

SEC AO2006-004

May 17, 2006

SUBJECT: TO INFLUENCE THE OUTCOME OF AN ELECTION

SUMMARY: A committee is a group of persons which to influence the outcome of an elective office receives contributions or makes expenditures in excess of \$500 during an election cycle. Section 8-13-1300(31)(c) defines the term “influence the outcome of an elective office” to include purchased program time broadcast over television or radio, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate.

QUESTION:

A member of the House of Representatives asks can a 501(c)4 use their financial resources to influence the outcome of an election within the final 45-day window? If a 501(c)4 uses its financial resources to influence the outcome of an election within the 45-day window, is that entity required to disclose their financial receipts and expenditures?

DISCUSSION:

This opinion is rendered in response to a letter dated May 9, 2006 requesting an opinion from the State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the State Ethics Act, S.C. Code §2-17-10; 8-13-100 (Supp. 1996). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-1300 provides in part:

(6) "Committee" means an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:

(a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or

(b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.

"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.

(7) "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, whether any of the above are made or offered directly or indirectly. "Contribution" does not include (a) volunteer personal services on behalf of a candidate or committee for which the volunteer or any person acting on behalf of or instead of the volunteer receives no compensation either in cash or in-kind, directly or indirectly, from any source; or (b) 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 committee, other than a candidate committee, and is used to pay for communications made not more than forty-five days before the election to influence the outcome of an elective office as defined in Section 8-13-1300(31)(c). These funds must be deposited in an account separate from a campaign account as required in Section 8-13-1312.

(31) "Influence the outcome of an elective office" means:

(a) expressly advocating the election or defeat of a clearly identified candidate using words including or substantially similar to "vote for", "elect", "cast your ballot for", "Smith for Governor", "vote against", "defeat", or "reject";

(b) communicating campaign slogans or individual words that, taken in context, have no other reasonable meaning other than to urge the election or defeat of a clearly identified candidate including or substantially similar to slogans or words such as "Smith's the One", "Jones 2000", "Smith/Jones", "Jones!", or "Smith-A man for the People!"; or

(c) any communication made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of this paragraph, "communication" means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. "Communication" does not include news, commentary, or editorial programming or article, or communication to an organization's own members.

The Ethics Reform Act is silent as to specific IRS designated groups. Based on significant changes to the Ethics Reform Act's campaign practices, a group, whether a 501(c)(4) or not, which uses its resources to influence the outcome of an election is a committee. Section 8-13-1300(6) provides that a committee is a group of persons which to influence the outcome of an elective office receives contributions or makes expenditures in excess of \$500 during an election cycle. It also means a person, who to influence the outcome of an elective office, makes an independent expenditure of \$500 during an election cycle. Section 8-13-1300(31)(c) defines the term "influence the outcome of an elective office" to include any purchased program time broadcast over television or radio, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. The Commission recognizes that these issues are fact specific and each matter will be judged on its specific facts on a case by case basis.

Section 8-13-1308 provides in part:

(A) Upon the receipt or expenditure of campaign contributions or the making of independent expenditures totaling an accumulated aggregate of five hundred dollars or more, a candidate or committee required to file a statement of organization pursuant to Section 8-13-1304(A) must file an initial certified campaign report within ten days of these initial receipts or expenditures. However, a candidate who does not receive or expend campaign contributions totaling an accumulated aggregate of five hundred dollars or more must file an initial certified campaign report fifteen days before an election.

(B) Following the filing of an initial certified campaign report, additional certified campaign reports must be filed within ten days following the end of each calendar quarter in which contributions are received or expenditures are made, whether before or after an election until the campaign account undergoes final disbursement pursuant to the provisions of Section 8-13-1370.

(C) Campaign reports filed by a candidate must be certified by the candidate. Campaign reports filed by a committee must be certified by a duly authorized officer of the committee.

(F) Certified campaign reports detailing campaign contributions and expenditures must contain:

- (1) the total of contributions accepted by the candidate or committee;
- (2) the name and address of each person making a contribution of more than one hundred dollars and the amount and date of receipt of each contribution;
- (3) the total expenditures made by or on behalf of the candidate or committee;
- (4) the name and address of each person to whom an expenditure is made from campaign funds, including the date, amount, purpose, and beneficiary of the expenditure.

If a committee's only campaign activity is the distribution of Section 8-13-1300(31)(c) communications, then it is only required to disclose its expenditures. Section 8-13-1300(7)(b) provides that money given to a committee for a 31(c) communication is not a contribution. If it is not a contribution, then it is not disclosed pursuant to Section 8-13-1308(F); however, the expenditures are disclosed.

CONCLUSION: A committee is a group of persons which to influence the outcome of an elective office receives contributions or makes expenditures in excess of \$500 during an election cycle. Section 8-13-1300(31)(c) defines the term "influence the outcome of an elective office" to include any purchased program time broadcast over television or radio, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate.

KEY WORDS: influence the outcome of an election, committee, contribution

ANNOTATIONS: 8-13-100(6), (7) and (31), 8-13-1308
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