

SEC AO2003-003

September 18, 2002

SUBJECT: E-MAIL AND THE PROHIBITIONS OF SECTIONS 8-13-765 AND 8-13-1346.

SUMMARY: Although not specifically addressed in the Ethics Reform Act, the State Ethics Commission issues the following opinion on the restrictions on use of e-mails and the prohibitions of Sections 8-13-765 and 8-13-1346.

QUESTION: The State Ethics Commission has requested an Advisory Opinion to outline the restrictions on the use of e-mails and the prohibitions of Sections 8-13-765 and 8-13-1346.

DISCUSSION: The State Ethics 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 of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The State Ethics Commission is mindful that the Ethics Reform Act does not address the use of the newest technology in campaigns, i.e. mass e-mailings of campaign material.

The sending of an e-mail containing campaign material to a government office building has resulted in the filing of a complaint and subsequent Decision and Order in the matter.

Section 8-13-765 provides that:

(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. (Emphasis

added).

(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 nongovernment premises.

Section 8-13-1346 provides in part:

(A) A **person** may not use or authorize the use of public funds, property, or time to influence the outcome of an election. (Emphasis added).

Section 8-13-1300 states in part:

(9) 'Election' means:

- (a) a general, special, primary, or runoff election;
- (b) a convention or caucus of a political party held to nominate a candidate;
- (c) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States or the Constitution of this State; or
- (d) a ballot measure.

In Advisory Opinion SEC AO92-055, the Commission advised that “[p]ublic 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.”

Clearly, a public employee may not use his government computer to e-mail campaign literature to other public employees or private citizens. The question resulting from the above referenced complaint is whether a violation of the Ethics Reform Act occurs when a private citizen on his personal computer e-mails campaign material to public employees on their government computer.

Unlike the Office of Special Counsel and its interpretation of the Hatch Act¹, the Commission finds that a person knowingly sending an e-mail which contains campaign material to a public employee on his government computer is in violation of the Ethics Reform Act, specifically Sections 8-13-765 and 8-13-1346.² The sender is using government personnel and equipment when he e-mails campaign material to public employees at their workplace. The sender is using public property to influence the outcome of an election when he e-mails campaign material which advocates the election or defeat of a candidate.

CONCLUSION: Accordingly, the State Ethics Commission finds that a person knowingly sending an e-mail which contains campaign material to a public employee on his government computer is in violation of the Ethics Reform Act.

KEY WORDS: election

ANNOTATIONS: 8-13-765, 8-13-1346

¹The Hatch Act prohibits federal employees from engaging in political activity while in uniform, on duty, in a government building, or in a government vehicle. Further it defines political activity as “an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.” 5 C.F.R. §734.101.

²The Office of Special Counsel in an Advisory Opinion issued on May 30, 2002 opined that a federal “employee who is merely a recipient of a message such as the one described in the text does not violate the Hatch Act, even if he or she receives, retrieves or review the message while on duty or in a government building because retrieving or reviewing a message are not acts directed toward the success or failure of a political party, candidate or group.”