

OFFICE OF THE ATTORNEY GENERAL

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MAY 15 1995

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Honorable Jim Bennett
Secretary of State
P.O. Box 5616
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Fair Campaign Practices Act -
Advertising - Political Activities

The provisions of Code of Alabama
1975, § 17-22A-13 are valid and
should be enforced, except with
respect to individuals in non-
candidate elections.

Dear Mr. Bennett:

This opinion is issued in response to your request for an opinion from
the Attorney General.

QUESTION

What consequences, if any, does the U.S. Supreme
Court ruling in McIntyre v. Ohio Elections
Commission have on Code of Alabama 1975,
§ 17-22A-13?

FACTS AND ANALYSIS

The United States Supreme Court in McIntyre v. Ohio Elections
Commission, 514 U.S. 334, 115 S. Ct. 1511 (1995), held that the Ohio

election law that prohibited the act of distributing anonymous campaign literature by an individual in a non-candidate election abridged freedom of speech in violation of the First Amendment and, thus, was unconstitutional. Although the case involved the distribution by an individual of anonymous leaflets opposing a proposed school tax levy, the Court struck down the entire Ohio Code provision finding it to be overbroad because it prohibited any person from distributing election related material in any election. The Court did note that in candidate elections there may be compelling state interests to be served by prohibiting anonymous pamphleteering. Accordingly, it is our opinion that the United States Supreme Court's ruling is limited to individuals who distribute anonymous materials in a non-candidate election.

Alabama's election laws prohibit anonymous distribution of election related material. Code of Alabama 1975, § 17-22A-13 provides:

"It shall be unlawful for any person, candidate, principal campaign committee, or other political committee to publish or distribute or display, or cause to be published or distributed or displayed, any card, pamphlet, circular, poster, or other printed material relating to or concerning any election, which does not contain the identification of the person, candidate, principal campaign committee, or other political committee responsible for the publication or distribution or display of the same."

Person is defined in Code of Alabama 1975, § 17-22A-2(8) as "an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons." Identification is defined in Code of Alabama 1975, § 17-22A-2(5) as the "full name and complete address."

All legislative acts are presumed to be constitutional and this office generally does not issue opinions as to the constitutionality of an act. Given the limitation of the United States Supreme Court's ruling to individuals who distribute anonymous materials in a non-candidate election, the provisions of § 17-22A-13 are valid, except with respect to individuals in non-candidate elections. Accordingly, it is our opinion that it is still unlawful for any candidate, his or her principal campaign committee, other political

committee, or partnership, committee, association, corporation, labor organization, or any other organization or group of persons to publish or distribute or display, or cause to be published or distributed or displayed any card, pamphlet, circular, poster, or other printed material relating to or concerning any candidate election which does not contain the identification of the candidate, principal campaign committee, other political committee or partnership, committee, association, corporation, labor organization, or any other organization or group of persons responsible for the publication or distribution or display of the material. More troublesome is the issue of whether an individual may publish or distribute or display or cause to be published, distributed or displayed printed material relating to or concerning a candidate election without identification; however, it is our opinion that this provision of Alabama law is also still valid and should be enforced unless a court of competent jurisdiction specifically rules otherwise.

We note that the Supreme Court's decision did not address unidentified communications broadcast on radio or television, but only written communications, particularly leaflets.

CONCLUSION

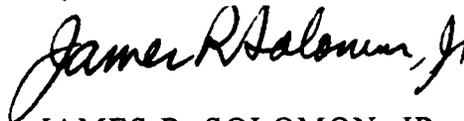
The provisions of Code of Alabama 1975, § 17-22A-13 are valid and should be enforced, except with respect to individuals in non-candidate elections.

I hope this sufficiently answers your question. If our office can be of further assistance, please contact Brenda F. Smith of my staff.

Sincerely,

JEFF SESSIONS
Attorney General

By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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