

State of South Carolina

State Ethics Commission

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SEC AO2021-001

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SUBJECT: CAMPAIGN CONTRIBUTIONS AND DIGITAL CRYPTOGRAPHIC CURRENCY

SUMMARY: Candidates may not accept contributions in the form of digital cryptographic currency, to include Bitcoin.

APPLICABLE LAW:

Section 8-13-1300(7) states, in relevant part:

“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, whether any of the above are made or offered directly or indirectly.

Section 8-13-100(1) provides:

(a) “Anything of value” or “thing of value” means: (i) a pecuniary item, including money, a bank bill, or bank note; (ii) a promissory note, bill of exchange, an order, a draft, warrant, check, or bond given for the payment of money; (iii) a contract, agreement, promise, or other obligation for an advance, a conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money; (iv) a stock, bond, note, or other investment interest in an entity; (v) a receipt given for the payment of money or other property; (vi) a chose-in-action; (vii) a gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel; (viii) a loan or forgiveness of indebtedness; (ix) a work of art, an antique, or collectible; (x) an automobile or other means of personal transportation; (xi) real property or an interest in real property, including title to realty, a fee simple or partial interest in realty including present, future, contingent, or vested interests in realty, a leasehold interest, or other beneficial interest in realty; (xii) an honorarium or

compensation for services; (xiii) a promise or offer of employment; (xiv) any other item that is of pecuniary or compensatory worth to a person.

(b) “Anything of value” or “thing of value” does not mean: (i) printed informational or promotional material, not to exceed ten dollars in monetary value; (ii) items of nominal value, not to exceed ten dollars, containing or displaying promotional material; (iii) a personalized plaque or trophy with a value that does not exceed one hundred fifty dollars; (iv) educational material of a nominal value directly related to the public official’s, public member’s, or public employee’s official responsibilities; (v) an honorary degree bestowed upon a public official, public member, or public employee by a public or private university or college; (vi) promotional or marketing items offered to the general public on the same terms and conditions without regard to status as a public official or public employee; (vii) a campaign contribution properly received and reported under the provisions of this chapter.

DISCUSSION:

Palmetto Chain, Inc. has asked the Commission to issue an Advisory Opinion as to whether candidates for public office may accept contributions in the form of digital cryptographic currencies, specifically Bitcoin. This is matter of first impression for the Commission.

Bitcoin is a privately-issued digital currency. Unlike U.S. dollars, Bitcoin is not government issued and does not have a physical coin or bill associated with its circulation, such as a Federal Reserve Note. Bitcoin can be used to buy merchandise anonymously – a bitcoin user’s real-life identity, IP address, and even country of operation “cannot be reliably traced to a real human by an auditor of ordinary technical skill.” U.S. Gov’t Accountability Office, GAO-13-516, *Virtual Economies and Currencies 5* (2013), *available at* <http://www.gao.gov/assets/660/654620.pdf>.

In 2014, the Federal Election Commission issued AO2014-02, finding candidates for federal public office could accept campaign contributions in the form of bitcoin. The FEC reasoned that bitcoin were akin to stocks or other securities and therefore could be accepted and reported as in-kind contributions. In 2018, the South Carolina House of Representatives Ethics Committee (HEC) issued AO2018-03, finding candidates for the House of Representatives could not accept campaign contributions in the form of bitcoin. The HEC reasoned that because the Ethics Act’s definitions of “contribution” and “a thing of value” did not include cryptographic currency, such contributions were not permissible. The HEC further opined that “should this practice be permitted in South Carolina, it should be done through legislation rather than through an HEC advisory opinion.”

The Commission holds that digital cryptographic currencies may not be used to make campaign contributions to candidates for public office. The Commission adopts the reasoning of the HEC and believes that allowing such contributions should be done through legislation rather than through this Commission’s Advisory Opinions.