

SUBJECT: POLITICAL CONTRIBUTIONS AND EXPENDITURES MADE FROM MONIES OBTAINED FROM COMMERCIAL TRANSACTIONS AND SOLICITATION OF SAME.

SUMMARY: Pursuant to S.C. Code §8-13-1332 (Supp. 1994) an contribution or expenditure may be made from money obtained in a commercial transaction as long as the committee support process is not used as a means of exchanging treasury monies for voluntary contributions. Solicitation of contributions by organizations and committees is restricted to the membership or their families.

QUESTION: Buyer's Association, Inc ¹ (hereinafter Buyer's) inquires as to whether it is permitted to sell campaign kits ² for political fund-raising and advertising purposes. Buyer's proposes to make the kit available to political parties and candidates and their committees for resale to raise funds and political advertising.

DISCUSSION:

This opinion is rendered in response to a letter dated October 23, 1995 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 2-17-5, et seq. and 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 that may apply to this situation.

On the state level³ whether Buyers can sell and whether a candidate, committee or organization may buy and resell Buyers' product requires an analysis of the definitions contained in the Ethics Act along with the prohibition found in S.C. Code §8-13-1332 (Supp. 1994).

A "committee" is defined as 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 \$500 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 \$50,000 during an election cycle to, or at the request of, a candidate or a

¹ The Buyers Advantage, Inc. is a SC corporation in good standing.

² A campaign kit consists of a video about the candidate; a brochure about the candidate; a prepaid long distance calling card with 20 minutes of calling time, recharge ability, and a voice mail box feature; a membership in the Buyers Advantage; printed materials on how to organize a grassroots organization; and a grocery coupon book.

³ The requestor also asks if a "candidate in this state is running for a federal office, is this campaign regulated and governed by federal election laws, by state election laws or by both." The State Ethics Act governs only those persons seeking election to local or statewide offices.

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. S.C. Code §8-13-1300(6) (Supp. 1994).

A "person" is defined as 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. S.C. Code §8-13-1300 (24)(Supp. 1994).

S.C. Code §8-13-1332 (Supp. 1994) provides:

It is unlawful for:

(1) a committee to make a contribution or expenditure by using: (a) anything of value secured by physical force, job discrimination, financial reprisals, or threat of the same; or b) dues, fees, or other monies required as a condition of membership in a labor organization, or as a condition of employment; or c) monies obtained by the committee in a commercial transaction;

* * *

(4) an organization or committee of an organization to solicit contributions to the organization or committee from a person other than its members and their families.

With respect to §8-13-1332, §8-13-1334 provides:

Notwithstanding Section 8-13-1332, a corporation or organization and their committees may through biannual seminars or at the time of hiring nonexecutive and nonadministrative personnel provide educational materials to such personnel explaining their organization, purposes, and operation and also may request contributions to their committees if the committees certify in their reports, as required under Section 8-13-1308, that the requirements of Section 8-13-1332 are met.

The State Ethics Commission has not had reason to review this section previously as it relates to obtaining monies in a commercial transaction. It is apparent that the Section does not prohibit corporate or business contributions since, under the definition of person, it includes "proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation..." Further, in-kind contributions are allowed "at no charge or for less than their fair market value", indicating further that business or corporate contributions are allowed.

We must then determine what the language in Section 8-13-1332 means. Since there is no definition, we look at the language of the section which prohibits "a committee" from making a contribution or

expenditure by using "monies obtained by the 'committee' in a commercial transaction". In reviewing the Federal Election Law, statutory authority exists for corporations or labor organizations to use general treasury monies including monies obtained in commercial transactions and dues or membership fees for the establishment, administration, and solicitation of contributions to its political action committee. However, the Federal Act specifically prohibits a corporation or labor organization from using the committee support process as a means of exchanging treasury monies for voluntary contributions. Thus, it appears that such commercial transaction funds are prohibited (1) by not identifying the actual contributor or, (2) that the corporation does not utilize its committee support process to channel funds to that committee or to a candidate.

It does not appear that the General Assembly intended to prohibit funds from any commercial transaction as that would entirely eliminate contributions by self-employed individuals or by partnerships or certain businesses. Further, it would prohibit the sale of campaign items such as t-shirts, baseball caps, or related paraphernalia. The Commission does not believe that was the intent.

As to the question of the sale of campaign kits, the Commission assumes that the kit sales to a candidate or committee is at fair market value. Since Buyer's is a profit making venture, any costs at less than fair market value become a contribution by Buyer's and subject to the contribution limitations. Any sales above the fair market value paid by the candidate or committee becomes a contribution by the person buying such campaign kit and must fall within the contribution limitations of Section 8-13-1314.

Further, the Act specifically requires that an organization or committee of an organization restrict its solicitation of contributions to the organization or committee's membership or the members immediate family.

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