



Ohio Elections Commission

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Ohio Elections Commission Advisory Opinion 2021ELC-05

SYLLABUS: A foreign national is prohibited from participating in a ballot issues campaign in the state of Ohio pursuant to the provisions of Ohio Revised Code §3517.13(W).

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:

Can a foreign national make a contribution to a ballot issue political action committee (PAC) in Ohio?

The Ohio Elections Commission has been apprised of recent decision issued by the Federal Elections Commission (FEC) in which the FEC did not pursue allegations made against certain foreign nationals, alleging that improper contributions by the foreign nationals were made that involved a Montana ballot issue. The FEC dismissed the pending matter as there was not a sufficient linkage between an election involving a candidate and a ballot initiative that sufficiently invoked the FEC's jurisdiction. In its decision, identified as MUR: 7523, the Commission cited multiple sources that held that the Federal Election Campaign Act of 1971 (the ACT), "regulates only candidate elections, not referenda or other issue-based ballot measures". (*McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 356 (1995) (citing *Buckley v. Valeo*, 424 U.S. 1, 80 (1976)); see also *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765 (1978) ("Referenda are held on issues, not candidates for public office.")).

As concerns have been raised about whether this decision could impact Ohio's campaign finance regulations, the Commission believes it appropriate to opine on the current status of Ohio's campaign contribution restrictions on foreign nationals..

Ohio Revised Code §3517.13(W) currently addresses the restrictions on contributions from foreign nationals and this provision relies on the ACT to define the term 'foreign national'. R.C. §3517.13(W)(3) states that the "'foreign national' has the same meaning as in section 441e(b)" of the ACT. R.C. §3517.13(W)(1) specifically prohibits a foreign national from making "a contribution, expenditure or independent expenditure or promise ... in support of or opposition to a candidate". This provision is similar to the federal restriction.

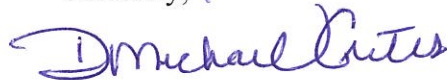
Most relevant to the situation in this Advisory Opinion is R.C. §3517.13(W)(2). This portion of Ohio's campaign finance law prohibits any recipient of a contribution from soliciting or accepting a contribution from a foreign national. The pertinent portion of the language in the statute is as follows

§3517.13(W)(2) No candidate, campaign committee, *political action committee, political contributing entity*, legislative campaign fund, state candidate fund, political party, or separate segregated fund shall solicit or accept a contribution, expenditure, or independent expenditure from a foreign national. [Emphasis Added]

The highlighted portion of the statute is most applicable to the possible circumstance of a foreign national attempting to make a contribution to a ballot issue committee. Basically, while it is regularly accepted that there are ‘ballot issue committees’ that operate in Ohio’s campaign finance arena, Ohio’s statutory provisions make no mention of the term ‘ballot issue committee’. Thus, when an individual, or a group of persons, decides to create a ballot issue committee and submits the required ‘Designation of Treasurer’ form with the local county Board of Elections or the office of the Secretary of State, what that submitted designation of treasurer form is actually creating under Ohio’s campaign finance law is a political action committee (PAC) or possibly a political contributing entity (PCE) (jointly, a ‘Committee’). Therefore, considering that the provisions of §3517.13(W)(2) prohibit a PAC or a PCE from soliciting or accepting a contribution from a foreign national, Ohio’s statutory structure sufficiently prohibits the involvement of any foreign national from participating in or contributing to an issue or question that will appear on an Ohio ballot.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that a foreign national is prohibited from participating in a ballot issues campaign in the state of Ohio pursuant to the provisions of Ohio Revised Code §3517.13(W).

Sincerely,



D. Michael Crites
Chair