Chapter 10: Electioneering Communication

This page intentionally left blank.

ELECTIONEERING COMMUNICATION

What is Electioneering Communication

Generally speaking, electioneering communication is any communication that refers to a candidate and that is distributed via a broadcast, cable or satellite means and is not otherwise considered an "expenditure." This primarily covers all radio and television communications. The candidate reference within the communication could be by use of the candidate's name, image or likeness or by some other clear and unambiguous reference. Electioneering communication does not include any print media or printed materials.

[*R.C. 3517.1011*; *OAC 111-4-10*]

What to Do First

Any person intending to make a disbursement for the direct costs of producing or airing electioneering communications must file *form 31-EC, Notice of Intent to Make Electioneering Communication Disbursements*, with the office of the secretary of state prior to making such a disbursement. Upon the filing of a *form 31-EC*, the secretary of state will issue credentials that permit the filing of required detailed reports via the secretary of state's online filing system. Except for the initial filing of a *Notice of Intent to Make Electioneering Communication Disbursements*, the prescribed format for filing all electioneering communication reports is through the secretary of state's online filing system.

[*R.C. 3517.1011(C)*]

When to File Reports

Any person who makes a disbursement or disbursements for the direct costs of producing and airing electioneering communications aggregating in excess of $10,000 during any calendar year must file, within 24 hours of each disclosure date, a disclosure of electioneering communications statement. After the first disclosure of electioneering communications statement is filed, continued filing is required weekly through that calendar year, so long as additional electioneering communication disbursements are made. These subsequent reports must be filed on the same day of the week as the day of the week that the initial disclosure statement was filed.

[*R.C. 3517.1011(A)(6) and (D)*]

What a Filing Must Contain

Each electioneering communication disclosure statement must contain all of the following:

a. The full name and address of the person making the disbursement, any person sharing or exercising direction or control over the activities of the person making the disbursement, and the custodian of the books and accounts of the person making the disbursement.

b. The principal place of business of the person making the disbursement, if not an individual.

c. The amount of each disbursement of more than $1 during the period covered by the statement and the identity of the person to whom the disbursement was made.

d. The nominations or elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified.

e. For each contributor who contributed an aggregate amount of $200 or more to the person making the disbursement and whose contributions were used for making the disbursement, all of the following information:

   i. The month, day and year that the contributor made the contribution or contributions aggregating $200 or more.

   ii. The full name and address of the contributor and, if the contributor is a political action committee, its registration number.

   iii. If the contributor is an individual, the name of the individual's current employer if any, or if the individual is self-employed, the individual's occupation and the name of the individual's business, if any.

   iv. A description of the contribution, if other than money.

   v. The value in dollars and cents of the contribution.

   vi. For any contribution transmitted through a payroll deduction, if the amounts deducted from the wages and salaries of two or more employees exceed, in the aggregate, $100, the full name of the employees' employer and the full name of the labor organization of which the employees are members, if any.

[*R.C. 3517.1011(D)*]

Coordinated Electioneering Communication

An electioneering communication that is made pursuant to any arrangement, coordination or direction by a candidate or a candidate's campaign committee, or by the officials, agents, employees or consultants of a candidate or a candidate's campaign committee, is considered to be coordinated and, as such, becomes an in-kind contribution to the candidate. An in-kind contribution is subject to contribution limits, the corporate prohibition and other requirements of the general campaign finance law.

[*R.C. 3517.1011(A)(5), (G) and (H)*; *3517.102*]

Disclaimer Requirement

Within each electioneering communication, a statement must appear or be presented in a conspicuous manner that clearly indicates that the electioneering communication is not authorized by the candidate or the candidate's campaign committee and that clearly identifies the person making the disbursement for the electioneering communication in accordance with R.C. 3517.20.

[*R.C. 3517.1011(F)*]

Other General Provisions

During the 30 days preceding a primary or general election, any disbursement to pay the direct costs of producing or airing a broadcast, cable or satellite communication that refers to a clearly identified candidate must be considered to be made for the purpose of influencing the results of that election and must be reported as an expenditure or as an independent expenditure. Therefore, all disbursements made within 30 days of an election must be funded by regulated political entities that fully disclose all campaign finance activity on a regular basis and that are otherwise permitted to make direct contributions to candidate campaign committees.[1]

[*R.C. 3517.01(B)(6)*, *3517.10*]

During the 30 days preceding a primary or general election, persons are prohibited from making any broadcast, cable or satellite communication that refers to a clearly identified candidate using any contributions received from a corporation or labor organization.

[*R.C. 3517.1011(H)*]

The term "contribution" for the purpose of electioneering communication is not the same as the term "contribution" used in other areas of the campaign finance law.

[*R.C. 3517.01(B)(5)(e)*]

A person must be considered to have made a disbursement if the person has entered into a contract to make the disbursement.

[*R.C. 3517.1011(B)*]

[1] These provisions may be subject to challenge. See, e.g., Federal Election Commission v. Wisconsin Right to Life Inc., 551 U.S. 449 (2007); Ohio Right to Life Society, Inc. v. Ohio Elections Commission, et al., 2008 WL 4186312 (N.D. Ohio Sept. 5, 2007)

Statutory Definitions Relating to Electioneering Communication

"Electioneering communication" means any broadcast, cable or satellite communication that refers to a clearly identified candidate and that is made during either of the following periods of time:

a. If the person becomes a candidate before the day of the primary election at which candidates will be nominated for election to that office, between the date that the person becomes a candidate and the 30th day prior to that primary election and between the date of the primary election and the 30th day prior to the general election at which a candidate will be elected to that office.

b. If the person becomes a candidate after the day of the primary election at which candidates were nominated for election to that office or between the date of the primary election and the 30th day prior to the general election at which a candidate will be elected to that office.[2]

[*R.C. 3517.1011(A)(7)(a)*]

"Refers to a clearly identified candidate" means that the candidate's name, nickname, photograph or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference to the person, such as "the chief justice," "the governor," "member of the Ohio Senate," "member of the Ohio House of Representatives," and other such examples cited in the act, or through an unambiguous reference to the person's status as a candidate.

[*R.C. 3517.1011(A)(13)*]

Electioneering communication does not include any of the following:

a. A communication that is publicly disseminated through a means of communication other than a broadcast, cable or satellite television or radio station, such as communications appearing in print media, mailings, brochures, bumper stickers, yard signs, communications over the internet, including e-mail, or telephone communications.

b. A communication that appears in a news story, commentary, public service announcement, news programming or editorial distributed through the facilities of any broadcast, cable or satellite television or radio station, unless those facilities are owned or controlled by any political party, political committee, or candidate.

c. A communication that constitutes an expenditure or an independent expenditure.

d. A communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

[*R.C. 3517.1011(A)(7)(b)*]

[2] For purposes of R.C. 3517.1011, "candidate" has the same meaning as in R.C. 3501.01(H)