

**AUDITOR OF STATE BULLETIN 99-016
SEPTEMBER 15, 1999**

TO: ALL PUBLIC OFFICES
ALL INDEPENDENT PUBLIC ACCOUNTANTS

SUBJECT: AMENDED SUBSTITUTE SENATE BILL 201 - ELECTION MATTERS

As the fall election season approaches, all public officials and all public offices should be aware that there is a new State law concerning dissemination of information by public offices during election campaigns. Amended Substitute Senate Bill 201 was passed by the General Assembly, signed by the Governor, and became effective on December 21, 1998. The bill created a new section in the Ohio Revised Code, Section 9.03.

Section 9.03(C)(1)(e) prohibits the governing body of a political subdivision from using any public funds to support or oppose the nomination or election of a candidate for public office, the investigation, prosecution or recall of a public official, or the passage of a levy or a bond issue. Furthermore, Section 9.03(C)(2) prohibits the governing body of a political subdivision from compensating any employee of the political subdivision for any time spent on any activity designed to influence any one of the types of election campaigns specified in Section 9.03(C)(1)(e). However, the statute does permit the governing body of a political subdivision to use public funds "to communicate information about the plans, policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision." Ohio Rev. Code § 9.03(B). Furthermore, § 9.03(C)(2) does not prohibit the use of public funds to compensate an employee of a political subdivision for attending a public meeting to present information about the subdivision's finances or activities, provided that the employee's attendance is not designed to influence the outcome of an election or the passage or defeat of a levy or bond issue.

Please note that one particular type of subdivision is exempted from the prohibitions contained in this statute. Section 9.03(C) specifically exempts ADAMH boards from the prohibition against using public funds to support a levy or a bond issue. ADAMH boards are specifically authorized by statute to use their public funds to obtain further financial support for their activities. For a thorough discussion of the authority of ADAMH boards to expend public funds to support levies, and for a discussion of previous Attorneys General Opinions which also generally concluded that public offices cannot use public funds in election campaigns, please see 1999 Op. Att'y Gen. No. 99-30.

A copy of Ohio Rev. Code § 9.03 is attached for your reference. If you have any questions regarding the application of this statute to your office or to a publication you are considering for distribution, please consult with the attorney responsible for your public office.

If you should have any questions regarding this Bulletin, please contact the Auditor of State's Legal Division at 1-614-752-8683 or 1-800-282-0370.

§ 9.03 POLITICAL SUBDIVISION NEWSLETTERS; RESTRICTIONS ON USE OF PUBLIC FUNDS

(A) As used in this section, “political subdivision” means any body corporate and politic, except a municipal corporation that has adopted a charter under Section 7 of Article XVIII, Ohio Constitution, and except a county that has adopted a charter under Sections 3 and 4 of Article X, Ohio Constitution, to which both of the following apply:

(1) It is responsible for governmental activities only in a geographic area smaller than the state.

(2) It is subject to the sovereign immunity of the state.

(B) Except as otherwise provided in division (C) of this section, the governing body of a political subdivision may use public funds to publish and distribute newsletters, or to use any other means, to communicate information about the plans, policies, and operations of the political subdivision to members of the public within the political subdivision and to other persons who may be affected by the political subdivision.

(C) Except as otherwise provided in division (A)(5) of section 340.03 or division (A)(12) of section 340.033 of the Revised Code, no governing body of a political subdivision shall use public funds to do any of the following:

(1) Publish, distribute, or otherwise communicate information that does any of the following:

(a) Contains defamatory, libelous, or obscene matter;

(b) Promotes alcoholic beverages, cigarettes or other tobacco products, or any illegal product, service, or activity;

(c) Promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry;

(d) Supports or opposes any labor organization or any action by, on behalf of, or against any labor organization;

(e) Supports or opposes the nomination or election of a candidate for public office, the investigation, prosecution, or recall of a public official, or the passage of a levy or bond issue.

(2) Compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the purposes described in division (C)(1)(e) of this section. Division (C)(2) of this section does not prohibit the use of public funds to compensate an employee of a political subdivision for attending a public meeting to present information about the political subdivision’s finances, activities, and governmental actions in a manner that is not designed to influence the outcome of an election or the passage of a levy or bond issue, even though the election, levy, or bond issue is discussed or debated at the meeting.

(D) Nothing in this section prohibits or restricts any political subdivision from sponsoring, participating in, or doing any of the following:

(1) Charitable or public service advertising that is not commercial in nature;

(2) Advertising of exhibitions, performances, programs, products, or services that are provided by employees of a political subdivision or are provided at or through premises owned or operated by a political subdivision;

(3) Licensing an interest in a name or mark that is owned or controlled by the political subdivision.

(E) As used in this section, “cigarettes” and “tobacco product” have the same meanings as in section 5743.01 of the Revised Code.

(1998 S 201, eff. 12-21-98)