



ALAN WILSON
ATTORNEY GENERAL

May 25, 2011

The Honorable Tom Young, Jr.
South Carolina House of Representatives, District 81
P.O. Box 651
Aiken, SC 29802

Dear Representative Young:

We are in receipt of your letter requesting an opinion of this Office as to whether a gated community in South Carolina can prohibit door to door campaigning by candidates for local, state or federal elections. This opinion addresses relevant case law and prior opinions.

Law/Analysis

The issue raised by your question involves the balancing of constitutional guarantees versus private property owners' rights. Gated communities are privately owned. "Before an owner of private property can be subjected to the commands of the First and Fourteenth Amendments the privately owned property must assume to some significant degree the functional attributes of public property devoted to public use. The First and Fourteenth Amendments are limitations on state action, not an action by the owner of private property used only for private purposes." Central Hardware Co. v. National Labor Relations Board, 407 U.S. 539, 547 (1972). In Lloyd Corp., Ltd. v. Tanner, 407 U.S. 551 (1972), the United States Supreme Court stated, "this Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminatorily for private purposes only." Id. at 568. The Court further noted, "it must be remembered that the First and Fourteenth Amendments safeguard the rights of free speech and assembly by limitations on state action, not on action by the owner of private property used nondiscriminatorily for private purposes only." Id. at 567.¹ Numerous courts have ruled that gated communities or condominium associations are not state actors. See, e.g., Kalian at Poconos, L.L.C. v. Saw Creek Estates Community Ass'n, Inc., 275 F. Supp.2d 578 (M.D. Pa. 2003); Goldberg v. 400 E. Ohio Condo. Ass'n, 12 F. Supp 2d 820 (N.D. Ill. 1998). Therefore, uninvited political candidates are not entitled to general rights of free speech within such communities.

Additionally, in a prior opinion of this Office addressing the question of whether a candidate could hand out campaign material in parking lots of shopping centers or in State office buildings, we

¹ "[The South Carolina Constitution] affords the same protections as does the Federal constitution." Charleston Joint Venture v. McPherson, 308 S.C. 145, 151, 417 S.E.2d 544, 548 n.7 (1992).

The Honorable Tom Young, Jr.
Page 2
May 25, 2011

concluded that as shopping centers and their parking lots are private property, "a candidate should obtain permission before going on the property and handing out campaign literature." Op. S.C. Att'y Gen. (April 11, 1978). Another prior opinion dealt with whether a campaign poster could be placed on a telephone pole for advertisement purposes. In that opinion, we advised, *inter alia*, that as the poles are the private property of a telephone utility, the company or co-operative would have the right to prohibit a campaign poster from being placed on its poles. Op. S.C. Att'y Gen. (May 29, 1970). Accordingly, as gated communities are private property, said communities may prohibit door to door campaigning by candidates as long as the property is used nondiscriminatorily for private purposes.²

Conclusion

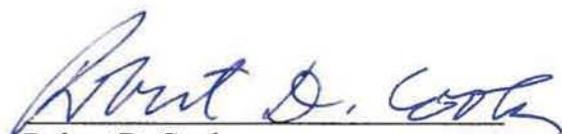
A gated community is private property, not a public forum; therefore, it may prohibit door to door campaigning by candidates for local, state or federal offices. We should note, however, that our comments herein are general in nature and do not address any specific factual situation.

Sincerely,



ElizabethAnn L. Felder
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

² Cf. Guttenberg Taxpayers and Rentpayers Ass'n v. Galaxy Towers Condominium Ass'n, 688 A.2d 156 (N.J. 1996) (condominium association that endorsed candidates by distributing campaign flyers to its residents could not deny access to its private property to citizens group that wished to distribute its campaign literature); Laguna Publishing Co. v. Golden Rain Foundation of Laguna Hills, 182 Cal. Rptr. 813 (Ct. App. 1982) (gated community cannot discriminatorily exclude delivery of unsolicited, give-away newspaper as it allowed the unsolicited delivery of another free, community type newspaper).