

SEC AO2005-002

January 19, 2005

SUBJECT: PUBLIC SERVICE COMMISSION AND THE JUDICIAL CODE OF CONDUCT

SUMMARY: Public Service Commission officials and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. The Judicial Code of Conduct significantly restricts the activities of Public Service Commission officials and employees to a much greater extent than the Ethics Reform Act.

QUESTION: The State Ethics Commission has requested an Advisory Opinion to provide guidance to Public Service Commission officials and employees who are now governed by both the Ethics Reform Act and the Judicial Code of Conduct as provided in S.C. Code Ann. §58-3-30(B)(Supp. 2003).

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.

Act No. 175 of 2004 made wide ranging changes to the Public Service Commission. Specifically, Section 58-3-30 provides in part:

(B) The commissioners and commission employees are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules, except as provided in Section 58-3-260, and the State Ethics Commission

must enforce and administer those rules pursuant to Section 8-13-320. In addition, commissioners and commission employees must comply with the applicable requirements of Chapter 13 of Title 8.

As public officials and employees, the Public Service Commission (hereinafter "PSC") commissioners and employees have always been governed by the Ethics Reform Act. It is the addition of Rule 501 of the Judicial Code of Conduct which greatly restricts the actions of both PSC commissioners and employees.

This advisory opinion will not be a section by section recitation of Rule 501 of the Judicial Code of Conduct. Rather it reviews those sections of Rule 501 which are significantly more restrictive regarding the activities of PSC commissioners and employees than comparable sections of the Ethics Reform Act.

Major differences exist between the campaign practices of the Ethics Reform Act and Rule 501, Canon 5, SCACR. The State Ethics Act provides in relevant part that:

Section 8-13-765(A) provides:

(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.

Section 8-13-1338 provides:

(A) The following persons personally may not solicit, verbally or in writing, a contribution to a candidate:

- (1) a law enforcement officer while in uniform;
- (2) a judge or candidate for judicial office;
- (3) a solicitor, an assistant solicitor, or an investigator in a solicitor's office;
- (4) the Attorney General, a deputy attorney general, an assistant attorney general, or an investigator in the Attorney General's office.

(B) The restrictions of subsection (A) on solicitation of contributions do not apply to:

- (1) a candidate soliciting a contribution to his own campaign; or
- (2) a part-time assistant solicitor.

(C) A law enforcement officer while in uniform may not solicit a contribution to any political party or candidate.

Section 8-13-1346 provides:

A person may not use or authorize the use of public funds, property, or time to influence the outcome of an election. 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.

The Ethics Reform Act has very few strict prohibitions, besides those solicitation restrictions in Section 8-13-1338 and the use of government funds, personnel, etc. Canon 5 of the Judicial Code is far more restrictive.

Canon 5(A) provides:

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(3), a judge or a candidate for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political gatherings; or

(e) solicit funds for, pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions.

(2) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

According to Canon 5(A) PSC commissioners and employees may not attend political gatherings, nor may they make contributions to candidates or political parties. Immediately upon election or employment activities in the political arena must cease under Canon 5(A).

In addition to campaign practice restrictions, PSC commissioners and employees may not accept any gift from a person who is a party before the PSC or is likely to become a party before the PSC. Canon 4(D)(5)(h). The comparable law in the Ethics Reform Act is Section 8-13-705 and requires the refusal of the gift if one is being influenced in the discharge of one's official responsibilities. Absent the intent to be influenced, a public official or employee may accept the gift.

Finally, PSC commissioners and employees may not hold membership in an organization which practices invidious discrimination on the basis of race sex, religion or national origin. Canon (2)(C). The Ethics Reform Act has no comparable section. As stated at the outset this opinion is not an exhaustive review of Rule 501, but rather a highlight of those sections of Rule 501 which depart significantly from the Ethics Reform Act.

CONCLUSION: Public Service Commission commissioners and employees are governed by both the Ethics Reform Act and the Judicial Code of Conduct. The Judicial Code of Conduct significantly restricts the activities of Public Service Commission commissioners and employees.

KEY WORDS: public officials, public employees, Public Service Commissioner, Judicial Code of Conduct

ANNOTATIONS: 8-13-705; 8-13-765; 8-13-1338; 8-13-1346; 58-3-30(B); Rule 501, SCACR