



Ohio Elections Commission

30 East Broad Street, 14th Floor

Columbus, Ohio 43266-0418

(614) 466-3205

March 14, 1996

Ohio Elections Commission

Advisory Opinion

96ELC-02

SYLLABUS: Contributions made prior to March 19, 1996 are not included in calendar year 1996 limits imposed by §3517.102 of the Revised Code.

TO: John Bender, Esq.
Chief Elections Counsel
Secretary of State
State of Ohio

You have requested an advisory opinion on the following question:

R.C. 3517.102, which establishes contribution limits for individuals and other entities, is effective March 19, 1996. This section establishes contribution limits that are calculated on a "calendar year" basis. Are contributions made between January 1, 1996 and March 19, 1996, (the effective date of the section), subject to inclusion in the "calendar year" limitation?

This section of the Ohio Revised Code is a new enactment, the same having been among several newly enacted sections pursuant to Amended Substitute Senate Bill 8 (SB 8) of the 121st General Assembly. Section 3 of SB 8 states:

Section 3517.102 of the Revised Code, as enacted by this act, shall take effect on the date of the primary election in 1996.

Your question is well taken because O.R.C. §3517.102 contains several particulars as to when "the primary election period" begins and ends as permanent law. It and the remainder of SB 8 offer nothing further to harmonize itself with the §3 effective date language or otherwise clarify the Legislature's intent on this particular point.

It is helpful to note that §11 of SB 8 begins, "The limitations prescribed in section 3517.102 of the Revised Code, as enacted by this act, on contributions made....", with respect to their application to judicial elections. By making specific reference to the "limitations" themselves, the General Assembly was clearly cognizant of making this distinction in considering how both §3517.102 and the contribution limits it contains were to take effect.

By its omission of the term "limitations" from §3 of SB 8, the General Assembly apparently intended a prospective rather than a retrospective application of them from the date of the primary election in 1996. To properly manifest the latter intent, §3 should have been made effective January 1, 1996 while further specifying that its "limitations" on contributions were to be effective that date as well.

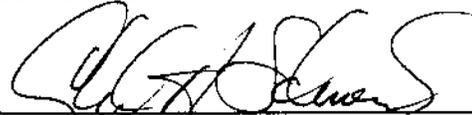
The Final Analysis of SB 8 by the General Assembly's Legislative Service Commission (LSC) also suggests only a prospective application. It restates on Chart A (@ p.18) that the limitations are "Effective on the 1996 primary election date." The result of both a careful reading of SB 8 and the LSC's Final Analysis is a legislative intent to omit any "primary election period" under O.R.C. §3517.102 from calendar year 1996. A statute is presumed to be prospective in its operation unless expressly made retrospective. O.R.C. §1.48

Any retrospective application of contribution limits enacted by R.C. §3517.102 to January 1, 1996 would also offend the Ohio Constitution. Article II, §28 of the Ohio Constitution generally prohibits retroactive application of laws. This issue does not arise until it is first determined that the General Assembly has specified that a statute so apply. Van Fossen v. Babcock & Wilcox Co., 36 Ohio St. 3d 100 (1988). Even though such a determination is not made here, it is helpful to resolve this issue by scrutinizing it constitutionally as if it were so determined.

This type of analysis requires an initial determination of whether the statute's application is substantive or remedial. Van Fossen, supra. While this is sometimes difficult to ascertain, the issue in this instance is easily resolved. The making of political campaign contributions is an exercise of First Amendment and other freedoms granted by the Constitution of the United States. Buckley v. Valeo, 424 U.S. 1 (1976). Therefore, any limitations placed thereon by state statute clearly apply to a substantive right rather than effecting some procedural remedy and would require a prospective application.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission and you are advised that contributions made prior to March 19, 1996 are not includeable for purposes of O.R.C. §3517.102, as SB 8 of the 121st General Assembly does not create any "primary election period" for calendar year 1996.

APPROVED:



Charles A. Schneider
Chairman