

SUBJECT: Contribution Rollover Requirements Between Campaigns

SUMMARY: Contributions made in the first quarter of a calendar year following an election are generally attributable to the next campaign cycle. First in, first out accounting is to be used to identify contributors of unspent funds whose permission must be obtained before their contributions may be used in a new campaign. A statewide candidate who makes a good faith switch in the office sought may only accept \$3500 during an election cycle.

DISCUSSION:

A potential candidate for statewide office seeks the advice of the Commission. The candidate was elected to a statewide office in November 1998. He seeks clarification of a number of issues regarding fund raising in the next election cycle. A number of questions are posed.

1. Are contributions raised in the first quarter of 1999 attributable to the previous electoral campaign, or to the next one?

Section 8-13-1320 of the South Carolina Code provides guidance with regard to how money is to be treated during the transition between electoral cycles. The Code states that:

A contribution made on or before the end of the quarter immediately following a general election or special election is attributed to the general election or special election, respectively.

The State Ethics Commission has interpreted this to mean that monies raised by candidates in the fourth quarter of 1998 would be attributed to that candidate's general 1998 election fund raising. This would apply unless the contributions are specifically designated for a different campaign. The Commission would consider "the quarter immediately following a general election" to be the final quarter of 1998 and not the first quarter of 1999.

As a general rule contributions received in the first quarter of 1999 would be attributed to the candidate's next election campaign. This would be done pursuant to South Carolina Code §8-13-1370(A)(3) which states:

(A) Contributions received by a candidate that are in excess of expenditures during an election cycle must be used by the candidate upon final disbursement:

* * *

(3) To be maintained in the campaign account for a subsequent race for the same elective office.

This would apply unless the campaign contribution is specifically earmarked for debt retirement on a previous campaign pursuant to South Carolina Code §8-13-1318 or if the funds are designated for a campaign for different office.

2. When a candidate for office decides to run for an office different than the one he originally intended, what procedure should he follow to identify those contributors whose permission he must obtain for their contributions to be used in the new campaign?

South Carolina Code Section 8-13-1352 is instructive. It provides that:

A candidate may use or permit the use of contributions solicited for or received by the candidate to further the candidacy of the individual for an elective office other than the elective office for which the contributions were received if:

- (1) the person originally making the contribution gives written authorization for its use to further the candidacy of the individual for a specific office which is not the office for which the contribution was originally intended; and
- (2) the contribution is otherwise permitted by law.

The intent of this statute was to provide the candidate with the ability to use funds already raised when he decides to run for a different office. As stated in the statute, he has to seek and receive written permission for the use of these funds, and the funds must be allowable under law.

The first in, first out (FIFO) accounting method would be the approach to use. Election campaigns are “pay as you go” affairs. It would be irrational to attribute monies raised late in a campaign or even after the election to expenditures made prior to the election unless to pay off loans. To attempt to pro rate contributions would create an accounting nightmare, particularly in attempting to contact small contributors.

To transfer the funds will require documentation of the dates they were initially received. Donors’ written permission could then be sought, working backward from the last to the first, until those representing sufficient contributions to cover the remaining funds were contacted. Monies left over should be disposed of pursuant to Section 8-13-1370. Monies transferred from one campaign to another would be attributed to the contributor and count toward that contributor’s election cycle limit.

3. When a candidate changes the office which he is running within an election cycle, how do the contribution limits carry over from one campaign to the next?

Under the facts as presented, could a candidate for state office A who: (1) accepts \$3500 from a contributor for his campaign for state office A, (2) subsequently decides to run for state office B and (3) lawfully transfers an individual’s contribution to his next campaign for office B, subsequently accept another \$3500 from the same donor?

South Carolina Code Section 8-13-1314 states the relevant limits and restrictions. It provides that:

(A) Within an election cycle, no candidate or anyone acting on his behalf may solicit or accept:

(1) a contribution which exceeds:

(a) three thousand five hundred dollars in the case of a candidate for statewide office; or

* * *

(4) contributions for two elective offices simultaneously, except as provided in Section 8-13-1318.

This section specifically restricts contributions for two elective offices simultaneously, except as provided for in Section 8-13-1318, the campaign debt retirement proviso. An individual's contribution to a statewide campaign, regardless of its source, *i.e.* campaign carryover, direct contribution to a new campaign, or a mixture of the two may not exceed the \$3500 requirement as stated in Section 8-13-1314.

This section provides that a candidate for statewide office may only accept or solicit a contribution not to exceed \$3500 within an election cycle. Therefore, a candidate may receive a contribution and may receive written permission to carry forward the contribution to the new campaign, however, the total contribution must not exceed \$3500 per election cycle.

ANNOTATIONS: §8-13-1320 §8-13-1314 §8-13-1318 §8-13-1370 §8-13-1352
