

SEC AO2002-012

May 15, 2002

**SUBJECT:** ABILITY OF CANDIDATES TO SOLICIT CONTRIBUTIONS FROM CANDIDATES' EMPLOYEES

**SUMMARY:** A candidate is an elective official who, in accordance with Section 8-13-1180(A), may not knowingly solicit, directly or through an agent, a contribution from an employee in the elective official's area of official responsibility.

**QUESTION:** The State Ethics Commission has requested an Advisory Opinion to provide guidelines to candidates on soliciting contributions from employees in the candidates area of official responsibility.

**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.

The State Ethics Commission calls attention to Section 8-13-1180, which provides:

(A) An elective official or the elective official's agent may not knowingly solicit a contribution from an employee in the elective official's area of official responsibility.

(B) A public official or public employee may not provide an advantage or disadvantage to a public employee or applicant for public employment concerning employment, conditions of employment, or application for employment based on the employee's or applicant's contribution, promise to contribute, or failure to contribute to a candidate, a political party, as defined in Section 8-13-1300(26) or a committee, as defined in Section 8-13-1300(6).

Although the Ethics Reform Act does not define the term "elective official", Section 8-13-100(13) defines "elective office" in part to mean, "an office at the state, county, municipal, or political subdivision level." Moreover, Section 8-13-100(27) defines "public official" in part to mean, "an elected or appointed official of the State, a county, a municipality, or a political subdivision thereof, **including candidates for the office.**" [Emphasis added.] Since this definition includes elected as well as appointed officials, it is the opinion of the State Ethics Commission that by using the narrower term "elective official", the Legislature intended for the prohibition contained in Section 8-13-1180(A), to apply only to those public officials who are elected. Candidates for elective office fall within the meaning of Section 8-13-1180(A). Therefore, neither candidates for office nor their agents may knowingly solicit campaign contributions from employees of the elective office's area of official responsibility.

The State Ethics Commission calls attention to Section 8-13-100(23), which provides:

'Official responsibility' means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

An elective official's area of official responsibility would encompass all employees over which the elective official has direct authority, to include under certain circumstances those employees who may not be public employees, as defined by Section 8-13-100(25). This would include all employees of the elected official. Candidates are advised to review the organizational chart or chain of command to determine an elective official's area of official responsibility.

In as much as this Advisory Opinions conflicts with that portion of SEC Advisory Opinion 94-016 which states ". . . Section 8-13-1180(A) does not prohibit candidates for Adjutant General from soliciting contributions from Guard members who are not employees of the South Carolina Adjutant General's Office" SEC AO94-016 is withdrawn.

**CONCLUSION:** A candidate is an elective official who, in accordance with Section 8-13-1180(A), may not knowingly solicit, directly or through an agent, a contribution from an employee in the elective official's area of official responsibility.

**KEY WORDS:** elective official, official responsibility, public official

**ANNOTATIONS:** 8-13-1180, 8-13-100(13), (23) and (27)