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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 24, 2002

The Honorable Doug Smith
Speaker Pro Tempore
South Carolina House of Representatives
P.O. Drawer 5587
Spartanburg, South Carolina 29304-5587

**Re: Your Letter of June 7, 2002
Health Service Districts - Political Contributions**

Dear Mr. Speaker Pro Tempore:

In your above-referenced letter, you have asked this Office for an informal opinion on the following questions:

... whether a Health Services District may legally make a political contribution to a State candidate or State political action committee; or whether a Health Services District may establish a separate segregate fund to be utilized for political purposes pursuant to U.S.C. § 441b(b)(2)(C).

Counties and municipalities in South Carolina are given the authority to create regional health service districts pursuant to S.C. Code Ann. §44-7-2010. That Section provides that:

Any county or group of contiguous counties, any municipality or group of contiguous municipalities located within their boundaries, or any county or group thereof, and any municipalities located within their boundaries, may form a health services district by enactment of the governing body of the county or municipality or by joint enactment of the governing bodies of the counties and municipalities desiring to create a health services district pursuant to the provisions of the South Carolina Education Improvement Act of 1984. The enactment shall designate the name of the health services district and shall declare it to be a body politic and corporate within the counties and municipalities so designated.

A health service district is governed by a board of directors, the members of which are appointed by the governing body of the political subdivision which has established the district. See S.C. Code Ann. §44-7-2020. The board of directors' powers and duties are provided for in Sections 44-7-2060,

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2070, 2080, 2100, etc. The board's overriding duty is that of "... planning, establishing, financing, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, protecting, policing or in other ways assisting in the development of nonprofit hospitals and health care related facilities" See S.C. Code Ann. §44-7-2100. Further, Section 44-7-2130 provides that a "... health service district constitutes an agency of the county to operate health care facilities and shall receive the proceeds from any special public hospital tax levied by the authorizing subdivisions." The board is also authorized to receive and expend money from private sources to further the purposes of the district. See 44-7-2060(12).

Given the nature in which they are created and the functions they perform, this Office previously opined that health service districts would most likely be considered political subdivisions of the State of South Carolina. See OP. ATTY. GEN. dated September 14, 1987. Health Service districts are specifically made agencies of the county, are authorized to receive public funding and they perform a recognized governmental or public function. Supra. As this Office has consistently opined, public funds may be expended only for a public purpose, not a private purpose. See OP. ATTY. GEN. dated December 18, 2000. Further, even though a district may receive funding from private sources, once private money is donated to a political subdivision of the State, that money becomes public funds just as though it had originated from public revenue sources. See OP. ATTY. GEN. dated May 21, 2001. Accordingly, even money received as a private donation would be subject to the limitation that it be expended for a public purpose. Supra. It seems doubtful that a political contribution to a State candidate or State political action committee could ever be considered an expenditure of money for a public purpose.

Moreover, South Carolina's Ethics, Government Accountability and Campaign Reform Act may also need to be considered in evaluating your question. S.C. Code Ann. §8-13-1346 of that Act provides that "[a] person may not use or authorize the use of public funds, property, or time to influence the outcome of an election." It seems axiomatic that the use of public funds for a campaign contribution would be a use intended to influence the outcome of an election. Again, as mentioned above, public funds include those generated from public revenue sources and those donated from private sources to a public body. Accordingly, it would appear that a contribution from a health service district to a political candidate or political action committee, even if the funds originated as a private donation to the district, would violate Section 8-13-1346. Of course, this Office must defer to the State Ethics Commission in regard to any specific allegation of a violation of the Act as the South Carolina General Assembly has delegated primary responsibility for interpreting the Act's provisions to the Ethics Commission. See S.C. Code Ann. §8-13-320(11).

You have also asked about the legality of a health service district creating a separate segregated fund and making political contributions from that fund pursuant to 2 U.S.C.A. §441b(b)(2)(C). Section 441b basically makes it unlawful for "any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office" See 2 U.S.C.A. §441b(a). The section you reference, §441b(b)(2)(C), exempts from the definition of "contribution or expenditure" a

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contribution which comes from a "separate segregated fund" which may be "... utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock." This exemption from the federal prohibition of corporate campaign contributions, however, does not change our State's requirement that public funds be used for public purposes. Neither does it alter our State's prohibition of the use of public funds to influence the outcome of an election. Therefore, it is my opinion that 2 U.S.C.A. §441b(b)(2)(C) does not provide a health service district with legal authority to make political contributions to political candidates or political action committees.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read "D. K. Avant", written in a cursive style.

David K. Avant
Assistant Attorney General

DKA/an