



# Ohio Elections Commission

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December 3, 1996

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## OHIO ELECTIONS COMMISSION

### Advisory Opinion

96ELC-13

**SYLLABUS:** Section 3599.031 of the Ohio Revised Code, and as amplified in Section 111-5-19 of the Ohio Administrative Code, permit an association to form a trusteeship to operate as a collecting agent solely for the purpose of receiving and disbursing combined payments from members to the general operating fund and political action committee of the association, so long as the trusteeship is separate and autonomous from that association and no director or officer of the association serves as a trustee or otherwise directs or controls the trusteeship.

**TO:** Susan J. Kyte  
Attorney for the Ohio Nurses Association

You have requested an advisory opinion on the following question:

May an association form a trusteeship to operate as a collecting agent under certain circumstances so as to comply with the requirements in Ohio Administrative Code §111-5-19, which amplifies Ohio Revised Code §3599.031 to create and utilize an "entity separate from the ... association"?

The particular circumstances you envision involve a trusteeship separate and autonomous from the association established solely for the purpose of collecting and combining member contributions and distributing them to the association's general fund and political action committee, respectively. No officer or director of the association would serve as a trustee or be able to control or direct the trusteeship's activities.

The manner in which employee and member contributions for political purposes are collected, disbursed, and reported in Ohio underwent substantial revision by the 121st General Assembly. Amended Substitute Senate Bill 8 (SB8) amended §3599.031 of the Ohio Revised Code in an effort to end the practice of collecting and combining employee wage deducted political contributions or member contributions into a single fund controlled by others who, with little or no input from those contributors, subsequently decided where and to which

candidate or campaign fund these funds would be further contributed. SB8 now requires that the employee\member who originally contributed those funds expressly and previously authorize such further contributions. A more detailed breakdown of these procedural requirements can be found in the General Assembly's Legislative Service Commission Final Analysis of SB8, page 13.

Suffice it to say that these new procedures will not be easily implemented without amplification and clarification. Under authority granted in R.C. §3517.15(A) as amended by SB8, the Secretary of State promulgated §111-5-19 of the Ohio Administrative Code to amplify newly amended R.C. §3599.031, first as an emergency rule (eff. 8\23\95) and finally as a permanent rule (eff. 3\29\96). Indicative of the difficulty in amplifying these new requirements for collecting, disbursing and reporting these employee\member contributions, the language for which you now seek clarification was not a part of the Secretary of State's emergency rules but rather first appearing in the permanent rule.

Your request for this advisory opinion also provides an opportunity to clarify the relationship between this Commission and the office of the Secretary of State which the 121st General Assembly apparently intends. In creating this successor Commission through Amended Substitute Senate Bill 9 (SB9), the 121st General Assembly granted authority to the Commission to interpret through advisory opinions certain of its enactments, including R.C. §3599.031. Yet the General Assembly limited the Commission's rule making authority primarily to internal procedures. This Commission has no authority to amplify R.C. §3599.031, the same having been reserved exclusively to the Secretary of State. R.C. §3517.153(D) and uncodified §4(C)(1)(a) of SB9.

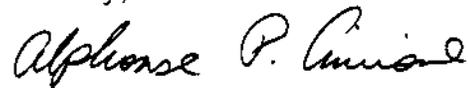
The General Assembly further designates the Secretary of State as this Commission's "advisor" and further directs the Secretary of State to "provide assistance, as needed, in the adoption of rules and the assumption of duties from the [predecessor] Ohio Elections Commission." (uncodified) §4(C)(2), SB9. One of those "assumed" duties was the rendering of advisory opinions. Therefore, for this Commission to properly render an advisory opinion on the Secretary of State's amplification of a statute over which the Commission has authority to interpret, the Commission must first obtain the Secretary's advice.

The Secretary of State has advised this Commission that the proposed method for collecting and receiving money does comport with and is in compliance with the language of the rule and the meaning of the statute. The Commission finds the Secretary's advice well taken and persuasive.

Accordingly, it is the opinion of the Ohio Elections Commission, upon the advice of the Secretary of State, and you are so advised that an association may

form a trusteeship to collect member contributions and disburse the combined payments to the general operating fund and political action committee of the association so long as that trusteeship is separate and autonomous from the association and no director or officer of the association serves as a trustee or otherwise directs or controls the trusteeship.

Sincerely,

A handwritten signature in cursive script that reads "Alphonse P. Cincione".

Alphonse P. Cincione  
Chairman