

May 29, 1987

ADVISORY OPINION 87-8

- Syllabus: 1. Contributions to a state or local officeholder's campaign for a federal office are taken into consideration in determining whether division (I) or (J) of Ohio Revised Code section 3517.13 would prohibit the award of a contract by an agency, department, or political subdivision for whose contracts the officeholder is ultimately responsible.
2. The Federal Election Campaign Act of 1971, 2 U.S.C. 453, does not preempt divisions (I) and (J) of Ohio Revised Code section 3517.13.

TO: Gordon M. Strauss, Counsel, Friends of Voinovich

You have requested an opinion on the following questions:

1. Are contributions to a state or local officeholder's campaign for a federal office taken into consideration in determining whether division (I) or (J) of Ohio Revised Code section 3517.13 would prohibit the award of a contract by an agency, department, or political subdivision for whose contracts the officeholder is ultimately responsible?
2. Does the Federal Election Campaign Act of 1971 preempt divisions (I) and (J) of Ohio Revised Code section 3517.13?

Ohio Revised Code section 3517.13, divisions (I) and (J), provide in part that:

[N]o agency or department of this state or any political subdivision shall award any contract, other than one let by competitive bidding, . . . for the purchase of goods costing more than five hundred dollars or services costing more than five hundred dollars to [any of several entities enumerated therein whose owners or owners' spouses have individually made] within the two previous calendar years one or more contributions totaling in excess of one thousand dollars to the holder of the public office having ultimate responsibility for the award of the contract or to his campaign committee. (Emphasis added.)

The contract bar provisions of R.C. 3517.13(I) and (J) apply only to contracts awarded by state and local agencies, departments and political subdivisions. The two divisions do not apply to, nor prohibit the award of contracts by federal agencies and departments. However, this is not dispositive of the question of what contributions to the holder of a state or local office with ultimate responsibility for the award of a contract are taken into consideration for purposes of enforcing R.C. 3517.13 (I) and (J).

The specific statutory language regarding what contributions are taken into consideration is "contributions . . . to the officeholder ultimately responsible for the award of the contract." The statute does not limit contributions to those made to the officeholder in connection with the office he holds. The statutory language includes all contributions received during the prior two calendar years by the officeholder or by a campaign committee of the officeholder, whether they are in connection with his current office or not. R.C. 3517.13(I) and (J) make no exception

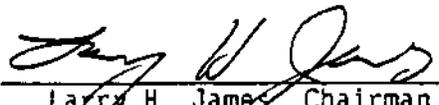
for contributions to state and local officeholders who also happen to be candidates for federal office.

R.C. 3517.13(I) and (J) are designed to prohibit the actual awarding of unbid public contracts, or favoritism in their award, based on political contributions. The opportunity for corruption, favoritism, or the appearance of impropriety, in the award of a public contract is just as present whether contributions to the officeholder during the two calendar year period are made in connection with the office he presently holds or another office he is seeking or previously held or sought. Given that an individual may have a different campaign committee for each office for which he is or may be a candidate (see Advisory Opinion 87-7), the legislative intent of R.C. 3517.13(I) and (J) could be circumvented by a contributor dividing his contributions between the committees. Aggregating contributions from the same contributor to different campaign committees of the officeholder with ultimate responsibility for the award of the unbid contract will insure that the legislative purpose is not subverted.

The Federal Election Campaign Act of 1971, 2 U.S.C. 453 provides that, "The provisions of this Act, and of rules prescribed under this Act, supercede and preempt any provision of state law with respect to election to Federal office". The Federal Campaign Act of 1971 regulates campaign finance reporting and contribution limits in connection with candidacies for federal offices. It makes no attempt to regulate the award of contracts by a state or local public officeholder. In fact, the preemption language of 2 U.S.C. 453 is limited to state laws with respect to "election to Federal office." In addition, the Federal Election Commission has promulgated no rules, nor issued any advisory opinions, addressing the question presented to the Commission. Therefore, it is our opinion that the preemptive clause has no effect on R.C. 3517.13 (I) and (J).

For the reasons stated herein, it is the opinion of the Ohio Elections Commission that:

1. Contributions to a state or local officeholder's campaign for a federal office are taken into consideration in determining whether division (I) or (J) of Ohio Revised Code section 3517.13 would prohibit the award of a contract by an agency, department, or political subdivision for whose contracts the officeholder is ultimately responsible.
2. The Federal Election Campaign Act of 1971, 2 U.S.C. 453, does not preempt divisions (I) and (J) of Ohio Revised Code section 3517.13


Larry H. James, Chairman