

ADVISORY 2010-07

October 18, 2010

To: All County Boards of Elections, Ballot Issue Committees, and Circulators of Statewide Issue Petitions

Re: Disclosure Requirements under R.C. 3517.12(B)

In November 2007, the Secretary of State's office issued Advisory 2007-16 notifying boards of elections, ballot issue committees, and circulators of statewide issue petitions that the Secretary of State's office would begin referring violations of R.C. 3517.12(B) to the Ohio Elections Commission. This statute has been challenged in a lawsuit, and a federal judge has enjoined enforcement of the statute with respect to certain types of information. As explained herein, pursuant to a federal court order this office will not make referrals to the Ohio Elections Commission for failure to disclose certain information about individual petition circulators. This Advisory partially supersedes Advisory 2007-16.

Revised Code Section 3517.12(B) requires that the circulator or the committee in charge of an initiative or referendum petition for the submission of a constitutional amendment or proposed law must file with the Secretary of State an itemized statement showing all payments made for circulating petitions and contributions made for use in circulating the petitions within thirty days after the petition papers are filed. The statement must also show the full names and addresses of all circulators to whom payments or promises were made and the amounts paid to each individual circulator R.C. 3517.12(B). Similar requirements are imposed for circulators of county referendum petitions under R.C. 305.36 and for circulators of municipal initiative or referendum petitions under R.C. 731.35.

On February 25, 2010, the United States District Court for the Southern District of Ohio issued a permanent injunction in the case *Citizens in Charge, et al. v. Brunner, et al.*, S.D. Ohio No. 2:10-CV-95, prohibiting enforcement of R.C. 3517.12(B) "to the extent that it requires ballot committees to disclose any amounts payable to a circulator of its referendum petitions." Consistent with the Court's order, this office will not make referrals to the Ohio Elections Commission for failure of ballot issue committees or circulators to disclose the full names, addresses, and amounts paid to *individual* circulators of statewide ballot issue or referendum petitions as required under R.C. 3517.12(B).

In addition to clarifying the Secretary of State's office's position on referrals under R.C. 3517.12(B), Advisory 2007-16 advised county boards of elections to refer violations of R.C. 305.36 or R.C. 731.35 to the Ohio Elections Commission after consulting with their county prosecutor regarding "home rule" considerations that might affect those statutory requirements. See Advisory 2007-16, at 3. Although R.C. 305.36 and R.C. 731.35 are not at issue in the *Citizens*

in Charge litigation, the Court's order suggests that to the extent those statutes impose requirements similar to those imposed by R.C. 3517.12(B), they would also be held unconstitutional under the prevailing United States Supreme Court case law. Boards of elections should consult with their county prosecutors regarding the effect of the Court's order in the *Citizens in Charge* case. However, this office recommends that boards of elections should not make referrals to the Ohio Elections Commission for failure to disclose the full names, addresses, and amounts paid to individual circulators of ballot issue or referendum petitions as required under R.C. 305.36 or R.C. 731.35.

Although the Court's order enjoins enforcement of R.C. 3517.12(B) for failure to provide information on individual petition circulators, ballot issue committees and circulators of statewide issue petitions must still disclose other information under the law – including, but not limited to, total expenditures for petition circulation and any payments to individuals or entities for coordinating circulation of petitions. The Secretary of State's office will continue to refer to the Ohio Elections Commission all violations of R.C. 3517.12(B) that do not involve failure to disclose the names, addresses, or amounts paid to individual circulators. We advise boards of elections to refer to the Ohio Elections Commission similar violations of R.C. 305.36 or R.C. 731.35 after consulting with their county prosecutor regarding "home rule" considerations relating to municipal and county charter provisions that may affect their statutory requirements.

If either you or your prosecutor has any questions regarding this Advisory, please contact Elections Counsel Josh Kimsey, Campaign Finance Administrator Curt Mayhew, or Assistant Campaign Finance Administrator Kelly Neer.

Sincerely,

Jennifer Brunner