2901.11(A)(2) prohibits Ohio's ability to limit the activity of a corporation outside of the state of Ohio. Since R.C. §3599.03 is a criminal law statute, the Ohio Elections Commission is not empowered to extend the reach of this elections law beyond the borders of this state.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the laws of the State of Ohio do not preclude an Ohio corporation from contributing money from its general treasury funds to a nonfederal candidate seeking office in another state in which such contributions are legally permissible.

Sincerely,



Alphonse P. Cincione
Chairman