Ohio Elections Commission
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May 25, 2006

Ohio Elections Commission
Advisory Opinion
2006ELC-03

SYLLABUS: Campaign contribution limits otherwise applicable to PACs are not applicable to affiliated PACs that are properly established under Ohio's campaign finance laws pursuant to R.C. §3517.08 et seq.

To: William M. Todd, Esq.
Counsel
All Children Matter

You have requested an advisory opinion on a series of questions concerning Ohio campaign finance law. The essential question posed to the Commission is as follows:

> What is the application of Ohio's contribution limits under Ohio Revised Code §3517.102 as they may apply to affiliated Political Action Committees (PACs), as that term is defined?

In your advisory opinion request letter you state that your client, All Children Matter, is currently operating affiliated Political Action Committees (PACs) in several states, but not in the state of Ohio. You indicate that All Children Matter intends to commence operations in Ohio, but that before doing so you seek the Commission's interpretation of certain provisions in Ohio's campaign finance laws. You are specifically seeking the Commission's interpretation of R.C. §3517.102(B)(2)(a)(vi), Ohio's statutory limitation on campaign contributions that may be made between PACs.

This statutory provision directs that no PAC shall make a contribution or contributions that aggregate more than ten thousand dollars to another PAC in a calendar year. The provision that is of interest to you, however, goes on to hold as follows:

> This division <u>does not</u> apply to a political action committee that makes a contribution to a political action committee affiliated with it. For purposes of this division, a political action committee is affiliated with another political action committee if they are both established, financed, maintained, or controlled by, or if they are, the same corporation, organization, labor organization, continuing association, or other person, including any parent, subsidiary, division, or

> department of that corporation, organization, labor organization, continuing association, or other person. [Emphasis Added]

First, you acknowledge that the anticipated activities of your clients are subject to this provision and that for the purposes of Ohio's campaign finance laws your client organizations are to be considered affiliated. Your basic question is primarily directed at whether affiliated PACs are limited in the amount of contributions that may be made between them. The Commission is in accord with the statute that there are no limitations on the amounts that can be transferred between affiliated PACs, whether from within or outside the state of Ohio. Before contemplating the transfer of funds to the Ohio PAC, however, the Commission believes that an out-of-state PAC must file the necessary documentation to establish its existence in Ohio.

Ohio law also recognizes two forms of PACs. Along with an Ohio PAC as defined in R.C. §3517.01(B)(8), Ohio law recognizes the existence of federal political committees (federal PACs). The manner in which these committees conduct their activities in Ohio is detailed in Ohio's campaign finance laws as contained in R.C. §3517.08 et seq. In order to conduct political activities in the state of Ohio, a PAC must fall into one of these two categories.

In discussing the latter, Ohio law is quite clear as to the requirements for the manner in which federal PACs can conduct Ohio activities. R.C. §3517.107(B) requires that a federal PAC shall first file "a copy of its most recent federal statement of organization," "(p)rior to making any such contribution, expenditure, or independent expenditure ..." R.C. §3517.107(B). As long as the federal statement of organization is filed prior to the federal PAC conducting any Ohio activity, it has complied with Ohio law. Subsequent to the initial filing, then, a federal PAC can make contributions and have expenditures. Additional filings are required based on the nature of the PAC's activity, and all PAC activity is subject to federal law and the jurisdiction of the Federal Elections Commission on the legal principle of the preemption of state law by federal law. Filings made with the state of Ohio in this situation are essentially notice type filings that are made merely to reflect a PAC's Ohio activity.

The only other type of PAC recognized in Ohio law is an Ohio PAC that files an Ohio Designation of Treasurer form and then complies with all of the provisions in Ohio's campaign finance statutes. Ohio law provides a definition of a PAC in R.C.§3517.01(B)(8) as

> ... a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy, and that is not a political party, a campaign committee, or a legislative campaign fund.

If two or more persons seek to combine to conduct political activities as their primary or major purpose in Ohio as is stated above, they must first comply with the provisions of R.C. §3517.10(D). Subdivision (1) of §3517.10(D) holds that

> (p)rior to receiving a contribution or making an expenditure, every ... political action committee ... shall appoint a treasurer and shall file, on a form prescribed by the secretary of state, a designation of that appointment, including the full name and address of the treasurer and of the ... political action committee [Emphasis Added]

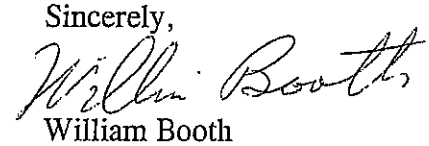
Ohio campaign finance law does not allow for any other type of PAC.

Therefore, while affiliated PACs are not subject to the statutory limitations on contributions under R.C. §3517.102, any contributions made between affiliated PACs can only occur between PACs that are already established under Ohio law. If such an affiliated contribution were to come from an existing federal PAC, the only requirement would be the filing of the federal Statement of Organization with the Secretary of State. Once that is accomplished, an affiliated contribution could be made and any prior activity of the PAC would be available with the Federal Elections Commission.

This would not be the case for an Ohio PAC. Your request letter indicates that All Children Matter has not been previously active in the State of Ohio. That being the case, it would not be possible for an existing All Children Matter PAC from another state to file a proper Declaration of Treasurer form with the Ohio Secretary of State. Since an Ohio PAC can have no activity prior to the filing of that Designation and due to the PAC's existence in another state, which implies the receipt of contributions and the making of expenditures, any attempt to establish an Ohio PAC for an existing out-of-state entity would immediately subject the filer to the jurisdiction of the Commission for an untimely filing of a Designation of Treasurer.

Accordingly, it is the opinion of the Ohio Elections Commission, and you are so advised, that the campaign contribution limits otherwise applicable to PACs are not applicable to affiliated PACs that are properly established under Ohio's campaign finance laws pursuant to R.C. §3517.08 et seq.

Sincerely,



William Booth
Chair