

# *State of South Carolina*

## *State Ethics Commission*

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**SEC AO2024-001**

**July 18, 2024**

**SUBJECT:** Whether the provision of free or reduced cost cybersecurity services to certain campaigns and/or political parties constitutes a “contribution” under Section 8-13-1300(7) of the Ethics Reform Act.

**SUMMARY:** The provision of free or reduced cost cybersecurity services to certain campaigns and/or political parties constitutes a “contribution” under Section 8-13-1300(7) of the Ethics Reform Act.

**QUESTION:** May a 501(c)4 non-profit organization provide free or reduced cost cybersecurity services to certain campaigns and/or political parties without making a contribution?

**APPLICABLE LAW:**

Section 8-13-100(1)(a) defines “anything of value,” in relevant part, as:

(xiv) any other item that is of pecuniary or compensatory worth to a person.

Section 8-13-1300(7) defines “contribution,” in relevant part, as:

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 . . .

Section 8-13-1300(20) defines “in-kind contribution” as:

goods or services which are provided to or by a person at no charge or for less than their fair market value.

## DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (the "Ethics Reform Act"). 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.

Defending Digital Campaigns, Inc. (DDC) is a nonpartisan, Section 501(c)(4) social welfare organization whose mission is "to secure our democratic process by providing [certain] campaigns and/or political parties with knowledge, training, and resources to defend themselves from foreign cyber threats." (AO Request, p.1). In that regard, DDC asks this Commission to opine on whether the provision of free or reduced cost cybersecurity services to certain campaigns and/or political parties would constitute a "contribution" under the Ethics Reform Act. More specifically, DDC wishes to offer free or reduced cost cybersecurity services to political party committees registered with the Commission as well as any campaigns that satisfy the following requirements:

- (1) candidates for local (municipal and county) office who have raised at least \$2,000 in receipts for the current election cycle;
- (2) candidates for state legislature<sup>1</sup> and solicitor whose campaign committees have raised at least \$5,000 in receipts for the current election cycle;
- (3) candidates for statewide office whose campaign committees have raised at least \$10,000 in receipts for the current election cycle; or
- (4) candidates for state or local office who have qualified for the general election ballot in their respective races.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd." Id. At 91. "A court should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." State v. Sweat, 379 S.C. 367, 377, 665 S.E.2d 645, 650-51 (Ct. App. 2008), aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010).

Pursuant to Section 8-13-1300(7), a "contribution" is anything of value given to a candidate or committee to "influence the outcome of an election." Thus, the question currently before the Commission is whether DDC's proposed provision of free or reduced cost cybersecurity services

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<sup>1</sup> The Commission notes that it is statutorily prohibited from issuing advisory opinions with regard to members of the South Carolina General Assembly. See Section 8-13-320 and Section 8-13-540. To that end, DDC should contact the South Carolina House of Representatives Ethics Committee or the South Carolina Senate Ethics Committee for guidance with regard to these bodies.

to certain political parties and/or campaigns can be construed as being given to influence the outcome of an election.

In previous formal and informal advisory opinions, the Commission has essentially held that actions are intended to influence the outcome of an election if they favor certain groups or individuals over others. See SEC AO2018-003; SEC AO2001-004; Jones Informal AO (Sept. 24, 2018); Depass Informal AO (Aug. 26, 1999).<sup>2</sup> Conversely, actions that treat all groups and individuals equally are not intended to influence the outcome of an election.

The Commission, like many others throughout South Carolina and the United States, shares DDC's concern and desire to protect federal, state, and local elections. However, given the selection parameters espoused by DDC, which favor some individuals and/or groups over others, the Commission must conclude that the provision of free or reduced cost cybersecurity services meets the definition of a "contribution" under the Ethics Reform Act. The Commission encourages DDC to reevaluate its targeted audience to include all campaigns and/or political parties, regardless of size or other limiting criteria. In the alternative, the Commission believes a change in legislation, wherein the provision of cybersecurity services is exempted from the definition of "anything of value," could be useful to all campaigns and/or political parties at the state and local level.

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<sup>2</sup> In its request, the DDC relies on SEC AO92-094 in support of its proposed action. In SEC AO92-094, the Commission allowed the Business and Industry Political Education Committee (BIPEC) to offer a campaign strategy workshop to "selected candidates" and ultimately held that any candidate who attended such workshop was not required to disclose a contribution for the costs of such workshop from BIPEC. The Commission finds that both the scant facts and lack of legal analysis found in SEC AO92-094 render it unusable for purposes of this Advisory Opinion.