I. Ohio Elections Commission

A. Not the Ohio Elections Commission
   Voter Registration, Review of Petitions, Approval of Voting Machines, Conduct of Voting, Elections Law Enforcement of R.C. 3599 prohibitions

B. Make-up of the Ohio Elections Commission
   1. 7 member board
      a. 6 members (3 Democrat\3 Republican) appointed by Governor
      b. 1 member not affiliated with a major party appointed by members
   2. 3 staff members

C. Jurisdiction of the Ohio Elections Commission
   1. Campaign Finance Law
   2. Corporate Political Activity
   3. Fair Campaign Practices
      a. False Statements
      b. Disclaimers

D. Advisory Opinions

II. History

A. Campaign Finance law began developing around the turn of the last century
   1. President Teddy Roosevelt called for legislative action to curb political influence of corporations
   2. Response to the perceived undue influence of corporations in the electoral process
   3. One of the first legislative enactments was the Tilman Act of 1907
   4. The precursor to Revised Code §3599.03, the current limitation on campaign contributions, was first enacted in 1908.
   5. Bill was intended "(t)o prevent the corruption of elections and political parties by corporations."
   6. Federal Corrupt Practices Act of 1925, which remained as the primary federal election law until the Federal Election Campaign Act of 1972

B. FECA was the first major attempt at a comprehensive revision of the campaign finance laws on the federal level
   1. It was born out of the concerns of the times relating to the desire to have Congress take action in an area of perceived need

C. FECA was followed-up FECA of ’74
   1. This was an outgrowth of the events and disclosures of Watergate
   2. A part of this law was the establishment of the Federal Elections Commission
      a. FEC monitors campaigns and PACS on the federal level and on campaigns that involve federal offices
      b. Federal campaign finance law preempts state law, but only as it relates to federal candidates, committee and where there is an actual similar federal statute

D. In 1974 in SB 46, the Ohio legislature established the Ohio version of the FEC, the Ohio Elections Commission
   1. OEC is responsible for two primary areas
      a. Assuring compliance with Ohio’s campaign finance laws
      b. Monitoring the fair campaign finance practices laws in Ohio
         1. Disclaimers
         2. False statements
         3. Planting spies on opponent campaign committee
2. For 20 years OEC was the administrative responsibility of the office of the Secretary of State and received its legal advice from the Attorney General

3. OEC was a 5 member Commission:
   a. Could issue advisory opinions
   b. Hold administrative hearings
   c. Refer violations to prosecutor
   d. Impose fines
   e. Find good cause to do neither

4. Hearings were quasi-judicial in nature

E. In 1995, SB 9 was passed making the OEC an independent agency, separate from the office of the SOS and the AG
   1. 7 members; 6 appointed by Governor, independent by the 6 members
   2. Members hire staff attorney who advises Commission members on all issues before the Commission; makes recommendation on all cases before the Commission; responsible for all administrative responsibilities of the Commission
   3. Commission may hire investigative attorney to perform more involved investigation to issues before the Commission
   4. Greater autonomy and authority

F. Since time of Watergate, greater emphasis on government ethics - one outgrowth of this is the increased interest in the area of campaign finance
   1. FECA and Ohio campaign finance reform of 1970
   2. Increasing review of impact of money on the campaign process
   3. Various states have had ABSCAM types of investigations in their respective state legislatures - corruption fraud & bribery issues
   4. “Pay-to-play” mentality relating to campaign contributions and the influence of particular contributors to politicians

G. SB 8 was enacted in 1995 which was the first major comprehensive update to Ohio’s campaign finance laws since SB 46 in 1974
   1. Included the first campaign contribution limits for “state” offices (5 majors, senate and house)
   2. Specific limitation on solicitation of certain employees by the persons running for the office
   3. Additional filing requirements place on “state” races similar to FEC requirements - 2-business day report and summer reporting requirements
   4. Centralized audit of reports of house and senate candidates by SOS
   5. Similar treatment of labor unions to corporations (subsequently stricken)
      a. Can’t use union or corp. funds to support a candidate or PAC
      b. Must have certain documentation from individual before utilizing certain campaign funds
      c. Included limitations on dues check-off as well, but this statute is preliminarily enjoined by the Federal District Court
   6. Limitation on excess funds carry over from campaign to campaign

H. OEC is a quasi-judicial administrative agency
   1. Acts in a manner similar to a grand jury
      a. Finds facts
      b. Makes determination
   2. OEC can impose administrative fines, which a grand jury cannot do
   3. OEC must use certain legal basis for its findings (clear and convincing evidence for false statement; preponderance of evidence for remainder)
   4. Cases are filed by BOEs, SOS or individuals based on personal knowledge
5. OEC has powers to expedite cases to quickly hear evidence and make fast determination in order to allow a determination prior to an election.

H. Additional Elements of Ohio’s campaign finance laws

1. R.C. §3517.1012 – State or County “Restricted Funds” – created to allow parties to maintain an account for monies which can be used in a similar fashion to the state tax check-off funds

2. R.C. §3517.1013 – Levin accounts – created to allow parties to maintain an account for monies which can be for get-out-the-vote, voter registration and other non-candidate-specific uses

3. R.C. §3517.1014 – Transition Funds – created to allow successful candidates to receive funds to offset the costs associated with office transition activities

III. Campaign Finance Basics

A. Filing Designation of Treasurer - Establishing a Campaign Committee

B. Local Candidate Waiver

1. §3517.10(K)

   a. Eligible Candidates
      1. Local Municipal Candidate with pay <$5000
      2. Local Bd. of Ed.
      3. Township Trustee
      4. Township Clerk

   b. Contributions
      1. Aggregate <$2000
      2. No Individual Contribution of $100 or more

   c. Expenditures: Aggregate <$2000

2. Must Establish a Campaign Committee

3. While no Pre-Gen or Post-Gen Reports Necessary, Must file “Something” to Affirm Status and Terminate Committee

4. Form filed within 10 days of Petition Filing

5. If any limit exceeded, must file reports required by §3517.10(A)

C. Reports required by §3517.10(A)

1. Pre Election - 12 days prior to election reflecting activity 20 days prior
   a. not required if contribution <$1000
   b. not required if expenditures <$1000

2. Post Election - 38 days after election reflecting activity up to 7 days prior

3. Annual - last business day of January for period through December 31
   a. not required if Post General Election Report filed after an election
   b. required if last filing was post-primary or special or pre-general

4. Semi-Annual - last business day of July for period through June 30 (not all candidates\committees may be required to file this report [statewide & county candidates must])

5. Addendum under §3517.11 filed within 21 days of notice

6. Contributions
   a. date
   b. name and address and employer if to statewide candidate
   c. amount
      1. no cash over $100
      2. no need to list $25 and under at a fund raiser
      3. however, must keep track of contributors less than $25 in own records
      4. contribution limits only apply to general assembly and statewide candidates
      5. Some municipalities have limits (Akron)
d. type (cash, check, in-kind, other)
e. separate form required for in-kind

7. Expenditures
   a. date
   b. name and address
   c. amount
   d. explanation
   e. canceled check or receipt

8. Other Sundry Reports
   a. In-kind (contribution/expenditures)
   b. Other Income
   c. Fund Raising Event (contribution/expenditures)
   d. Loans
   e. Debts

D. Contribution limits §3517.102 (Only applicable to statewide & general assembly)
E. Issues pertaining to Personal Funds, Excess Funds, Carry-In & Carry-Out limits

F. §3517.092 Solicitation of Public Employees
   1. Specific restrictions are on statewide officeholders and candidates and officeholders and
candidates for ‘an elective office of a political subdivision’
   2. Restrictions apply to persons who are or will be employees of the candidate
   3. Division “D” contains general restrictions on public employee solicitation
      a. no public employee from a person while public employee is working
      b. no person from a public employee while public employee is working
      c. official duties where official business is conducted

G. Limitation on use campaign funds
   1. Not for personal use

2. Must be for Legitimate, Verifiable, Ordinary & Necessary expenses
   a. Legitimate – recognized or accepted rules or standards
   b. Verifiable – can be identified through a receipt or billing
   c. Ordinary – usual; normal; taking place according to customary occurrences
   d. Necessary – appropriate and helpful to accomplish a particular end

3. Can be used for expenses related to holding office
4. Contributions to other campaign committees (be aware of judicial)

H. Cannot make contributions in name of another
I. Contribution Limits - Only Apply to Statewide candidates
   1. Individual
      a. $12,532.34 to a candidate campaign committee in primary campaign period and in general
election period, to a PAC, or to a county State Candidate Fund
      b. $37,597.02 to a state party fund in a calendar year
      c. $18,798.51 to a Legislative Campaign Fund
   2. PAC
      a. $12,532.34 to a candidate campaign committee in primary campaign period and in general
election period, or to a PAC
      b. $37,597.02 to a state party fund in a calendar year
      c. $18,798.51 to a Legislative Campaign Fund
   3. Campaign Committee
      a. $12,532.34 to another campaign committee in primary campaign period and in general
election period, or to a PAC
      b. $12,532.34 to a state party fund in a calendar year
      c. $18,798.51 to a Legislative Campaign Fund
4. Other Limits and Prohibitions Apply in Varying Amounts to State and County Party State Candidate Funds & Legislative Campaign Funds (See Attached Schedule prepared by the Secretary of State)

IV. Disclaimer Law §3517.20

A. "Political publication for or against a candidate" means a notice, placard, advertisement, sample ballot, brochure, flyer, direct mailer, or any other form of general publication that is designed to promote the nomination, election, or defeat of a candidate.

B. "Public political advertising" means newspapers, magazines, outdoor advertising facilities, direct mailings, or other similar types of general public political advertising, or flyers, handbills, or other nonperiodical printed matter.

C. Must contain the following
   1. name of committee or candidate
   2. treasurer, chair, etc. (i.e. a responsible person for the committee)
   3. residence or business address
   4. “paid political advertisement” is insufficient
   5. use of “paid for by” - as long as other elements of disclaimer are present, the Commission has not historically required inclusion of this phrase

V. R.C. §3517.21 (Candidates) and §3517.22 (Ballot Issues)

“Certain Provisions Declared Unconstitutional”

Commission is Currently Enjoined from Hearing Complaints Brought Under these Provisions

A. Certain provisions declared unconstitutional by U.S. 6th Circuit Court of Appeals in Susan B. Anthony List v. OEC and companion case, COAST Candidates PAC v. OEC

B. Recently had Complaints filed with Commission invoking subdivision ‘A’ which prohibits placing someone on a ‘rival’ committee to ‘spy’ or ‘bribing’ someone that is on a rival committee to work on behalf of the committee – very rare

VI. Corporate Activity

A. As a result of the U.S. Supreme Court decision in Citizens United v. FEC, corporations now have the ability to directly participate in candidate campaigns, as long as they do so without any involvement of the candidate that is the beneficiary of the participation. While the statute (R.C. §3599.03) has not been amended, OEC issued its Advisory Opinion 2010ELC-02 to limit application of statute

B. Corporations cannot directly contribute to candidate campaign committees or to PACs that make candidate contributions

C. Non-profits can make certain contact with its stockholders, members, donors, trustees, or officers

D. R.C. §3599.03 only applies to R.C. §1701. And §1702. Type of corporations, not LLCs or other types of entities
VII. Electioneering Communications

A. Any broadcast, cable, or satellite communication that refers to a clearly identified candidate
B. Does not include communications appearing in print media, including a newspaper or magazine, handbill, brochure, bumper sticker, yard sign, poster, billboard, and other written materials, including mailings; communications over the internet, including electronic mail; or telephone communications, a news story, commentary, public service announcement, bona fide news programming, or editorial, a candidate debate or forum
C. Can only be made until 30 days prior to an election
D. Includes a variety of Report Filing Requirements

VIII. Elections Commission Penalty Options

A. Referral for Prosecution
B. Fines - Amounts Vary Depending on the Nature of the Violation Found
   1. Disclaimer - up to $500
   2. Report Filing Fines - Generally $25\text{\$}/day but could be $100\text{\$}/day up to as much as $500 for not Filing a Designation of Treasurer
   3. Some Fines may be up to 3-times a Specific Amount, such as for a Contribution Limits Violation
   4. Improper Corporate Activity - up to $5000
C. Good Cause not to Impose a Fine or Refer a Matter for Prosecution
   1. Issue a letter of Reprimand if Commission believes such an issuance is appropriate