



Ohio Legislative Service Commission

Bill Analysis

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H.B. 326*

129th General Assembly
(As Introduced)

Reps. McClain and Hill, Huffman, Grossman, C. Hagan, Martin, Thompson, Stebelton, Derickson, J. Adams, R. Adams, Blair, Ruhl, Sears, Young, Dovilla, Hayes, Maag, Combs, Carney

BILL SUMMARY

- Provides that "whoever" knowingly violates an existing prohibition against a governing body of a political subdivision using public funds to publish, distribute, or otherwise communicate information that 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 or using public funds to compensate any employee of the political subdivision for time spent on any activity to influence the outcome of an election for any of the previously listed purposes is guilty of a first degree misdemeanor.
- Prohibits any "person" from using public funds for any of the purposes set forth in the prior dot point and provides that whoever knowingly violates the prohibition is guilty of a first degree misdemeanor.
- Prohibits any "person" from using public funds to publish, distribute, or otherwise communicate information that contains defamatory, libelous, or obscene matter, promotes alcoholic beverages, cigarettes or other tobacco products, or any illegal product, service, or activity, promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry, or supports or opposes any labor organization or any action by, on behalf of, or against any labor organization.

* This analysis was prepared before the introduction of the bill appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

CONTENT AND OPERATION

Governing body of a political subdivision – prohibited acts

Existing law prohibits a governing body of a political subdivision from using public funds to publish, distribute, or otherwise communicate information that 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.¹ Additionally, existing law prohibits a governing body of a political subdivision from using public funds to 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 listed in the preceding sentence. However, 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, is not prohibited.² "Political subdivision" is defined as 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, which is responsible for governmental activities only in a geographic area smaller than the state and is subject to the sovereign immunity of the state.

The bill provides that "whoever" knowingly violates any of the prohibitions described in the preceding paragraph is guilty of a first degree misdemeanor.³ As used in the Revised Code, "whoever" includes all persons, natural and artificial; partners; principals, agents, and employees; and all officials, public or private.⁴ It is not clear how or whether a criminal penalty can be applied to the governing body of a government entity or to the individual members of that governing body for acts of the governing body.

Persons – prohibited acts

The bill further specifies that no person may commit any of the prohibited acts described above in "**Governing body of a political subdivision – prohibited acts.**" A

¹ R.C. 9.03(C)(1)(e).

² R.C. 9.03(C)(2).

³ R.C. 3599.40.

⁴ R.C. 1.02(A).

person who knowingly violates any of those prohibitions is guilty of a first degree misdemeanor.⁵

Additionally the bill prohibits any person from using public funds to publish, distribute, or otherwise communicate information that contains defamatory, libelous, or obscene matter, promotes alcoholic beverages, cigarettes or other tobacco products, or any illegal product, service, or activity, promotes illegal discrimination on the basis of race, color, religion, national origin, handicap, age, or ancestry, or supports or opposes any labor organization or any action by, on behalf of, or against any labor organization. The bill does not specify a criminal penalty for any of these activities.⁶

COMMENT

It is not clear whether the individual members of a governing body of a political subdivision would be liable under the criminal penalty imposed by the bill for acts of the governing body. Under R.C. 2901.24 (not in the bill), an officer, agent, or employee of an "organization" (as defined in R.C. 2901.23) may be prosecuted for an offense committed by such organization, if he acts with the kind of culpability required for the commission of the offense, and in the name of the organization or in its behalf, he engages in conduct constituting the offense, or causes another to engage in such conduct, or tolerates such conduct when it is of a type for which he has direct responsibility, or if he has primary responsibility to discharge a duty imposed on the organization by law, and such duty is not discharged. However, R.C. 2901.23(D) (not in the bill) explicitly provides that "organization" does not include any entity organized as or by a governmental agency for the execution of a governmental purpose. As used in the bill, a "governing body of a political subdivision" most likely fits under this exemption from the definition of "organization."

HISTORY

ACTION	DATE
Introduced	---

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⁵ R.C. 3599.40.

⁶ R.C. 9.03(C)(1)(a) to (d).