

SEC AO2000-010

May 17, 2000

SUBJECT: A NON-PROFIT CORPORATION DISSEMINATING INFORMATION ON POSITIONS OF STATE CANDIDATES REGARDING ISSUES OF CONCERN TO THE CORPORATION

SUMMARY: The South Carolina Citizens for Life (SCCL), a non-profit corporation, is advised that they need not register as a committee and need not file Campaign Disclosure Reports unless they incur expenditures in the dissemination of information which clearly identifies candidates, and which expressly supports or opposes the election of the identified candidates.

QUESTION: The Executive Director of the South Carolina Citizens for Life, a non-profit corporation whose primary purpose is to gather and disseminate factual information on human life issues, asks whether the expenditures for disseminating information on specific candidates records on issues of concern to the corporation, and which would obviously be intended to influence the outcome of elections, but would not in explicit words or by express terms advocate any candidate's election or defeat, i.e., the voter guide will not use clear directives such as "vote for," "elect," "defeat", would such information and expenditures qualify the corporation as a committee, and subject them to campaign finance and disclosure provisions.

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.

A committee is defined in Section 8-13-1300(6) as:

'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. It also means an individual who, to influence the

outcome of an elective office or a ballot measure, makes contributions aggregating at least fifty thousand dollars during an election cycle to, or at the request of, a candidate or a committee, or a combination of them. `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. [Emphasis added]

Noncandidate committee is defined in Section 8-13-1300(23) as:

`Noncandidate committee' means a committee that is not a campaign committee for a candidate but is organized to influence an election or to support or oppose a candidate or public official, which receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. `Noncandidate committee' does not include political action committees that contribute solely to federal campaigns." [Emphasis added]

Courts throughout the country are grappling with this issue of issue advocacy and express advocacy. Most courts have continued to apply the magic words test set forth in Buckley v. Valeo, 424 U.S. 1 (1976). The magic words are "vote for", "vote against", "elect", and "defeat". Most courts have resolved that, so long as these words are not used, the matter does not involve express advocacy, but rather issue advocacy, and does not fall within the campaign finance and disclosure provisions.

CONCLUSION: If, as expressed in the opinion request letter, the SCCL intends to disseminate information on a candidate's record on issues of concern to the SCCL, which clearly identify a candidate and would be intended to influence the outcome of elections; however, the magic words of Buckley v. Valeo would not be used in the information, it is the opinion of the State Ethics Commission that those expenditures would fall outside the campaign finance and disclosure provisions, and would not subject the SCCL to the reporting requirements as a committee.

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| ANNOTATIONS: | §8-13-1300(6) | §8-13-1300(23) |
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