

SEC AO2004-002

May 19, 2004

SUBJECT: CAMPAIGN PRACTICES AND THE USE OF PUBLIC BUILDINGS

SUMMARY: The Commission will defer to the local governmental entity's policies and procedures regarding the use of public buildings in a campaign in interpreting the restrictions of Section 8-13-765.

QUESTION: A candidate poses several questions related to the use of public buildings in a campaign.

DISCUSSION: The State Ethics 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 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

1. Hypothetically, let's say that my city allows a social group to use a city owned building for meetings on a monthly basis. This group could be a book club or possibly a Senior Citizens group. If I am a candidate running for City Council, and I am invited by the group to come in the city owned building, to discuss my campaign platform, is this permissible without all the other candidates being invited? Can I go there to campaign and meet the group when the other candidates are not invited to do so and were not notified that I was invited to do so?

Section 8-13-765 provides in part as follows:

(A) No person may use government personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official's use of an official residence.

(B) A government, however, may rent or provide public facilities for political meetings and other campaign-related purposes if they are available on similar terms to all candidates and committees, as defined in Section 8-13-1300(6).

The Commission is required to interpret the term “use” in Section 8-13-765 of the Ethics Reform Act cited above. Under the proposed hypothetical, the Commission looks to the predominant purpose of the public building which in this case is use by a book club or seniors’ group. The initial use of the city owned building is non-campaign related. The predominant purpose under the hypothetical is to hold a book club or a senior citizen’s meeting; therefore, a candidate may attend the meeting and discuss his campaign notwithstanding that other candidates were not invited or notified.

2. Hypothetically, let’s say that my city sponsors a [holiday] party at the City Recreation Center. Let’s say that the City has not designated that facility as a campaign site. If I want to go to the party, wear a “Vote for John Marion” T-shirt and hand out candy to the children, while campaigning with the parents, is this permissible inside the City owned facility?

In SEC Complaint No. C96-010, the State Ethics Commission brought a complaint alleging two violations of Section 8-13-765 against a candidate for re-election to the Spartanburg City Council. The candidate used city council chambers to film two campaign videos. The candidate did make an appointment to reserve city council chambers; however, he failed to inform the official that he would be filming a campaign video. According to city policy, council chambers were available for use by other governmental groups for meeting space; however, it was not available to the general public or non-governmental groups, nor was it available for election or campaign related meetings or activities. The Commission and the candidate entered a Consent Order. The candidate admitted to two violations of Section 8-13-765 for using a government office building in an election campaign.

As in the complaint matter cited above, the Commission defers to the city policy in place in designating a city owned building a campaign site or not. In the above hypothetical the candidate may attend the function in a campaign t-shirt and hand out candy; however, the candidate may not conduct campaign related activities when the city prohibits it, i.e. “not designated that facility as a campaign site.”

3. Can I give out “Vote for John Marino” campaign T-shirts, for City employees to wear to work?

A candidate may give campaign material, to include campaign t-shirts, to public employees; however, whether a public employee may wear a campaign t-shirt to work requires a review of the employer’s policy and procedures. In addition, the Commission would caution

public employees who wear campaign t-shirts to work that they may be using a public office building in an election campaign in violation of Section 8-13-765. A federal counterpart to the Ethics Reform Act, the Hatch Act specifically prohibits a covered employee from engaging in [political] activity in a room or building occupied in the discharge of official duties. The political activity would include wearing a campaign t-shirt to work.

4. It is my understanding that, as a candidate, I am allowed to go to the polling place and vote as well as to periodically go and check things such as the number of voters which have come in on that particular Election Day. In my next election, on Election Day, would I be allowed to stand next to the poll worker, at the registration table inside the election facility and shake hands with the voters as they prepare to enter the voting booth? Let's say, hypothetically, the poll worker and the registration table is approximately 20 feet from the voting booth. Am I allowed to stand there and shake hands and introduce myself with every voter that comes in to vote at this close proximity to the voting booth?

This is an election law question and should be referred to the State Election Commission.

CONCLUSION: The Commission will defer to the local governmental entity's policies and procedures regarding the use of public buildings in a campaign in interpreting the restrictions of Section 8-13-765. When no policy is in place the Commission will look to the predominant purpose of the use of the public building.

KEY WORDS: public building, campaign activity and predominant purpose
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ANNOTATIONS: 8-13-765
