

# **OPINION OVERTURNED BY AMENDMENT TO SECTION 8-13-1316 EFFECTIVE NOVEMBER 3, 2004.**

SEC AO99-004

SEPTEMBER 30,1998

**SUBJECT:** POLL NOT A MULTI-CANDIDATE PROMOTIONAL EXPENDITURE

**SUMMARY:** The provision of multi-candidate promotional expenditures is limited to those specific activities referred to in §8-13-1316(B), i.e., (1) the operation of telephone banks; (2) the preparation, mailing, and distribution of campaign materials including newspaper, television, and radio advertisements; or (3) voter registration and ballot information. A poll does not fall within these three specific activities. Therefore, depending upon the facts, a poll may be considered to be an in-kind contribution, which fair market value must be determined at the time of the contribution to the candidate or committee.

**FACTS:** A statewide campaign requests advice based on a hypothetical and also requests the Commission to ascertain whether a violation has occurred.<sup>1</sup> The Commission advises that the use of formal opinions is to address facts and events prospectively. As to facts or events that have already occurred, and the question as to whether a violation has occurred, the Commission requires by its enabling statute that a verified complaint be filed. See §8-13-320. In addition, based on the presentation of the materials and the apparent contradiction in what the Commission is being asked to advise on, see Question 1, the Commission confines its opinion to the two questions presented by the requestor.

**QUESTIONS PRESENTED:**

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Requestor poses several scenarios and then asks for advice “regardless of the hypothetical facts presented, “ and thus the Commission has confined its response and opinion accordingly. The requestor’s letter also questions whether a poll may “ever” be a multi-candidate promotion. Formal opinions are based on facts and events and apply prospectively. Therefore, your question cannot be adequately addressed without further sufficient facts of each poll that “ever” could be conducted. In addition, formal opinions are rendered by the Commission and are not a tool designed to circumvent a determination of any potential violation, as provided for in Section 8-13-320, based on past conduct and/or events.

I. Regardless of the hypothetical facts presented,<sup>2</sup> may a candidate for Governor review and thus use a poll paid for by a political party as an alleged multi-candidate promotional expenditure pursuant to South Carolina Code Ann. Section 8-13-1316(B). In other words, may a poll ever be a multi-candidate promotion, regardless of the questions or issues concerned in the poll.

II. Assuming that a poll may constitute a multi-candidate promotional expenditure for which a political party may fund, pursuant to the above referenced hypothetical facts, does such a poll identified in this letter meet the criteria of Section 8-13-1316 such that four or more candidates receive substantially equal treatment.

The requestor poses two questions, which, in essence, ask whether a poll is a multi-party expenditure within the meaning of §8-13-1316(B). This precise question is a novel one for the State Ethics Commission. It has not been previously addressed by the State Ethics Commission in formal advisory opinions.

#### DISCUSSION:

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 which may apply to this situation. An opinion rendered by the Commission until amended or revoked is binding on the Commission in any subsequent charges concerning the person who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion. Identities of parties involved must be withheld upon request.

Section 8-13-1316 provides:

- (A) Within an election cycle, a candidate may not accept or receive contributions from a political party through its party committees or legislative caucus committees which total in the aggregate more than:
  - (1) fifty thousand dollars in the case of a candidate for statewide office;
  - (2) five thousand dollars in the case of a candidate for any other office.
- (B) Party expenditures for partisan multi-candidate promotions for four or

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It is noted that the Federal Election Commission and 11 C.F.R. §106.4 address the use and the allocation of the value and costs of polls used at the Federal level. In 11 C.F.R. §106.4, polls may be treated as in-kind contributions depending upon certain conditions and factors. One factor is whether the poll results have been requested or used by a candidate or committee. Another relevant factor is the age and publication dissemination of the poll. In addition, the Federal regulation provides that poll results that have been made public without the request, authorization, prearrangement or coordination by a candidate or committee is not treated as a contribution in-kind and expenditure. 11 C.F.R §106.4(c).

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more candidates, including candidates for the United States Senate or the United States House of Representatives, where each candidate receives substantially equal treatment, both in terms of time or length discussed and prominence in presentation, shall not be included in the contribution limits under subsection (A). However, multi-candidate promotional expenditures are limited to:

- (1) the operation of telephone banks;
- (2) the preparation, mailing, and distribution of campaign materials including newspaper, television, and radio advertisements; or
- (3) voter registration and ballot information.

“Contribution” is defined in §8-13-1300(7) to be:

(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 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.

“Expenditures incurred” is defined in §8-13-1300(13) as:

‘Expenditures incurred’ means an amount owed to a creditor for purchase of delivered goods or completed services.

An “In-kind contribution” is defined in §8-13-1300(20) as:

"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.

The provision of multi-candidate promotional expenditures was limited by the South Carolina General Assembly to those specific activities listed in §8-13-1316(B), i.e.: (1) the operation of telephone banks; (2) the preparation, mailing, and distribution of campaign materials including newspaper, television, and radio advertisements; or (3) voter registration and ballot information. A poll does not fall within these three specific activities.

Therefore, depending upon the facts, a poll may be considered to be an in-kind contribution, which fair market value must be determined at the time of the contribution to the candidate or committee.

Key words:	Promotional expenditures    Polls    Contribution Expenditure    In-kind contribution or expenditure
S.C. Code Sections Cited:	§8-13-1316(B)    §8-13-1300(7)    §8-13-1300(12) §8-13-1300(20)