

SEC AO2000-008

January 19, 2000

SUBJECT: A PUBLIC OFFICIAL USING HIS OFFICE TO INFLUENCE THE OUTCOME OF AN ELECTION.

SUMMARY: The public official is advised that he may not use his office to influence the outcome of an election.

QUESTION: A constitutional officer has taken a stand concerning the proposed constitutional amendment to allow a lottery in South Carolina. Notwithstanding the opinion of this constitutional officer, to what extent can the officer use his office in order to advocate his position?

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)(hereinafter "the Act"). 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. Is this considered an "election campaign"?

Section 8-13-1300 provides in part

- (9) 'Election' means:
 - (a) a general, special, primary, or runoff election;
 - (b) a convention or caucus of a political party held to nominate a candidate;
 - (c) the election of delegates to a constitutional convention for proposing

amendments to the Constitution of the United States or the Constitution of this State;
or

(d) a ballot measure.

(2) `Ballot measure' means a referendum, proposition, or measure submitted to voters for their approval.

Referendum is defined as “the process of referring to the electorate for approval a proposed new State constitution or amendment (constitutional referendum) or of a law passed by the legislature (statutory referendum).” BLACK’S LAW DICTIONARY 1152 (5th ed. 1979). The definitions of election, ballot measure and referendum clearly indicate that the constitutional amendment to allow a lottery in South Carolina is an election campaign.

2. Can the officer use the actual physical premises of his office for his campaign?

The Commission calls attention to 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 may not use the actual physical premise of his office for his campaign.

3. Can the letterhead of the constitutional office be used?

As noted above, Section 8-13-765 prohibits the use of government materials to influence the outcome of an election, which would include the constitutional officer’s stationary. The constitutional officer may reprint his letterhead at his own expense with a disclaimer of “not paid for with state funds” or “paid for by the Committee to....”.

4. Can telephones, faxes and copiers be used?

The office may have in place a means to reimburse for the incidental use of such equipment; but beyond such incidental use, Section 8-13-765 prohibits the use of government equipment to influence the outcome of an election.

5. Can computers be used, including computer research?

The office may have in place an office policy relating to off-duty computer use; notwithstanding such an office policy, Section 8-13-765 prohibits the use of government equipment to influence the outcome of an election.

6. Can staff be used on the campaign?

Both Section 8-13-765 and Section 8-13-1346 prohibit the use of government personnel and public time, respectively, to influence the outcome of an election. The use of staff time while on the state's payroll is prohibited by the Act. If, however, members of the staff wish to work on the campaign on their own time, then such activity is permitted by the Act. Specifically, Section 8-13-765(3) provides that government personnel may participate in "election campaigns on their own time and on non-government premises."

7. If staff is used, to what extent can they work on the campaign in the office?

Please see the answer to Question 6, above.

8. Do the limitations concerning contributions to campaigns pertain to the constitutional officer's campaign?

The Commission, in response to a decision in U.S. District Court, issued Advisory Opinion 2000-003 setting forth guidelines for ballot measure committees. The thrust of the opinion is that all ballot measure committees are exempt from the dollar limits found in Section 8-13-1322(A). A ballot measure committee, which the constitutional officer's campaign would be, may accept unlimited contributions to influence the outcome of a ballot measure or more specifically in this case, to influence the outcome of a constitutional referendum. As the Commission noted in AO2000-003, all ballot measure committees must be formed separate and apart from any ongoing candidate committee, to include separate bank accounts and disclosure forms. A commingling of funds between committees is strictly forbidden.

9. To what extent does the recent opinion concerning contributions in the video poker campaigns apply to the lottery campaigns?

Please see the answer to Question 8, above.

CONCLUSION:

Accordingly, the Commission directs that the constitutional officer cannot use his office, to include his office materials, equipment and personnel, to influence the outcome of an election. Members of his staff may participate in the constitutional officer's election activities on their own time. Finally, the constitutional officer may accept unlimited contributions to his ballot measure committee.

KEY WORDS: election, ballot measure and referendum

ANNOTATIONS: 8-13-765 and 8-13-1346