

State of South Carolina

State Ethics Commission

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SUBJECT: USE OF PUBLIC RESOURCES TO INFLUENCE THE OUTCOME OF AN ELECTION OR BALLOT MEASURE; INFORMATIONAL MATERIALS CONCERNING A BALLOT MEASURE

QUESTIONS: Beaufort County Council (Council) seeks an opinion from the Commission on the scope of a Council Member's allowable communication regarding a referendum when such communication is made in the Council Member's private capacity. Specifically, Council asks if S.C. Code Ann. § 8-13-765 and § 8-13-1346 apply when Council Members are not using public time and public resources. Council also asks if S.C. Code Ann. § 8-13-765 and § 8-13-1346 apply to a proposed referendum that has not yet been submitted to the voters for approval.

SUMMARY: Sections 765 and 1346 do not apply when Council Members are not using public time and public resources. Sections 765 and 1346 do not apply to proposed referenda not yet submitted to voters for approval.

APPLICABLE LAW:

Section 8-13-765 provides:

- (A) No person may use governmental personnel, equipment, materials, or an office building in an election campaign. The provisions of this subsection do not apply to a public official's use of an official residence.
- (B) A government, however, may rent or provide public facilities for political meetings and other campaign-related purposes if they are available on similar terms to all candidates and committees, as defined in Section 8-13-1300(6).

- (C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time and on nongovernment premises.

Section 8-13-1346 provides:

- (A) A person may not use or authorize the use of public funds, property, or time to influence the outcome of an election.
- (B) This section does not prohibit the incidental use of time and materials for preparation of a newsletter reporting activities of the body of which a public official is a member.
- (C) This section does not prohibit the expenditure of public resources by a governmental entity to prepare informational materials, conduct public meetings, or to respond to news media or citizens' inquiries concerning a ballot measure affecting that governmental entity; however, a governmental entity may not use public funds, property, or time in an attempt to influence the outcome of a ballot measure.

DISCUSSION:

Question: What is the scope of a Council Member's allowable communication regarding a referendum measure in their private capacity?

When Council Members are not using public time and public resources, Sections 8-13-765 and 8-13-1346 are not applicable. Specifically, the following would not violate Sections 8-13-765 and 8-13-1346 if no public time or resources are used and the actions are taken in a Council Member's private capacity: (1) writing letters to the editor of a local newspaper advocating for or against a referendum; (2) making public speeches before private groups (such as Rotary Clubs) advocating for or against a referendum; (3) organizing a public meeting on his or her own time and own expense to discuss the pros and cons of a referendum without any restrictions on what can be discussed at this meeting; or (4) meeting to discuss or promote the referendum in a public building such as a public library, so long as the official's position is not used to access the public building, and the building is available on equal terms and at the same cost to all members of the general public.

The Commission cautions Council to ensure it is not running afoul of any other provisions of the Ethics Act or any other applicable law, such as the South Carolina Freedom of Information Act, prior to undertaking such actions.

Question: Do the restrictions of Section 8-13-765 and 8-13-1346 apply to a proposed referendum that has not yet been submitted to the voters for approval?

When Council must adopt an ordinance to put a referendum on the ballot for consideration by the voters, Sections 8-13-765 and 8-13-1346 do not apply to Council's debate on the ordinance, as Council must have the ability to move the issue forward when not otherwise prohibited.

However, once the final legislative decision rests with the electorate, Sections 8-13-765 and 8-13-1346 prohibit Council from using or authorizing the use of public resources to influence the outcome of the referendum.