State Ethics Commission of Georgia

ADVISORY OPINION NO. 2001-32
June 29, 2001

REAL OR HYPOTHETICAL SET OF CIRCUMSTANCES

SUBJECT: INDEPENDENT COMMITTEE EXPENDITURE FOR COMMUNICATIONS INTENDED TO AFFECT THE OUTCOME OF AN ELECTION FOR ANY ELECTED OFFICE

Georgia Right to Life Committee, Inc. (hereinafter referred to as the "organization" or GRTL) an organization established as a nonprofit corporation funded by donations of supporters and exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code has asked whether certain communication they issued would be considered as "intended to affect the outcome of an" [election for any elected office]. They seek a formal advisory opinion from the State Ethics Commission concerning application of the provisions of H.B. 1630 (passed by the General Assembly in 2000 and scheduled to go into effect January 1, 2001).

The organization, through a series of questions, seeks either two or three advisory opinions from the State Ethics Commission.

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RELEVANT FACTORS

The organization acknowledges that it is a "committee, association and corporation" which "receives donations from persons who are ... supporters" of the organization. The organization states that it "expends such funds for the purpose of affecting the outcome of elections for elected offices" and that it "also expends such funds on communications intended to affect the outcome of elections...."

QUESTION ONE:

WHETHER THE ENCLOSED EXHIBITS B-D ARE THE TYPES OF COMMUNICATIONS THAT WILL BE CONSIDERED AS "FOR THE PURPOSE OF AFFECTING THE OUTCOME OF AN ELECTION FOR ANY ELECTED OFFICE OR [ADVOCACY OF] THE ELECTION OR DEFEAT OF ANY PARTICULAR CANDIDATE?" SEE H.B. 1630, LL. 7-10.

However, in order to conclude that a communication is for the purpose of "affecting the outcome of an election" for an elected office as contemplated by the statute, it is necessary to determine what criteria must be present to conclude that a communication is made for the purpose of "affecting the outcome of an election."

Such criteria are also relevant to ascertaining whether a group is an "independent committee" under H.B. 1630, for part of the definition of such committees speaks of accepting donations and expending "...such funds either for the purpose of affecting the outcome of an election for any elected office [emphasis added] or to advocate the election or defeat of any particular candidate." Section 2, H.B. 1630, to be codified as O.C.G.A. § 21-5-3(12.1).

The second part of the definition – "to advocate the election or defeat of any particular candidate" – is instructive, because it apparently acknowledges and adopts the express advocacy standard set out in Buckley v. Valeo, 424 U.S. 1, at 44 (1976) as "communications containing express words of advocacy of election or defeat, such as 'vote for', 'elect', 'cast your ballot for', 'Smith for Congress', 'vote against', 'defeat', 'reject.'"

As to whether the phrase "for the purpose of affecting the outcome of an election for any elected office" adds anything to the express advocacy standard, it is necessary to review both the words of the phrase and the context from which it emerged.

The words of the phrase taken in isolation provide no firm guidance. After all a communication exhorting citizens to "get out and vote" could be reasonably said to have been made "for the purpose of affecting the outcome of an election for any elected office" if only by encouraging greater public participation. Yet such a communication could not be intended to be covered by a requirement that the communicating group register and disclose as an independent committee.

Viewing the broader context of the newly created and enacted definition of "independent committee," it is clear that the core purpose of adding this definition and the concomitant regulation of independent committees was to require that certain expenditures made independently of candidates be disclosed to the public.

Such disclosure was sanctioned by the Supreme Court in Buckley, supra, when the requirements of disclosure of such "independent expenditures" contained in the Federal Election Campaign Act were found to be lawful, provided the communications generated by such independent expenditures contained words of express advocacy as set out above.

Mindful that in construing any statute we must assume that the General Assembly did not intend to enact an unconstitutional provision (See for example Mayor of Hapeville v Anderson, 246 Ga. 786 (1980) and Wigley v Hambrick, 193 Ga. App. 903 (1989)), it follows that the subject "independent committee" provisions are intended to reach groups which raise and expend funds to expressly advocate the election or defeat of particular candidates. Since the literature submitted for review does not appear to contain "express words of advocacy of election or defeat" of the particular candidates mentioned therein, the answer to Question One is no.

QUESTION TWO:

IF GRTL RECEIVES DONATIONS FROM ITS SUPPORTERS AND EXPENDS SUCH FUNDS FOR COMMUNICATIONS LIKE THOSE SUBMITTED, WOULD SUCH ACTIONS CAUSE GTRL TO BE CONSIDERED AN "INDEPENDENT COMMITTEE" AS DEFINED BY H.B. 1630?

For the reasons set out above, the communications involved do not rise to the level of "advocat[ing] the election or defeat of any particular candidate." As observed in the previous discussion, the "affect the outcome" language in the definition of "independent committee" cannot be viewed as going beyond "express advocacy", or, as worded in the subject provision – "advocat[ing] the election or defeat of any particular candidate."

It follows that expending funds for such communications would not, standing alone, cause GRTL to be considered an "independent committee" as defined by H.B. 1630