

REVISED BY SECTION 8-13-1308(G)(Supp. 2005) ALL CONTRIBUTIONS TO A POLITICAL PARTY'S OPERATING ACCOUNT MUST BE DISCLOSED AS MUST THE POLITICAL PARTY'S EXPENDITURES.

SEC AO93-059

January 20, 1993

SUBJECT: RECORD-KEEPING AND DISCLOSURE REQUIREMENTS OF COUNTY POLITICAL PARTIES

SUMMARY:

The Ethics Reform Act does not require County political parties to keep records or disclose contributions specifically solicited for non-campaign related expenses, provided such funds are maintained in an account separate from the campaign account and are not used to support candidates.

QUESTION:

The Chairman of the Richland County Republican Party asks several questions concerning contribution solicitation, record-keeping, and disclosure requirements under the Ethics Reform Act.

DISCUSSION:

This opinion is rendered in response to a letter dated October 14, 1992 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.

1. If a political party solicits contributions which are strictly limited to payment of its operation expenses, i.e., rent, telephone bills or payroll, is that political party obligated to maintain records and disclose those contributions pursuant to State law? In addition, would the contributions be limited by their amount or by nature?

"Political party" is defined in Section 8-13-1300(26) as "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization."

According to Section 8-13-1300(24), "Party committee means a committee established by a political party."

"Committee" is defined in Section 8-13-1300(6) as follows:

'Committee' means an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office or a ballot measure, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle...'Committee' includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election.

The State Ethics Commission notes that the Ethics Reform Act distinguishes a political party from a party committee, and that Section 8-13-1304 requires a **committee** (emphasis added) which receives or expends more than \$500 to influence the outcome of an elective office or ballot measure to file a Statement of Organization. Further, Section 8-13-1308 requires disclosure of campaign finances by any such committee. Based on the facts submitted, these contributions will be solicited strictly for the payment of the party's operational expenses and not to influence the outcome of an election. Accordingly, the Commission advises that the Ethics Reform Act does not require a political party to disclose contributions specifically solicited for non-campaign related expenses, provided such funds are maintained in an account separate from the campaign account and are not used to influence the outcome of elective offices or ballot measures.

The State Ethics Commission calls attention to Section 8-13-1322(A) which provides, "[a] person may not contribute to a committee and a committee may not accept from a person contributions aggregating more than three thousand five hundred dollars in a calendar year." The State Ethics Commission recently advised in SEC AO92-240 that while the contribution limitation of Section 8-13-1322 would apply to contributions to a political party committee, "[n]o such restriction applies to contributions to the political party itself." Therefore, the

Commission advises that the Ethics Reform Act does not limit contributions to a county political party which are neither channeled through a campaign account nor used to influence elections or ballot measures.

2. If a county political party establishes a legal defense fund which is funded by contributions, are those contributions subject to record-keeping and disclosure requirements? Would such a legal defense fund be limited in the amount or nature of contributions it receives?

Based on the facts submitted, the contributions to the legal defense fund would be expended only for payment of attorney's fees and court costs. For the reasons discussed above, the Ethics Reform Act does not require a county political party to disclose contributions specifically solicited for non-campaign related expenses, provided such funds are maintained in an account separate from the campaign account and are not used to influence the outcome of an elective office or ballot measure. Similarly, the Ethics Reform Act would not appear to limit contributions to a county political party's legal defense fund since such contributions are not being received or expended to influence the outcome of elective offices or ballot measures.

3. Could a legal defense fund make payment directly to certain elected officials, or their attorneys, in order to assist in the payment of legal expenses incurred by them individually, by virtue of their being parties in an action involving issues which the county political party deems will affect its interests?

Section 8-13-705 prohibits both the direct and indirect solicitation or receipt of anything of value by a public official, public member or public employee in return for being influenced. The Commission does not believe that a legal defense fund's payment of an elected official's individual legal expenses is an ipso facto violation of Section 8-13-705.

4. Would such a legal defense fund be limited and as to what amounts it might contribute to elected officials or public officials for their legal expenses?

"Candidate" is defined in Section 8-13-1300(4) as follows:

'Candidate' means a person who seeks appointment, nomination for election, or election to a statewide or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election. 'Candidate' does not include a candidate within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976.

Whether the Ethics Reform Act limits a legal defense fund's payment of expenses for a public official will depend primarily upon the status of the official on whose behalf the payment is made. If the recipient is not a "candidate" within the meaning of Section 8-13-1300(4) at the time payment is made, then the Ethics Reform Act would not seem to limit the amount of legal expenses paid by the fund. However, if the public official on whose behalf legal expenses are paid is a "candidate", then it is necessary to examine the definition of "contribution" in order to determine whether such amounts are limited by the Act.

"Contribution" is defined in Section 8-13-1300(7) as follows:

'Contribution' means a gift, subscription, loan, guarantee upon which collection is made, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit of money, or anything of value made to a candidate or committee to influence an election or ballot measure; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge.

The State Ethics Commission notes that the first clause of this definition makes a contribution dependent upon whether the "...gift, subscription, loan ...[is] made ...to influence an election or ballot measure." The Commission recognizes that the payment of a public official's legal expenses ordinarily would not be made to influence an election or ballot measure, and thus arguably, not a "contribution". However, the Commission also notes that the second clause of the above-quoted

definition, which begins after the semicolon, does not appear to be modified by the language concerning a necessary intent to influence. In fact, the second clause includes within the definition of "contribution", "...payment or compensation for the personal service of another person (such as an attorney) which is rendered **for any purpose** (emphasis added) to a candidate ...without charge". The State Ethics Commission believes this clause principally refers to compensating a volunteer for services performed on behalf of a candidate; nevertheless, given the breadth of this language as well as the Ethics Reform Act's partiality for maintaining accountability, the Commission advises that amounts paid by a legal defense fund to offset a candidate's legal expenses should be regarded as a "contribution" for the purposes of the Act, and the Act's contribution limitations would therefore apply.

