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Advisory Opinion 1993-082 *REVISED*

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REVISED

SEC AO93-082

July 21, 1993

SUBJECT: CANDIDATE COLLECTING CAMPAIGN CONTRIBUTIONS WITHOUT SPECIFYING THE OFFICE BEING SOUGHT

SUMMARY:

A local official, who is considering running for a different local office in 1994, may begin raising funds without specifying the office being sought; however, the official must open a separate campaign account and inform potential supporters that their contributions will not be used for a reelection campaign, but rather for a different local office race.

QUESTION:

A local elected official is considering running for a different local office in 1994. The official would like to begin raising funds for this campaign as soon as possible; however, due to the likely intensity of the race, the official would prefer not to publicly announce his candidacy at this point in time. Accordingly, the official's campaign manager inquires whether the official may begin raising funds without specifying the office being sought.

DISCUSSION:

This opinion is rendered in response to a letter dated April 23, 1993 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 8-13-1308, which provides in part as follows:

(A) Upon the receipt or expenditure of campaign contributions totaling, in an accumulated aggregate, five hundred dollars or more, a candidate or committee required to file a statement of organization pursuant to Section 8-13-1304 must file an initial certified campaign report within ten days of these receipts or expenditures. However, a candidate or a committee that does not receive or expend campaign contributions totaling, in an accumulated aggregate, five hundred dollars or more must file an initial certified campaign report fifteen days before an election as provided in subsection (D).

(B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election.

* * *

(E) Certified campaign reports detailing campaign contributions and expenditures must contain:

- (1) the total of contributions accepted by the candidate or committee;
- (2) the name and address of each person making a contribution of more than one hundred dollars and the date of receipt of each contribution;
- (3) the total expenditures made by or on behalf of the candidate or committee;
- (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

The State Ethics Commission notes that these filing requirements do not require a candidate to specify the office being sought. Nevertheless, because the candidate in the present situation is already a local office holder, unless notified to the contrary, many contributors could reasonably assume that they are supporting the candidate's reelection campaign. For this reason, the Commission advises the candidate to inform his potential supporters that their contributions will not be used for a reelection campaign, but rather for a different local office race.

The State Ethics Commission also calls attention to Section 8-13-1310(A) which states, "All persons required to file certified campaign reports under this article must file those reports with the appropriate supervisory office." Section 8-13-1300(1) defines 'Appropriate supervisory office' as follows:

- (a) the State Ethics Commission for all candidates for public office in this State except for members of or candidates for the office of State Senator or State Representative;
- (b) the Senate Ethics Committee for members of or candidates for the office of State Senator, and the House of Representatives Ethics Committee for members of or candidates for the office of State Representative;
- (c) the State Ethics Commission for all committees, except legislative caucus committees, supporting or opposing a ballot measure or supporting or opposing a candidate;

Accordingly, depending upon which local office the candidate intends to run for in 1994, he must ensure that all necessary filings are made in accordance with Section 8-13-1310(A).

In addition, the Commission calls attention to Section 8-13-1312, which provides in part, "a candidate may not establish more than one campaign checking account and one campaign savings account for each office sought...." Therefore, if the candidate has maintained his campaign account from his last election, he is advised to establish a separate account in which to deposit contributions for the 1994 campaign.

The State Ethics Commission notes that Section 8-13-1314(A) establishes different maximum contribution amounts depending upon whether the election is for statewide or local office. Section 8-13-1314(A) provides:

Within an election cycle, no candidate or anyone acting on his behalf may solicit or accept:

1) a contribution which exceeds:

(a) three thousand five hundred dollars in the case of a candidate for statewide office;

or

(b) one thousand dollars in the case of a candidate for any other office;

Accordingly, in so far as contribution limitations may be affected, the candidate should inform potential contributors whether he intends to run for a statewide or local office in 1994. The Commission also calls attention to Section 8-13-1314(A)(4), which prohibits candidates or anyone acting on behalf of a candidate from soliciting or accepting, within an election cycle, "contributions for two elective offices simultaneously except [for the purpose of retiring a campaign debt]."

Finally, the State Ethics Commission calls attention to Section 8-13-1352, which provides as follows:

Notwithstanding the provisions of Section 8-13-1350, a candidate may use or permit the use of contributions solicited for or received by the candidate to further the candidacy of the individual for an elective office other than the elective office for which the contributions were received if:

(1) the person originally making the contribution gives written authorization for its use to further the candidacy of the individual for a specific office which is not the office for which the contribution was originally intended; and

(2) the contribution is otherwise permitted by law.

Therefore, a contribution which is received to further an individual's candidacy for one elective office may only be used to promote the individual's candidacy for an elective office other than that for which the contribution was originally intended after the candidate has received the contributor's written authorization and ensured that the contribution is otherwise permitted by law.