

SEC AO2001-004

November 15, 2000

SUBJECT: CANDIDATES FOR PUBLIC OFFICE USING GOVERNMENT PERSONNEL, EQUIPMENT, MATERIALS, OR AN OFFICE BUILDING IN AN ELECTION CAMPAIGN.

SUMMARY: If a government office building is available to all candidates on equal terms as required by Section 8-13-765(B), then candidates may use the office building in their election campaign.

QUESTION: This opinion is issued in response to the ongoing concern the State Ethics Commission has regarding potential violations of Section 8-13-765 of the Ethics Reform Act of 1991, by candidates for elective office who use photos of government office buildings in their campaign materials.

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.

The State Ethics Commission calls attention to Section 8-13-765, which provides:

Section 8-13-765. (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).

(C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time and on nongovernment premises.

The Commission in AO2000-008 answered the question whether a constitutional officer may use the actual physical premises of his office for a ballot measure campaign? The Commission advised the officer to review both Sections 8-13-765 and 8-13-1346 which set forth a number of prohibitions related to the use of public resources to influence the outcome of an election. Specifically Section 8-13-765 provides that “no person may use government personnel, equipment, materials, or an office building in an election campaign.” Section 8-13-1346 provides in part that “a person may not use or authorize the use of public funds, property, or time to influence the outcome of an election.” Accordingly, the constitutional officer was advised that he may not use the actual physical premise of his office for the campaign.

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.

A candidate may use a government office building or property as long as the building or property is available to all candidates on equal terms. An incumbent candidate must not have an advantage. Government officials must ensure their buildings or properties are available to either all candidates or to no candidates. Candidates must also ensure that the facility they seek to use in their election campaign is available on equal terms to all candidates.

CONCLUSION:

Accordingly, the Commission finds that a government office building or property is not being used in an election campaign in violation of Section 8-13-765, if the building or

property is available to all candidates on equal terms. Officials of county, city and other political subdivisions are advised to either review or develop policy on the use of governmental office buildings and property for election or campaign related meetings or activities.

ANNOTATIONS:	Section 8-13-765
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