August 19, 1993

OPINION NO. 93-017

The Honorable Lynn Alan Grimshaw
Scioto County Prosecuting Attorney
Scioto County Court House
Room 310
Portsmouth, Ohio 45662

Dear Prosecutor Grimshaw:

You have requested an opinion pertaining to R.C. 3599.45, which prohibits candidates for certain elective offices from knowingly accepting campaign contributions from Medicaid providers. R.C. 3599.45 states:

> (A) No candidate for the office of attorney general or county prosecutor or his campaign committee shall knowingly accept any contribution from a provider of services or goods under contract with the department of human services pursuant to the medicaid program of Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended, or from any person having an ownership interest in the provider.
> As used in this section "candidate," "campaign committee," and "contribution" have the same meaning as in section 3517.01 of the Revised Code.
> (B) Whoever violates this section is guilty of a misdemeanor of the first degree.

You have asked whether this section means that a candidate for county prosecutor or his campaign committee is prohibited from knowingly accepting a campaign contribution from a physician who accepts Medicaid payments. You have also asked, if the answer to the above is in the affirmative, whether the candidate or campaign treasurer who knowingly accepts the contribution is subject to criminal prosecution by the appropriate prosecuting authority.

R.C. 3599.45 Prohibits a Candidate for County Prosecutor or the Candidate's Campaign Committee from Knowingly Accepting a Campaign Contribution from a Physician Who Is a Medicaid Provider

Your first question is whether R.C. 3599.45 prohibits a candidate for county prosecutor or his campaign committee from knowingly accepting a campaign contribution from a physician who accepts Medicaid payments. R.C. 3599.45 expressly prohibits a candidate for the office of county prosecutor or his campaign committee from knowingly accepting any contribution "from a provider of services or goods under contract with the department of human services pursuant to the medicaid program of Title XIX of the _Social Security Act,_ 49 Stat. 620 (1935), 42 U.S.C. 301, as amended." Accordingly, if a physician is a provider within this definition, then the prohibition of R.C. 3599.45(A) applies to contributions from that physician.

Medicaid is a program under which the federal government provides participating states with grants for medical assistance programs for eligible recipients, including families with dependent children and aged or disabled individuals who have insufficient resources for medical care. Under federal law, a qualifying state receives a portion of the expenditures made by the state for certain medical care and services provided by qualified providers to eligible recipients. *See* 42 U.S.C.A. §§1396-1396u (1992). Ohio's Medicaid provisions appear primarily in R.C. Chapter 5111. R.C. 3599.45 was initially enacted as part of a bill prohibiting Medicaid fraud and providing for enforcement by the Attorney General or appropriate prosecuting attorney. *See* 1977-1978 Ohio Laws, Part I, 434 (Am. S.B. 159, eff. April 24, 1978) (enacting R.C. 109.85, 3599.45, and 5101.511 (now 5111.03)).

Ohio law permits Medicaid payments to be made only to "eligible providers," who are individuals or institutions "licensed or approved by a standard-setting or regulatory agency, and approved for participation in the medicaid program by the Ohio department of human services as evidenced by the issuance of a signed _Provider Agreement._" 10 Ohio Admin. Code 5101:3-1-17; *see also* R.C. 5111.02, .03, .06. A Provider Agreement may be issued to an individual, a group of individuals, or a corporation. 10 Ohio Admin. Code 5101:3-1-17(B); *see also* [1992-1993 Monthly Record, vol. 1] Ohio Admin. Code 5101:3-1-172, at 804. In order to receive Medicaid payments, a physician must have an individual Provider Agreement, regardless of whether the physician is a member of a group that has a Provider Agreement or an employee of an entity that has a Provider Agreement. 10 Ohio Admin. Code 5101:3-1-174(E). It follows that each physician who receives Medicaid payments must qualify as an eligible provider and be under contract with the Ohio Department of Human Services. Therefore, a candidate for the office of county prosecutor, or the candidate's campaign committee is, pursuant to R.C. 3599.45, prohibited from knowingly accepting a campaign contribution from a physician who accepts Medicaid payments.

Enforcement of R.C. 3599.45

Your second question is whether a candidate or campaign treasurer who knowingly accepts a contribution made to the candidate's campaign by a physician who accepts Medicaid payments is subject to criminal prosecution by the appropriate prosecuting authority. This question must be answered in the affirmative. R.C. 3599.45(B) provides that a violation of R.C. 3599.45 is a misdemeanor of the first degree. *See, e.g.*, R.C. 2929.21-.22 (penalties and sentences for misdemeanors). Thus, an individual who violates R.C. 3599.45 is clearly subject to prosecution for the offense. The prohibition of R.C. 3599.45(A) extends to the candidate himself and also to the campaign committee. By statute, the campaign committee receives contributions only through its campaign treasurer.[1] R.C. 3517.081. Accordingly, the campaign treasurer acts on behalf of the committee in accepting contributions and is subject to the prohibition of R.C. 3599.45. It follows that a candidate for prosecuting attorney or the campaign treasurer for such a candidate may be subject to prosecution under R.C. 3599.45 for knowingly accepting a campaign contribution from a physician who accepts Medicaid payments. The determination as to whether to prosecute in a particular instance is within the discretion of the appropriate prosecuting authority. *See generally, e.g.*, 1990 Op. Att'y Gen. No. 90-069, at 2-295.

Conclusion

It is, therefore, my opinion, and you are advised, as follows:

1. R.C. 3599.45 prohibits a candidate for the office of county prosecutor, or the candidate's campaign committee, from knowingly accepting a campaign contribution from a physician who accepts Medicaid payments.

2. If a candidate for the office of prosecuting attorney or the candidate's campaign treasurer knowingly accepts a campaign contribution from a physician who accepts Medicaid payments, such candidate or campaign treasurer is subject to criminal prosecution for a violation of R.C. 3599.45.

Respectfully,

LEE FISHER
Attorney General

---

[1] A deputy campaign treasurer "may exercise any of the powers and duties of a campaign treasurer when specifically authorized to do so by the campaign treasurer or the candidate." R.C. 3517.081.

August 19, 1993

The Honorable Lynn Alan Grimshaw
Scioto County Prosecuting Attorney
Scioto County Court House
Room 310
Portsmouth, Ohio 45662

SYLLABUS: 93-017

1.R.C. 3599.45 prohibits a candidate for the office of county prosecutor, or the candidate's campaign committee, from knowingly accepting a campaign contribution from a physician who accepts Medicaid payments.

2.If a candidate for the office of prosecuting attorney or the candidate's campaign treasurer knowingly accepts a campaign contribution from a physician who accepts Medicaid payments, such candidate or campaign treasurer is subject to criminal prosecution for a violation of R.C. 3599.45.