

SEC AO2002-006

January 16, 2002

SUBJECT: A PUBLIC EMPLOYEE RUNNING FOR OFFICE.

SUMMARY: A public employee is advised that she may not use her employment to influence the outcome of an election.

QUESTION: A public employee in a county clerk of court's office plans to run for clerk of court. May she continue as a public employee while running for office?

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 following seven questions were considered:

1. Can I work in the Office of the Clerk of Court while running for Clerk of Court? I would like to know if one could work in the same office that they are running for?

The State Ethics Commission knows of no reason why a public employee of a clerk of court's office could not continue to serve in her present position while she campaigns for the position of clerk of court. In Advisory Opinion AO92-012, the State Ethics Commission advised: "The State Ethics Commission knows of no reason why a Deputy Sheriff could not continue to serve in his present position while he campaigns for the office of Clerk of Court for Aiken County." Absent a county ordinance prohibiting continued employment while campaigning the following sections must be adhered to.

Section 8-13-765 provides in part:

(A) No person may use government 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.

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

Section 8-13-1346 provides in part:

(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.

2. When filing for office in March of 2003, would I have to resign or take a leave of absence from my position in the clerk's office, or could I remain working there?

Please see the answer to Question One above.

3. The present clerk of court is retiring, and I would be running against the deputy clerk. Could I be fired for running for the clerk's position? I have heard the statement made in my office that an elected official could do anything they want, including firing an employee for any or no reason.

The Ethics Reform Act is silent as to the issue of employee termination. You should refer to the county's employee manual to determine whether you serve at the pleasure of the clerk of court or whether you have rights under an employee grievance procedure.

4. If I were to be working for County Government in a different department other than clerk of court, would I have to resign or take a leave of absence from that position when filing for office in March of 2003?

Please see the answer to Question One above.

5. Can you tell me about a law called the "The Hobbs Act"? Where is it located in the statute?

The Hobbs Act is a federal anti-racketeering act making it a crime to interfere with interstate commerce by extortion, robbery or physical violence. It is a federal act and the site is 18 U.S.C.A. §1951. The federal act which you may be interested in is the Hatch Act. The site is 5 U.S.C.A. §§7321-7326 and 5 C.F.R. §§733-734. Information about the

Hatch Act may be requested from the Office of Special Counsel at 1-800-872-9855.

6. Does the Ethics Commission have any publications on the rules and regulations involved in running for political office in the State of South Carolina? Can you tell me where I can obtain information concerning the rules and regulations involved in running a campaign.

The State Ethics Commission publishes a manual for filers of Campaign Disclosure Forms and Statements of Economic Interests, both forms you will file as a candidate. The manual is available to all candidates.

7. How soon can I begin to raise money for a campaign with a filing date of March 2003?

The State Ethics Commission does not list deadlines for when candidates may begin raising money. Pursuant to Section 8-13-1308, when you spend or receive more than \$500.00 you must file an initial Campaign Disclosure Form and then file quarterly thereafter.

CONCLUSION: Accordingly, the Commission directs that a public employee cannot use her employment, to include her office materials, equipment and personnel, to influence the outcome of an election. Fellow employees may participate in the election activities on their own time. Finally, the public employee is not required to take unpaid leave in order to run for office.

KEY WORDS: candidate, public employee

ANNOTATIONS: 8-13-765, 8-13-1308 and 8-13-1346
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