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SEC AO2014-004

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SUBJECT: Contributions in the primary run-off

SUMMARY: Notwithstanding the apparent inconsistencies between S.C. Code §8-13-1314(A) and S.C. Code §8-13-1320(1) the Commission opines that because of the plain meaning S.C. Code §8-13-1320(1) candidates in a primary runoff who accept campaign contributions in the seven day period following the primary election must attribute those contributions to the primary. Contributions for the primary runoff election must not be accepted from those contributors who made maximum contributions for the primary until the eighth day after the primary. This opinion is prospective only from the date of the opinion.

QUESTION: Although S.C. Code §8-13-1320(1) by itself is unambiguous, in light of an inconsistency between S.C. Code §8-13-1314 and S.C. Code §8-13-1320 on election cycles and primary run-offs, as well as the incorrect advice of staff, the Commission issues this opinion to provide guidance for future candidates, rather than penalizing past candidates who relied on the wrong interpretation of the campaign finance law.

DISCUSSION: This opinion is rendered as a State Ethics Commission opinion. 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; S.C. Code §2-17-5 et seq. and S.C. Code §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.

S.C. Code §8-13-1314 provides in part:

- (A) Within an election cycle, no candidate or anyone acting on his behalf may solicit or accept, and no person shall give or offer to give to a candidate or person acting on the candidate's behalf:
- (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;

S.C. Code §8-13-1300(10) provides:

'Election cycle' means the period of a term of office beginning on the day after the general election for the office, up to and including the following general election for the same office, including a primary, special primary, or special election; however, the contribution limits under S.C. Code s §8-13-1314 and §8-13-1316 apply only to elections occurring on or after January 1, 1992, and are for each primary, runoff, or special election in which a candidate has opposition and for each general election. If the candidate remains unopposed during an election cycle, one contribution limit shall apply.

S.C. Code §8-13-1320 provides in part:

- (1) A contribution made on or before the seventh day after a primary or primary runoff is attributed to the primary or primary runoff, respectively.

In light of the perceived conflict and inconsistency between S.C. Code §8-13-1314 and S.C. Code §8-13-1320, as well as incorrect advice from staff on occasion, the Commission issues this opinion to all future candidates from the date of this opinion. S.C. Code §8-13-1314 provides for maximum contribution limits in election cycles for local and statewide races and the definition of election cycle in S.C. Code §8-13-1300(10) provides for contribution limits for each type of election in which a candidate may have opposition. Those are general rules.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hardee v. McDowell*, 673 S.E.2d 813, 817 (2009)(internal quotations omitted). S.C. Code §8-13-1320(1) provides in plain and unambiguous language that a contribution received on or before the seventh day after a primary is attributable to the primary. A contribution received on or before the seventh day after a primary runoff is attributable to the primary runoff.

This is an issue for those candidates who have accepted maximum contributions in the primary and find themselves in the primary runoff and immediately seek additional contributions from those same contributors who have all met the maximum contribution limit.

CONCLUSION: Notwithstanding the apparent inconsistencies between S.C. Code §8-13-1314(A) and S.C. Code §8-13-1320(1) the Commission opines that because of the plain meaning S.C. Code §8-13-1320(1) candidates in a primary runoff who accept campaign contributions in the seven day period following the primary election must attribute those contributions to the primary. Contributions for the primary runoff election must not be accepted from those contributors who made maximum contributions for the primary until the eighth day after the primary. This opinion is prospective only from the date of the opinion.

KEY WORDS: campaign contributions, election cycles, primary run-off

ANNOTATIONS: 8-13-1300(10), 8-13-1314, 8-13-1320(1)