

OPINION 1996-1

TO: MEMBERS, SOUTH CAROLINA SENATE  
FROM: SENATE COMMITTEE ON ETHICS  
DATE: JANUARY 16, 1996  
RE: OPINION 1996-1

The Senate Committee on Ethics has received the following questions that we feel should be answered with this Opinion:

- 1) Is a person who has filed a form E4A.1 - Campaign Disclosure Form and a form EA8.1 - Committee Statement of Organization, who is soliciting campaign funds by mail and other methods indeed a candidate and subject to *The Ethics, Government Accountability, and Campaign Reform Act of 1991, With Amendments Effective January 12, 1995*?
- 2) If that person is considered a candidate and is currently an officer with an organization whose purpose is to influence legislation through citizen involvement, is that person permitted under *The Ethics, Government Accountability, and Campaign Reform Act of 1991, With Amendments Effective January 12, 1995*, to distribute literature, newspaper fillers and to write articles identifying himself as an officer of the organization?
- 3) If the answer to question two is in the affirmative, must the candidate, the organization in which he is a member and officer, and any newspaper, magazine, or other media organization publishing or announcing such articles be required to report the associated costs on the Campaign Disclosure Form or other required reports as assistance in-kind to a political candidate?
- 4) Would an incumbent Member who writes a column during the legislative session for publication in various newspapers or gives legislative reports on radio and television stations be required to report the in-kind value of publication space and or air time on their Campaign Disclosure Form.

We feel that to properly begin our answers to these questions, *The Ethics, Government Accountability, and Campaign Reform Act of 1991, With Amendments Effective January 12, 1995*, should be quoted in part. Therefore, we offer the following quotations:

"SECTION 8-13-1300. Definitions.

(4) "Candidate" means a person who seeks appointment, nomination for election, or election to a statewide or local

office or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election. "Candidate" does not include a candidate within the meaning of Section 431(b) of the Federal Election Campaign Act of 1976."

(6) "Committee" means an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office or a ballot measure, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means an individual who, to influence the outcome of an elective office or a ballot measure, makes contributions aggregating at least fifty thousand dollars during an election cycle to, or at the request of, a candidate or a committee, or a combination of them. '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 ballot measure; or payment or compensation for the personal service of another person which is rendered for any purpose to a candidate or committee without charge. "Contribution" does not include volunteer personal services on behalf of a candidate or committee for which the volunteer receives no compensation from any source.

(12) "Expenditure" means a purchase, payment, loan, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit, transfer of funds, gift of money, or anything of value for any purpose.

(15) "Gift" means anything of value, including entertainment, food, beverage,

travel, and lodging given for pay to a public official or public employee to the extent that consideration of equal or greater value is not received. A gift includes a rebate or discount on the price of anything of value unless it is made in the ordinary course of business without regard to that person's status. A gift does not include campaign contributions accepted pursuant to this article.

(17) "Independent expenditure" means:

(a) an expenditure made by a person to advocate the election or defeat of a clearly identified candidate; and

(b) when taken as a whole and in context, the expenditure made by a person expressly to urge a particular result in an election but which is not:

(i) made to;

(ii) controlled by;

(iii) coordinated with;

(iv) requested by; or

(v) made upon consultation with a candidate or an agent of a candidate.

Expenditures by party committees or expenditures by legislative caucus committees based upon party affiliation are considered to be controlled by, coordinated with, requested by, or made upon consultation with a candidate or an agent of a candidate.

(19) "Individual with whom he is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in a business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

(20) "In-kind contribution or expenditure" means goods or services which are provided to or by a person at no charge or for less than their fair market value.

(23) "Noncandidate committee" means a committee that is

not a campaign committee for a candidate but is organized to influence an election or to support or oppose a candidate, public official, or ballot measure, which receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. 'Noncandidate committee' does not include political action committees that contribute solely to federal campaigns.

(25) "Person" means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert.

**SECTION 8-13-1302.**

Maintenance of records of contributions, contributors, and expenditures.

(A) A candidate or committee shall maintain and preserve an account of:

- (1) the total of contributions accepted by the candidate or committee;
- (2) the name and address of each person making a contribution and the date of receipt of each contribution;
- (3) the total of 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 including the date, amount, purpose, and beneficiary of the expenditure;
- (5) all receipted bills, canceled checks, or other proof of payment for each expenditure.

(B) The candidate or committee must maintain and preserve all receipted bills and accounts required by this article for four years."

Question One ask firstly if a person who has filed the proper forms and is soliciting campaign funds is indeed a candidate and subject to *The Ethics, Government Accountability, and Campaign Reform Act of 1991, With Amendments Effective January 12, 1995*. SECTION 8-13-1300, Subsection 4 says in part, "Candidate" means a person who seeks appointment, nomination for election, or election to a

statewide or local office or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election.' Therefore, it is our decision, that for the purposes of this Opinion, the criteria which determines if a person is a candidate for the office of State Senator in South Carolina, has been met. We remind Members and candidates of Section 8-13-1304, which reads as follows:

"A committee, except an out-of-state committee, which receives or expends more than five hundred dollars in the aggregate during an election cycle to influence the outcome of an elective office or ballot measure must file a statement of organization with the State Ethics Commission no later than five days after receiving the contribution or making the expenditure. An out-of-state committee which expends more than five hundred dollars in the aggregate during an election cycle to influence the outcome of an elective office or a ballot measure must file a statement of organization with the State Ethics Commission no later than five days after making the expenditure."

And Section 8-13-1308 which reads as follows:

"Filing of certified campaign reports by candidates and committees.

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

(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.

(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.

(D) (1) At least fifteen days before an election, a certified campaign report must be filed showing contributions of more than one hundred dollars and expenditures to or by the candidate or committee for the period ending twenty days before the election. The candidate or committee must maintain a current list during the twenty-day period before the election of all contributions of more than one hundred dollars. The list must be open to public inspection upon request.

(2) A committee immediately shall file a campaign report listing expenditures if it makes an independent expenditure or an incurred expenditure within twenty days before the election in excess of:

(a) ten thousand dollars in the case of a candidate for statewide office; or

(b) two thousand dollars in the case of a candidate for any other office.

(3) In the event of a runoff election, candidates or committees are not required to file another campaign report in addition to the reports already required under this section. However, records must remain open to public inspection upon request between the election and the runoff.

(E) 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 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."



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A reading of Sections 8-13-1300(4), 8-13-1304 and 8-13-1308 are very necessary in determining the time in which a person becomes a candidate.

Questions Two, Three and Four can be joined together as we continue with this Opinion.

With the proper definition of a candidate as a basis for our discussion, we must now determine what is considered an in-kind contribution and what is considered an independent expenditure, to a candidate and Members in relation to media services and media related publications, whether these publications are distributed widely and readily available to the general public or whether they are for the consumption of members of a particular organization.

An in-kind contribution is defined by Section 8-13-1300(20), this is a very broad definition. However, we feel that for the purposes of this Opinion we can and should further define in-kind. The practice of giving goods or services to a campaign is perfectly legal in South Carolina, so long as the value of the in-kind gift is reported. An example is as follows:

Candidate A, has formally announced and filled all the proper documents for the State Senate. A good friend of his owns the local hardware store and wishes to help with the campaign. After discussing the campaign it is determined that the owner of the hardware store decides that he will donate 500 wood stakes, 2 heavy duty staple guns and 1000 staples, for the purpose of constructing yard signs for the campaign. The total value of this material is \$250.00. The campaign of Candidate A should then report on their Campaign Disclosure Form this contribution under the In-kind section, and include the name and address of the hardware store and the date the material was given to the campaign.

Another example would be:

Candidate B ask his neighbor to host a cook out for the neighborhood so that he may discuss with them all his reasons for running for the State Senate. The neighbor agrees and buys all of the food and beverage associated with the cook out. Invitations are mailed calling the event a meet Candidate B cook out. All of the cost associated with this cook out must be reported as an in-kind contribution from the neighbor on Candidate B's Campaign Disclosure Form under the In-kind section, and include the name and address of the neighbor who paid for the cook out and the date the event was held.

However, a publication would not be considered an in-kind contribution, however wide spread, of an organization's material unless at some point the material or organization endorses a particular candidate or announces that it is working for the defeat of a particular candidate. An example is as follows:

Candidate C is the president of a local organization. This particular organization is very active in supporting various local and statewide initiatives designed to enhance the funding of technical education, because of the many new factories in their community that need specialized training for their new employees. As president of the organization, Candidate C is highlighted weekly in the organization's newsletter. Candidate C also receives request from many organizations in the area to write guest editorials in their newsletters and speak to their meetings, as well as, many request from the local media to address this issue. Even though Candidate C is a duly filled candidate for the State Senate, this type of publicity, whether sought or un-sought, is not considered an in-kind contribution and does not have to be reported on the Campaign Disclosure Form.

The other extreme would be as follows:

Candidate D has received the formal endorsement of a local organization and has requested before a meeting of the board of directors of the organization that they help the campaign with some type of donation. The organization has agreed to support his campaign through the printing and mailing of several hundred flyers stating why Candidate D should be elected to the State Senate and why Candidate E should be defeated. The organization spends \$630.00 on printing and postage. All of this should be reported on Candidate D's Campaign Disclosure Form under the In-kind section, and include the name and address of the organization and the date the material was given to the campaign.

Yet another extreme would be as follows:

Candidate F has received the endorsement of the local organization and does not ask for it, nor does Candidate F seek any funding or help from the organization. The organization pays for bill board advertisements relating to the public their reasons for supporting the campaign of Candidate F for the State Senate. At no time does Candidate F or anybody employed by or associated with the campaign coordinate or request the bill boards. In this



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case, Candidate F does not have to disclose the cost of the bill boards, since this expenditure would be considered an independent expenditure as defined by Section 8-13-1300(17).

Therefore, we must determine that an in-kind contribution occurs after an organization or person endorses a candidate and/or collaborates with the candidate or the campaign committee or staff to expend moneys on behalf of the candidate.

A Member or a candidate for the Senate of South Carolina does not have to disclose the value of public media related interviews, articles, editorials, legislative reports or updates. This type of activity is not governed by *The Ethics, Government Accountability, and Campaign Reform Act of 1991, With Amendments Effective January 12, 1995*.

The Committee realizes that this Opinion may not cover all questions related to in-kind contributions, however, we feel that this Opinion will serve as a basis for determining what is and is not considered an in-kind contribution. Members and candidates are encouraged to thoroughly research a proposed in-kind contribution before acceptance of the same, and if in question as to the legality of the contribution, seek further guidance from the Senate Committee on Ethics in writing.