Ohio Elections Commission

21 West Broad Street, Suite 600
Columbus, Ohio 43215
614•466•3205

Alphonse Cincione
Chairman

Mary W. Sullivan
Vice-Chairperson

Fred Alberini

Dale W. Bayer

William M. Connelly

Robert Duncan

Norton Webster

Philip C. Richter
Executive Director

September 10, 1996

Ohio Elections Commission

Advisory Opinion
96ELC-10

SYLLABUS: Electronic messages posted on a World Wide Web page of the Internet or sent via electronic mail supporting or opposing a candidate or issue, which messages are posted or sent by a candidate, campaign committee, legislative campaign fund, political party, corporation, labor organization, other entity, a political action committee described in R.C. §3517.20(A), a corporation, or a labor organization are subject to the disclaimer requirement set forth in R.C. §3517.20. The language included in the disclaimer should be the same as that outlined in R.C. §3517.20(A).

To: John Bender
Chief Counsel
Office of Secretary of State, Bob Taft

You have requested an advisory opinion on the following question:

> Are electronic messages posted on a World Wide Web page of the Internet or sent via electronic mail supporting or opposing a candidate or issue subject to the disclaimer requirement set forth in R.C. 3517.20? If so, what is the language that must be included in the disclaimer?

The United States Supreme Court, in the case of McIntyre v. Ohio Elec. Comm., 514 U.S. ___, 115 S.Ct. 1511, 131 L.Ed. 2d 426 (1995), found Ohio's former disclaimer statute, R. C. §3599.09, overbroad and unconstitutional. However, in that opinion, the Supreme Court recognized that the state may have a valid interest in protecting its electoral process which would necessitate a similar, less restrictive statute. Id. at 1522, 131 L. Ed. 2d at 443. As characterized in McIntyre, and as enacted in Amended Substitute House Bill 99 (HB99) by the 121st general assembly, the Ohio legislature adopted a more limited disclaimer requirement in order to protect the state's electoral process.

As defined in the new disclaimer statute, R.C. §3517.20, the phrase "political publication" includes as a part of the definition, "any other form of general publication..." Black's Law Dictionary defines "publication" as

> "To make public; to make known to people in general; to bring before the public ... The act of publishing anything; offering it to public notice, or rendering it accessible to public scrutiny."

While the traditional view of such a term encompasses the mere production of a written document, today's modern age requires the incorporation of a greater breadth of material, including the production of a Web or Internet "page". Society has reached a level of technical sophistication that an individual may receive electronic mail or review "pages" on the Internet in greater quantities than that delivered by a postal service employee or by a campaign volunteer dropping literature door-to-door in a neighborhood. Recognizing the increasing trend toward the availability and accessibility of such electronic information, the Commission believes that the language "any of other form of general publication ... that is designed to promote" the nomination, election, adoption or defeat of a candidate, issue or question, must include electronic means of publication, as well as any written form.

In Advisory Opinion 91-3, the Commission previously determined the content of a proper disclaimer on a political message. The Commission stated that a disclaimer must contain the residence or business address of the person or persons responsible for the political message, and that the mere inclusion of a post office box number was insufficient. In coming to that conclusion, the Commission stated that

> "... there are three reasons for requiring that a post office box cannot be used in a disclaimer required by R.C. 3599.09 (now R.C. 3517.20). First, to assist the voters in evaluating the opinions expressed; and secondly, to insure that good service can be obtained upon the persons issuing the material in question at a later date if that should become necessary. Finally, the term "residence" itself has been defined for purposes of Title 35 at 3503.02, and that definition speaks to a physical place or location, not a post office box. Consequently, the statutory language itself, which this commission is called upon to enforce mandates this interpretation."

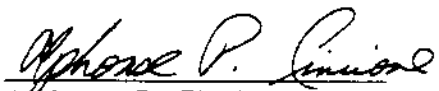
The same three reasons are equally valid in this context. A person may use the information set forth in a disclaimer to better assess the opinion expressed or to be informed as to the physical location at which additional information can be obtained. It also gives an organization, such as the Commission, a valid address at which to complete legal service should that become necessary. While other

information (Internet address etc.) may be included, the Commission recognizes the need for the name and address of a responsible party, regardless of whether the message is in a hard copy or electronic format.

Similar to the Supreme Court's holding in McIntyre, the Commission recognizes an individual's right to endorse or oppose any candidate, issue, or question by contacting any other individual and engaging them in discourse about that candidate, issue or question, regardless of whether it is in written, oral, or electronic form. By means of this opinion, the Commission does not intend to curtail those individual rights or impose upon any free speech rights under the First Amendment to the United States Constitution. However, this Commission believes that it is appropriate for a disclaimer to be included on any material issued by the parties defined in the language of R.C. §3517.20(A); namely a candidate, campaign committee, legislative campaign fund, political party, other entity, a political action committee as described in such section, a corporation, or labor organization.

For the reasons stated herein, it is the opinion of the Ohio Elections Commission, and you are so advised, that electronic messages posted on a World Wide Web page of the Internet or sent via electronic mail supporting or opposing a candidate or issue, which messages are posted or sent by a candidate, campaign committee, legislative campaign fund, political party, other entity, a political action committee described in such section, a corporation, or a labor organization, are subject to the disclaimer requirement set forth in R.C. §3517.20 and that the language included in the disclaimer must be the same as that outlined in R.C. §3517.20(A).

APPROVED:



Alphonse P. Cincione
Chairman