

September 2, 2010

Ohio Elections Commission
Advisory Opinion
2010ELC-02

SYLLABUS:

The Ohio Elections Commission will interpret and apply Ohio Revised Code §3517.105 and §3599.03 in light of the United States Supreme Court decision in *Citizens United*, and thus a corporation will be permitted to independently participate in partisan political activities, as long as such participation is independent of and not coordinated with any candidate or political party, and the corporation will not be subject to a finding of a violation by the Commission.

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 the application of Ohio Revised Code §3517.105 and §3599.03 in light of the United State Supreme Court decision in *Citizens United v. FEC*, 130 S.Ct. 876 (2010)?

In Ohio Elections Commission Advisory Opinion 96ELC-03, the Commission summarized the history of Ohio Revised Code §3599.03, Ohio's long-standing ban on corporate activity in candidate campaigns. For over a century, the provision's of this section of Ohio law prohibited corporations from participating in the partisan electoral process by or on behalf of a candidate except through a corporate sponsored political action committee. This provision was intended "(t)o prevent the corruption of elections and political parties by corporations." While there has been no direct challenge to Ohio's statute, the recent decision of the United States Supreme Court in the case of *Citizens United v. FEC*, 130 S.Ct. 876 (2010), has called into question the continuing applicability of this statutory provision.

In light of pending matters before the Commission and because Ohio law is sufficiently similar to the Federal prohibition that was at issue in *Citizens United*, a review of the statue and the Commission's application of it is appropriate.

The essential holdings in *Citizens United* struck down the strict Federal bar on corporate activity in candidate campaigns. Instead, the Court's decision allows corporations to participate in candidate campaigns, as long as there is no direct contribution to or coordination with either a candidate's campaign committee or a partisan political committee. The Supreme Court did maintain a ban on direct contributions to candidates or political parties from corporate entities.

The Commission hereby declares that a corporation that is subject to the provisions of R.C. §3517.105 or §3599.03, is then brought before the Commission on a complaint and is subject to the jurisdiction of the Commission, will not be held in violation of either R.C. §3517.105 or §3599.03 as long as they act in concert with the holding of the U.S. Supreme Court in *Citizens United* and conduct their partisan political activity totally independent of and not coordinated with a candidate or a political party. Alternatively, any direct contribution to a candidate campaign committee or a political party will continue to be considered a violation of R.C. §3599.03.

While there is no specific obligation currently in Ohio law, the Commission would encourage any corporation that desires to involve itself in the partisan political arena as allowed by the Court's decision, to file a statement that reflects this activity with the appropriate filing office, similar to the form 30-B-1 that reflects a corporation's contribution to a ballot issue committee. Such a filing would manifest the foundation of Ohio's campaign finance laws: public disclosure.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the Ohio Elections Commission will interpret and apply R.C. §3517.105 and §3599.03 in light of the United States Supreme Court decision in *Citizens United*, and thus a corporation will be permitted to independently participate in partisan political activities, as long as such participation is independent of and not coordinated with any candidate or political party, and the corporation will not be subject to a finding of a violation by the Commission.

Sincerely,

John Mroczkowski
Chair