



Ohio Elections Commission

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December 16, 2021

Ohio Elections Commission Advisory Opinion 2021ELC-03

SYLLABUS: The Ohio Elections Commission identifies all cryptocurrency (the most well-known version of which is identified as ‘Bitcoin’) as ‘anything of value’ as defined in Ohio Revised Code §1.03, and must be reflected as an ‘in-kind contribution’ as defined in Ohio Revised Code §3517.01(C)(16) when reporting the receipt of such in a campaign finance report. Further, unlike some ‘in-kind contributions’, cryptocurrency, because it is more fungible than other types of ‘in-kind contributions’, is hereby declared subject to Ohio’s campaign contribution limits as stated in R.C. §3517.102.

To: Opinion Issued *sua sponte*.

The commission has been presented with a situation that requires a response. The essential question for the Commission is as follows:

What is ‘Bitcoin’, or any other version of cryptocurrency that may be received into a campaign account, and how should it be classified when it is received in a campaign fund?

The Ohio Elections Commission has been apprised of a situation where a campaign committee has received certain cryptocurrency into its campaign fund and questions have arisen as to the manner in which such a contribution of the cryptocurrency should be reflected in a campaign finance report. With concerns that contributions of this type could become more prevalent, as such cryptocurrency gains wider acceptance, the Commission has determined that it is important to provide guidance to any potential recipient of such a contribution.

Federal Election Commission Advisory Opinion 2014-02 goes into great detail concerning the creation, background, definition and description of Bitcoin as cryptocurrency. This Advisory Opinion incorporates that explanation by reference. Since the FEC Opinion also explains how the identification of a contributor of Bitcoin is established and confirmed, this Advisory Opinion incorporates that aspect of FEC Advisory Opinion 2014-02 as well. In addition, the Commission hereby obligates a recipient of a cryptocurrency contribution to guarantee that the contributor is a proper contributor under Ohio law and that all such contributions comply with applicable Ohio campaign finance laws.

Cryptocurrency is generally identified as ‘digital currency’ or ‘virtual currency’, as an alternative to ‘fiat money’, such as the United States Dollar, the Euro or other paper currencies which are not backed by a physical commodity such as gold or silver (Investopedia.com “Why Do Bitcoins Have Value?” and “Fiat Money”). Further, money

is generally identified as currency created by a government as a means of exchange or as coins or bills used to pay for goods. While cryptocurrency, such as Bitcoin, may be used to pay for goods in certain circumstances, it is not used much in retail transactions at this time. It does have value, could potentially gain wider acceptance in the marketplace, become more widespread in the general economy as well as in a campaign finance context, but is not viewed as money under these definitions. Thus the need for the Ohio Elections Commission to provide additional guidance at this time is critical.

As some campaign finance laws have been in place for over 100 years, contributions to campaign committees have been generally identified as money, or American Dollars, and reflected as such in campaign finance reports. Whether in the form of cash in amounts of \$100 or less, as required by R.C. §3517.13(F), or as checks from a contributor's checking account based on deposits of cash to a financial institution, a campaign committee receives these amounts as the only apparent means of contributing to a campaign committee. From those contributions, the committee makes deposits into its own bank account so that funds are subsequently used to support a candidate's (or a ballot issue's) campaign activity. In time, and as a reflection of the fact that a campaign committee could receive something other than cash or a check in support of its activity, other types of 'contributions' to a campaign committee were defined as "in-kind contributions". Ohio Revised Code §3517.01(C)(16) defines an "in-kind contribution" as 'anything of value other than money that is used to influence the results of an election'.

The word 'money' appears only four times in the definitions section of Ohio's campaign finance laws, R.C. §3517.01. Most illustrative is R.C. §3517.01(C)(12) where the phrase "campaign fund" is defined to mean 'money or other property, including contributions.' Thus, from an historic standpoint, a campaign fund consists of contributions of money. Cryptocurrency, as basically described above, is not identified as money. Relying on these definitions then, cryptocurrency cannot be considered money, a cash contribution or a vehicle for making a money contribution to a campaign account. It must therefore be identified as an 'in-kind contribution' as it is 'anything of value other than money ...'

However, unlike some 'in-kind contributions' that may be not included within the terms of R.C. §3517.102 for contribution limit purposes, cryptocurrencies must be limited in the same manner as any other contribution as defined in R.C. §3517.01(A)(8). As cryptocurrency, such as Bitcoin, is more fungible than other 'in-kind contributions', and as the value attributed to cryptocurrencies is both volatile and highly valued in the marketplace, it is critical that the attributed value be properly reflected on the date that the cryptocurrency is accepted as an 'in-kind contribution'. It is critical then that campaign contributions of cryptocurrency be subject to Ohio's contribution limits as stated in R.C. §3517.102.

Lastly, in order to be used by the campaign committee, any form of cryptocurrency would eventually need to be turned into a cash equivalent, a dollar. As the value of the contribution was accurately reflected in the campaign finance report when it was received, upon exchange the amount of the cryptocurrency will be reflected in the campaign finance report as an 'other income' entry. When that exchange is completed, any cost involved in the exchange must be shown as an expenditure for the campaign committee.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the Ohio Elections Commission identifies all cryptocurrency (the most well-known version of which is identified as 'Bitcoin') as 'anything of value' as defined in Ohio Revised Code §1.03, and must be reflected as an 'in-kind contribution' as defined in Ohio Revised Code §3517.01(C)(16) when reporting the receipt of such in a campaign finance report. Further, unlike some 'in-kind contributions', cryptocurrency, because it is more fungible than other types of 'in-kind contributions', is hereby declared subject to Ohio's campaign contribution limits stated in R.C. §3517.102.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. Michael Crites". The signature is fluid and cursive, with a large initial "D" and a stylized "Crites".

D. Michael Crites
Chair