

SEC AO2007-008

March 21, 2007

SUBJECT: DECEASED CANDIDATE AND HIS CAMPAIGN COMMITTEE

SUMMARY: A deceased candidate's campaign committee continues to be subject to the same laws that apply to all candidates. A candidate committee may not make a contribution from its campaign account to the debt retirement of a deceased candidate.

QUESTION: Should a deceased candidate's campaign committee be subject to the same laws if he is no longer living that would apply if he were still alive? Would there be any restriction on a campaign committee making donation to the debt retirement of a deceased candidate?

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.

Section 8-13-1314 provides in part:

- (A) Within an election cycle, no candidate or anyone acting on his behalf may solicit or accept:
 - (1) a contribution which exceeds:
 - (a) three thousand five hundred dollars in the case of a candidate for statewide office; or
 - (b) one thousand dollars in the case of a candidate for any other office;

Section 8-13-1318 provides:

If a candidate has a debt from a campaign for an elective office, the candidate may accept contributions to retire the debt, even if the candidate accepts contributions for another elective office or the same elective office during a subsequent election cycle, as long as those contributions accepted to retire the debt are:

- (1) within the contribution limits applicable to the last election in which the candidate sought the elective office for which the debt was incurred; and
- (2) reported as provided in this article.

Neither a state-wide candidate nor anyone acting on his behalf, i.e. a candidate committee, may solicit or accept a contribution in excess of \$3500. Section 8-13-1318 provides that retire the debt funds must adhere to the contribution limits of the cycle. A person who made the maximum contribution prior to the election may not make a contribution to retire the debt as he has made the maximum contribution allowed for the cycle. The campaign practices section of the Ethics Reform Act makes no distinction between living and deceased candidates.

Section 8-13-1340 provides in part:

- (A) A candidate may not make a contribution to another candidate or make an independent expenditure on behalf of another candidate.

Section 8-13-1370 provides in part:

(A) Contributions received by a candidate that are in excess of expenditures during an election cycle must be used by the candidate upon final disbursement:

- (1) to defray ordinary and necessary expenses incurred in connection with his duties in his public office;
- (2) to be contributed to an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code of 1986, a political party, or a committee;
- (3) to be maintained in the campaign account for a subsequent race for the same elective office;
- (4) to further the candidacy of the individual for a different elective office. However, after December 31, 1992, the funds must be used in a campaign for a different elective office only as provided for in Section 8-13-1352;

- (5) to be returned pro rata to all contributors;
- (6) to be contributed to the state's general fund; or
- (7) to be distributed using a combination of these options

A campaign committee of a candidate is prohibited by Section 8-13-1340 from making a campaign contribution to another candidate's debt retirement. No exceptions are provided for in Section 8-13-1340 for a deceased candidate's campaign. The prohibition is clear. The same is true at final disbursement. A candidate who is closing out his campaign account may not, pursuant to Section 8-13-1370, use his excess funds to make a campaign contribution to another candidate.

CONCLUSION: A deceased candidate's campaign committee is subject to the same campaign laws that apply to all candidates. A candidate committee may not make a contribution from its campaign account to the debt retirement of a deceased candidate.

KEY WORDS: debt retirement, candidate, campaign account

ANNOTATIONS: Sections 8-13-1314, 8-13-1318, 8-13-1340 and 8-13-1370