

SUBJECT: POLITICAL INVOLVEMENT OF DEPUTY ADJUTANT GENERAL

SUMMARY:

The Ethics Reform Act would not prohibit a Deputy Adjutant General from participating in an election campaign on his own time consistent with certain guidelines.

QUESTION:

The Deputy Adjutant General is questioning whether there are any restrictions regarding his private support of a candidate. He specifically questions the propriety of his endorsement of a candidate, serving on a candidate's campaign committee, soliciting campaign contributions, and writing personal letters in support of a candidate.

DISCUSSION:

This opinion is rendered in response to a letter dated December 27, 1991 requesting an opinion from the State Ethics Commission. The 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 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

The provisions of the Ethics Reform Act apply to public employees, however, other restrictions by the employee's agency may also apply. Further, the Hatch Act may apply to public employees with involvement with Federal funds. Since this situation may apply, the Commission advises that the Office of Special Counsel, US Merit Systems Protection Board, 999 East Street Northwest, Washington, DC, 20463, (202)653-7188 be contacted as well. With regard to the Ethics Reform Act, Section 8-13-765 provides some restrictions regarding political campaigning. Section 8-13-765 provides as follows:

(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.

(B) A government, however, may rent or provide public facilities for political meetings and other campaign-related purposes if they are available on similar terms to all candidates and committees, as defined in Section 8-13-1300(6).

(C) This section does not prohibit government personnel, where not otherwise prohibited, from participating in election campaigns on their own time and on non-governmental premises. 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.

Also, 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.

Public employees are, thus, restricted from utilizing government resources in an election campaign. The State Ethics Commission has advised in prior opinions that public employees may campaign for public office when done on their own time without utilizing public materials and equipment. Section 8-13-765 provides that a public employee may participate in election campaigns on their own time and on non-governmental premises.

The Commission also calls attention to other provisions of the Ethics Reform Act. Section 8-13-1332 provides in part as follows :

It is unlawful for:

* * *

(2) a person to solicit an employee for a contribution and fail to inform the employee of the political purposes of the committee and of the employee's right to refuse to contribute without any advantage or promise of an advantage conditioned upon making the contribution or reprisal or threat of reprisal related to the failure to make the contribution.

Further, Section 8-13-1336 provides:

(A) No public official, candidate, public employee, or committee may accept or solicit campaign contributions on the State Capitol grounds, including the office complexes located on them, or in any building which houses the principal office of a statewide officer.

(B) No public official, candidate, public employee, or committee may accept or collect campaign contributions on the grounds of or in any building which houses the official residence of a statewide officer.

(C) Contributions delivered by mail are excluded from the provisions of this Section.

Provided that a public employee abides by the above-quoted provisions, the State Ethics Commission knows of no reason why a public employee could not participate in the political process in endorsing candidates, serving on a candidate's campaign committee, soliciting campaign contributions, and

writing candidate support letters.