

SUBJECT: ALL BALLOT MEASURE COMMITTEES ARE EXEMPT FROM THE DOLLAR LIMITS ON CONTRIBUTIONS FOUND IN S.C. CODE ANN. §8-13-1322(A).

ALL BALLOT MEASURE Non-profit CORPORATIONS AND THEIR COMMITTEES ARE EXEMPT FROM THE SOLICITATION PROHIBITIONS FOUND IN S.C. CODE ANN. §8-13-1332(3).

SUMMARY: Ballot measure committees have the ability to collect unlimited contributions. Citizens Against Rent Control/Coalition for Fair Housing, et al., v. City of Berkeley, California, et al., 102 S.Ct. 434 (1981).

Non-profit corporations and committees formed by non-profit corporations, seeking to influence a ballot measure, may solicit from the general public. FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986).

QUESTION: Based on the order of the U.S. District Court in Legacy Alliance Committee v. State Ethics Commission, C/A No. 3:99-2476-17 (9/3/99) has the \$3,500.00 limit on contributions to ballot measure committees been removed for all ballot measure committees?

Based on the order of the U.S. District Court in Legacy Alliance Committee has the prohibition of soliciting contributions from the general public for ballot measures been lifted for non-profit corporations and committees formed by non-profit corporations?

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 applicable sections of the Ethics Reform Act are Sections 8-13-1322(A) and 8-13-1332(3). Section 8-13-1322(A) states that "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." Section 8-13-1332(3) states that "it is unlawful for a corporation or committee of a corporation to solicit contributions to the corporation or committee from a person other than its shareholders, directors, executive or administrative personnel, and their families."

Section 8-13-1322(A), as it relates to ballot measure committees, has been unconstitutional since the passage of the Ethics Reform Act. The United States Supreme Court in Berkeley made no

distinction between what types of ballot measure committees would be allowed to receive unlimited contributions. "Contributions by individuals to support concerted action by a committee advocating a position on a ballot measure is beyond question a very significant form of political expression." Berkeley, 102 S.Ct. at 438. The U.S. District Court in Legacy Alliance Committee appears to make a distinction between types of ballot measure committees. The District Court declared Section 8-13-1322(A) unconstitutional to the extent it is applied to a "not for-profit organization campaigning as to a ballot measure." (Final Order, dated Sept. 2, 1999, p. 11). The Commission will make no such distinction; therefore, ballot measure committees may solicit unlimited contributions to influence a ballot measure regardless of their organizational structure.

Section 8-13-1322(A)'s contribution limits are constitutional for committees, whether non-profit or for-profit, campaigning to support or oppose a candidate. A committee which wishes to influence both a candidate election and ballot measure must, therefore, form two separate committees with separate banking accounts and disclosure forms.

Section 8-13-1332(3), as it relates to ballot measure non-profit committees soliciting contributions from the general public, has been unconstitutional since the passage of the Ethics Reform Act. The U.S. District Court in Legacy Alliance Committee clearly states that only non-profit corporations and committees formed by non-profit corporations may solicit contributions from the general public for ballot measures. The prohibitions of for-profit corporations soliciting from the general public remain, whether soliciting for a candidate or a ballot measure. Finally non-profit corporations or their committees are prohibited from soliciting the general public for a candidate election.

CONCLUSION: It is the opinion of the State Ethics Commission that Section 8-13-1322(A)'s limit on contributions is unconstitutional as it applies to any ballot measure committee. The Commission makes no distinction as to what type of ballot measure committee has been formed; however, a single committee may not solicit or receive contributions to support or oppose a ballot measure **and** to support or oppose a candidate. Separate committees must be formed with separate banking accounts and disclosure forms.

The Commission does make such a distinction in the prohibitions found in Section 8-13-1332(3). Section 8-13-1332(3) is only unconstitutional as it relates to non-profit corporations and committees formed by non-profit corporations. Non-profit corporations and committees formed by non-profit corporations may solicit contributions from the general public for ballot measures only. They may not solicit contributions from the general public for candidate support or opposition.

KEY WORDS: Ballot Measure, Legacy Alliance

ANNOTATIONS: 8-13-1322, 8-13-1332
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