

SEC AO98-007

March 18, 1998

SUBJECT: CAMPAIGN CONTRIBUTIONS THROUGH RETAIL SALES OF GOODS

SUMMARY:

A political party's proposal to raise campaign funds through the sale of products would violate section 8-13-1332.

QUESTION:

A member of a political party proposes to offer political committees the opportunity to lease or purchase income-generating tangible assets. Those assets would be leased or sold at fair market value with the right to repurchase for the bargain price of one dollar. He further proposes to sell at wholesale products which would be sold on a retail basis. Those assets would be serviced by this member with profits going to the political committee. In this particular instance, he proposes to offer gumballs as the income-generating product with the profits. He requests an opinion as to the legality and proper treatment of his proposal as to whether it is income or a contribution.

DISCUSSION:

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 2-17-5 et seq. and 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.

S.C. Code §8-13-1332 (Supp. 1994) provides:

It is unlawful for:

- (1) a committee to make a contribution or expenditure by using:
  - (a) anything of value secured by physical force, job discrimination, financial reprisals, or threat of the same; or

- (b) dues, fees, or other monies required as a condition of membership in a labor organization, or as a condition of employment; or
- (c) monies obtained by the committee in a commercial transaction;

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- (4) an organization or committee of an organization to solicit contributions to the organization or committee from a person other than its members and their families.

With respect to §8-13-1332, §8-13-1334 provides:

Notwithstanding Section 8-13-1332, a corporation or organization and their committees may through biannual seminars or at the time of hiring nonexecutive and nonadministrative personnel provide educational materials to such personnel explaining their organization, purposes, and operation and also may request contributions to their committees if the committees certify in their reports, as required under Section 8-13-1308, that the requirements of Section 8-13-1332 are met.

The following definitions are applicable:

`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 payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. `Contribution' does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

`Anything of value' or `thing of value' means:

- (i) a pecuniary item, including money, a bank bill, or a bank note;
- (ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money;
- (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money...

A "committee" is defined as 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 \$500 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 \$50,000 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. S.C. CODE §8-13-1300(6) (Supp. 1994).

A "person" is defined as an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert. S.C. Code §8-13-1300 (25)(Supp. 1994).

In Advisory Opinion SEC AO96-005, the State Ethics Commission advised that it had not had reason to review this section previously as it relates to obtaining monies in a commercial transaction. The Commission went on to advise that the section does not prohibit corporate or business contributions since, under the definition of person, it includes "proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation..." Further, in-kind contributions are allowed "at no charge or for less than their fair market value", indicating further that business or corporate contributions are allowed.

The State Ethics Commission then reviewed the language in Section 8-13-1332 in light of the language of the section and Federal Election Law where statutory authority exists for corporations or labor organizations to use general treasury monies including monies obtained in commercial transactions and dues or membership fees for the establishment, administration, and solicitation of contributions to its political action committee. The Commission noted that the Federal Act specifically prohibits a corporation or labor organization from using the committee support process as a means of exchanging treasury monies for voluntary contributions. The State Ethics Commission indicated that it appeared that such commercial transaction funds are prohibited (1) by not identifying the actual contributor or, (2) that the corporation does not utilize its committee support process to channel funds to that committee or to a candidate.

The State Ethics Commission concluded that it did not appear that the General Assembly intended to prohibit funds from any commercial transaction as that would entirely eliminate contributions by self-employed individuals or by partnerships or certain businesses. Further, it would prohibit the sale of campaign items such as t-shirts, baseball caps, or related paraphernalia. The Commission did not believe that was the intent of this provision.

Based on the facts as submitted for this request, it appears that the lease or rental of the machines as well as the sale of the gumballs will be on a fair market basis. It appears that the receipt of these

profits from this moneymaking venture would not comply with the provisions of Section 8-13-1302(A)(2) which requires that a candidate or committee shall preserve "...the name and address of each person making a contribution and the date of receipt of each contribution." Since this proposal would involve a money-making venture (or commercial venture) wherein the possibility of obtaining names and addresses is not feasible, the State Ethics Commission would advise against such a venture.

The Requestor posits that this venture would be similar to the sale of t-shirts or other campaign paraphernalia. The State Ethics Commission sees a distinction in that there is no record of purchasers, i.e., "contributors". Those purchasers of campaign paraphernalia would be required to maintain a record of purchasers to comply with the provisions of Section 8-13-1302(A)(2).

The Requestor further posits that this venture is no different than income producing assets such as certificates of deposit. Requestor says that such increases are not considered contributions but are considered income.

The Ethics Reform Act treats income produced from campaign accounts as miscellaneous income with documentation being required of the source of the income, however, as noted by the Requestor, it is not subject to campaign contribution limits. Section 8-13-1362 provides:

- (A) If a candidate or committee has not accepted any contributions and has not made any expenditures during a reporting period, the candidate or a duly authorized officer of the committee must file a statement of inactivity.
- (B) A statement of inactivity must include the candidate's or committee's name and address; the type of report, pre-election or quarterly; and a statement by the candidate or a duly authorized officer of the committee verifying that no contributions were received and no expenditures were made during the reporting period. **For the purpose of this report, interest earned is not a contribution.** (emphasis added)

This provision treats interest earned not to be a contribution only with regard to the filing of the statement of inactivity. The vehicle for disclosing a statement of inactivity is the Campaign Disclosure Form. The source of that interest earned, however, is duly noted on the Campaign Disclosure Form.

In summary, based upon the facts as submitted, it appears that this fundraising proposal would violate Section 8-13-1332 in utilizing monies obtained by the committee in a commercial transaction.