

**OPINION WITHDRAWN
PLEASE SEE AO2002-012**

SUBJECT: ABILITY OF CANDIDATE FOR ADJUTANT GENERAL TO SOLICIT CONTRIBUTIONS FROM MEMBERS OF THE NATIONAL GUARD

SUMMARY:

A candidate for the Office of Adjutant General is an "elective official" who, in accordance with Section 8-13-1180(A), may not, directly or through an agent, knowingly solicit a contribution from an employee in the Adjutant General's area of official responsibility. Section 8-13-1180(A), however, does not prohibit candidates for Adjutant General from soliciting contributions from members of the National Guard who are not employees of the South Carolina Adjutant General's Office.

QUESTION:

A potential candidate for the office of Adjutant General inquires whether Section 8-13-1180(A) impedes his ability to solicit campaign contributions from members of the National Guard. The potential candidate states that it has been routine for persons to solicit contributions from members of the Guard on behalf of various candidates for Adjutant General, and in fact, their contributions comprise the primary source of funding for the Adjutant General's race.

DISCUSSION:

This opinion is rendered in response to a letter dated February 24, 1994 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The State Ethics Commission calls attention to Section 8-13-1180, which provides:

(A) An elective official or the elective official's agent may not knowingly solicit a contribution from an employee in the elective official's area of official responsibility.

(B) A public official or public employee may not provide an advantage or disadvantage to a public employee or applicant for public employment concerning employment, conditions of employment, or application for employment based on the employee's or applicant's contribution, promise to contribute, or failure to contribute to a candidate, a political party, as defined in Section 8-13-1300(26) or a committee, as defined in Section 8-13-1300(6).

Although the Ethics Reform Act does not define the term "elective official", Sections 8-13-100(13) and 8-13-1300(11) define "elective office" in part to mean, "an office at the state, county, municipal,

or political subdivision level." Moreover, Sections 8-13-100(27) and 8-13-1300(28) define "public official" in part to mean, "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, **including candidates for the office.**" [Emphasis added.] Since this definition includes elected as well as appointed officials, it is the opinion of the State Ethics Commission that by using the narrower term "elective official", the Legislature intended for the prohibition contained in Section 8-13-1180(A), to apply only to those public officials who are elected. Since the Adjutant General is a public official, and because the Office of Adjutant General is an elective office, the State Ethics Commission advises that candidates for Adjutant General are "elective officials" within the meaning of Section 8-13-1180(A). Therefore, neither candidates for Adjutant General nor their agents may knowingly solicit campaign contributions from employees of the Adjutant General's Office, to include those employees who are also members of the National Guard. Nevertheless, the State Ethics Commission advises Section 8-13-1180(A) does not prohibit candidates for Adjutant General from soliciting contributions from Guard members who are not employees of the South Carolina Adjutant General's Office.